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Compilations

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OF WASHINGTON

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BY

HON. ARTHUR REMINGTON,

Reporter of the Supreme Court, Author of "Notes on Washington Reports," "Remington's Washington Digest," "Remington and Ballinger's Annotated Codes and Statutes," etc.

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CONSTITUTION

OF THE

STATE OF WASHINGTON.

[This constitution was framed by a convention of seventy-five delegates, chosen by the people of the territory of Washington at an election held May 14, 1889, under § 3 of the Enabling Act. The convention met at Olympia on the fourth day of July, 1889, and adjourned on the twenty-second day of August, 1889. The constitution was ratified by the people at an election held on October 1, 1889, and on November 11, 1889, in accordance with § 8 of the Enabling Act, the President of the United States proclaimed the admission of the state of Washington into the Union.]

PREAMBLE.

We the people of the state of Washington, grateful to the Supreme Ruler of the Universe for our liberties, do ordain this constitution.

ARTICLE I.

Bill of Rights.

Cited in 53 Wash. 2; 84 Wash. 62.

§ 1. Political Power.—All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights.

Cited in 30 Wash. 443.

§ 2. Supreme Law of the Land.—The constitution of the United States is the supreme law of the land.

Cited in 1 Wash. 386.

§ 3. Personal Rights.—No person shall be deprived of life, liberty, or property without due process of law.

Cited in 5 Wash. 304; 13 Wash. 159; 16 Wash. 415; 17 Wash. 450; 18 Wash. 78, 595; 19 Wash. 208, 337; 29 Wash. 604; 35 Wash. 512; 36 Wash. 312, 453; 39 Wash. 164; 41 Wash. 178; 42 Wash. 240; 44 Wash. 352, 354; 45 Wash. 252; 46 Wash. 302; 54 Wash. 153; 60 Wash. 112; 63 Wash. 468; 65 Wash. 175, 213; 67 Wash. 40, 641; 75 Wash. 582, 587; 77 Wash. 535; 78 Wash. 55; 79 Wash. 609; 80 Wash. 700; 81 Wash. 671; 86 Wash. 24, 434; 87 Wash. 655.

§ 4. Right of Petition and Assemblage.—The right of petition and of the people peaceably to assemble for the common good shall never be abridged.

Cited in 70 Wash. 602; 75 Wash. 582.

§ 5. Freedom of Speech.—Every person may freely speak, write, and publish on all subjects, being responsible for the abuse of that right.

Cited in 19 Wash. 242; 82 Wash. 88.

§ 6. Oaths—Mode of Administering.—The mode of administering an oath or affirmation shall be such as may be most consistent with and binding upon the conscience of the person to whom such oath or affirmation may be administered.

§ 7. Invasion of Private Affairs or Home Prohibited.—No person shall be disturbed in his private affairs, or his home invaded, without authority of law.

Cited in 36 Wash. 454; 75 Wash. 582; 86 Wash. 24.

§ 8. Irrevocable Privilege, Franchise or Immunity Prohibited.—No law granting irrevocably any privilege, franchise, or immunity shall be passed by the legislature.

Cited in 21 Wash. 522; 83 Wash. 13.

§ 9. Rights of Accused Persons.—No person shall be compelled in any criminal case to give evidence against himself, or be twice put in jeopardy for the same offense.

Cited in 7 Wash. 338; 14 Wash. 666; 18 Wash. 484; 36 Wash. 488; 40 Wash. 219; 56 Wash. 132; 81 Wash. 391; 83 Wash. 517; 86 Wash. 24; 87 Wash. 471.

§ 10. Administration of Justice.—Justice in all cases shall be administered openly and without unnecessary delay.

Cited in 16 Wash. 575.

§ 11. Religious Freedom.—Absolute freedom of conscience in all matters of religious sentiment, belief, and worship shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion, but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for or applied to any religious worship, exercise, or instruction, or the support of any religious establishment. No religious

qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony.

This section is amended: See 4th Amendment, infra.

§ 12. Special Privileges and Immunities Prohibited.—No law shall be passed granting to any citizen, class of citizens, or corporation, other than municipal, privileges or immunities which, upon the same terms, shall not equally belong to all citizens or corporations.

Cited in 4 Wash. 426; 15 Wash. 297, 421; 18 Wash. 78, 591; 21 Wash. 522, 554; 23 Wash. 580; 24 Wash. 31, 56; 28 Wash. 631; 29 Wash. 458; 31 Wash. 192, 641; 35 Wash. 36, 343, 515; 36 Wash. 454; 37 Wash. 429, 432; 38 Wash. 397; 41 Wash. 238; 42 Wash. 217, 240; 44 Wash. 352–354; 45 Wash. 477; 47 Wash. 539; 49 Wash. 35, 462; 54 Wash. 289; 55 Wash. 292; 58 Wash. 476; 63 Wash. 468, 469; 65 Wash. 175; 67 Wash. 641, 646, 647; 79 Wash. 231, 609; 80 Wash. 700; 84 Wash. 247; 86 Wash. 434.

§ 13. Habeas Corpus.—The privilege of the writ of habeas corpus shall not be suspended, unless in case of rebellion or invasion the public safety requires it.

Cited in 84 Wash. 62.

§ 14. Excessive Bail, Fines and Punishments.—Excessive bail shall not be required, excessive fines imposed, nor cruel punishment inflicted.

Cited in 70 Wash. 67; 79 Wash. 609; 80 Wash. 700.

§ 15. Convictions, Effect of.—No conviction shall work corruption of blood nor forfeiture of estate.

§ 16. Eminent Domain.—Private property shall not be taken for private use, except for private ways of necessity, and for drains, flumes, or ditches on or across the lands of others for agricultural, domestic, or sanitary purposes. No private property shall be taken or damaged for public or private use without just compensation having been first made, or paid into court for the owner, and no right of way shall be appropriated to the use of any corporation other than municipal until full compensation therefor be first made in money, or ascertained and paid into court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived, as in other civil cases in courts of record, in the manner pre-

scribed by law. Whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such, without regard to any legislative assertion that the use is public.

Cited in 3 Wash. 234, 235; 4 Wash. 451; 5 Wash. 38, 744; 6 Wash. 8, 164, 399, 402; 7 Wash. 269; 9 Wash. 2, 87, 92; 11 Wash. 430, 635; 13 Wash. 49, 159; 15 Wash. 319; 19 Wash. 202, 358; 20 Wash. 88; 23 Wash. 112; 24 Wash. 500; 26 Wash. 286; 27 Wash. 125, 526; 29 Wash. 5, 494; 30 Wash. 224, 254; 31 Wash. 560; 32 Wash. 227; 33 Wash. 391, 497; 34 Wash. 351; 53 Wash. 42, 44, 239, 585; 54 Wash. 153; 55 Wash. 187, 577; 57 Wash. 53; 58 Wash. 612; 59 Wash. 627, 629; 61 Wash. 272; 62 Wash. 221, 533; 63 Wash. 464, 468, 469; 65 Wash. 103, 107, 114; 66 Wash. 445; 67 Wash. 143, 541; 69 Wash. 659; 70 Wash. 490, 544; 71 Wash. 167, 653; 72 Wash. 182, 499; 73 Wash. 119, 126, 234; 74 Wash. 134, 620, 626; 75 Wash. 219, 369, 582; 76 Wash. 188, 631; 77 Wash. 586, 613; 80 Wash. 131; 82 Wash. 599, 601; 83 Wash. 383, 449; 85 Wash. 36, 37; 86 Wash. 105, 161.

See infra, Art. XII, § 19, eminent domain extended to telegraph and telephone companies.

See infra, Art. XII, § 10, right of, not to be abridged.

§ 17. Imprisonment for Debt.—There shall be no imprisonment for debt except in cases of absconding debtors.

Cited in 2 Wash. 258; 19 Wash. 349; 21 Wash. 200; 24 Wash. 499; 53 Wash. 467; 60 Wash. 104; 78 Wash. 695; 81 Wash. 396; 84 Wash. 60; 86 Wash. 24.

§ 18. Military Power, Limitation of.—The military shall be in strict subordination to the civil power.

§ 19. Freedom of Elections.—All elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

§ 20. Bail, When Authorized.—All persons charged with crime shall be bailable by sufficient sureties, except for capital offenses, when the proof is evident, or the presumption great.

Cited in 64 Wash. 141; 84 Wash. 62.

§ 21. Trial by Jury.—The right of trial by jury shall remain inviolate, but the legislature may provide for a jury of any number less than twelve in courts not of record, and for a verdict by nine or more jurors in civil cases in any court of record, and for waiving of the jury in civil cases where the consent of the parties interested is given thereto.

Cited in 13 Wash. 663; 15 Wash. 421, 447; 16 Wash. 384; 22 Wash. 131; 30 Wash. 325; 33 Wash. 537; 39 Wash. 164, 203; 58 Wash. 180;

60 Wash. 112; 61 Wash. 400; 65 Wash. 176, 213, 214; 75 Wash. 582; 76 Wash. 190; 82 Wash. 289; 86 Wash. 24.

§ 22. Rights of Accused Persons.—In criminal prosecutions, the accused shall have the right to appear and defend in person, and by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to meet the witnesses against him face to face, to have compulsory process to compel the attendance of witnesses in his own behalf, have a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed, and the right to appeal in all cases; and in no instance shall any accused person before final judgment be compelled to advance money or fees to secure the rights herein guaranteed.

Cited in 2 Wash. 125, 371; 3 Wash. 114, 7 Wash. 258, 337; 8 Wash. 232, 234, 464; 9 Wash. 214, 339; 12 Wash. 297; 13 Wash. 486; 15 Wash. 18, 421; 16 Wash. 575; 17 Wash. 563; 18 Wash. 48; 19 Wash. 466; 22 Wash. 5; 23 Wash. 578; 29 Wash. 60, 457; 30 Wash. 142; 35 Wash. 155; 41 Wash. 244; 45 Wash. 254; 49 Wash. 437; 54 Wash. 383; 55 Wash. 589; 56 Wash. 297; 57 Wash. 247; 58 Wash. 417; 65 Wash. 631; 68 Wash. 12; 71 Wash. 596; 72 Wash. 161; 75 Wash. 333; 80 Wash. 370; 82 Wash. 367; 84 Wash. 62.

§ 23. Bill of Attainder, Ex Post Facto Law, etc.—No bill of attainder, ex post facto law, or law impairing the obligations of contracts shall ever be passed.

Cited in 14 Wash. 539; 17 Wash. 613; 19 Wash. 208; 38 Wash. 628.

§ 24. Right to Bear Arms.—The right of the individual citizen to bear arms in defense of himself or the state shall not be impaired, but nothing in this section shall be construed as authorizing individuals or corporations to organize, maintain, or employ an armed body of men.

Cited in 46 Wash. 410.

§ 25. Prosecution by Information.—Offenses heretofore required to be prosecuted by indictment may be prosecuted by information or by indictment, as shall be prescribed by law.

Cited in 1 Wash. 380; 2 Wash. 555; 15 Wash. 510; 20 Wash. 247.

§ 26. Grand Jury.—No grand jury shall be drawn or summoned in any county, except the superior judge thereof shall so order.

Cited in 2 Wash. 555.

§ 27. Treason, Defined, etc.—Treason against the state shall consist only in levying war against the state, or adhering to its enemies,

or in giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or confession in open court.

§ 28. Hereditary Privileges Abolished. — No hereditary emoluments, privileges, or powers shall be granted or conferred in this state.

§ 29. Constitution Mandatory.—The provisions of this constitution are mandatory, unless by express words they are declared to be otherwise.

Cited in 11 Wash. 437; 25 Wash. 265; 46 Wash. 274; 80 Wash. 353.

§ 30. Rights Reserved.—The enumeration in this constitution of certain rights shall not be construed to deny others retained by the people.

Cited in 30 Wash. 443.

§ 31. Standing Army.—No standing army shall be kept up by this state in time of peace, and no soldier shall in time of peace be quartered in any house without the consent of its owner, nor in time of war except in the manner prescribed by law.

§ 32. Fundamental Principles.—A frequent recurrence to fundamental principles is essential to the security of individual rights, and the perpetuity of free government.

Cited in 18 Wash. 571; 60 Wash. 113; 76 Wash. 315, 317, 333; 77 Wash. 580; 81 Wash. 411.

This article is amended by adding sections 33 and 34: See 8th Amendment.

ARTICLE II.

Legislative Department.

§ 1. Legislative Powers, Where Vested.—The legislative powers shall be vested in a senate and house of representatives, which shall be called the legislature of the state of Washington.

Cited in 13 Wash. 20; 35 Wash. 132; 64 Wash. 79; 70 Wash. 300; 80 Wash. 693; 81 Wash. 632; 82 Wash. 648; 84 Wash. 309, 323; 85 Wash. 263, 272, 284, 299.

This section is amended: See 7th Amendment.

§ 2. House of Representatives and Senate.—The house of representatives shall be composed of not less than sixty-three nor more than ninety-nine members. The number of senators shall not be

more than one-half nor less than one-third of the number of members of the house of representatives. The first legislature shall be composed of seventy members of the house of representatives and thirty-five senators.

Cited in 85 Wash. 263.

§ 3. The Census.—The legislature shall provide by law for an enumeration of the inhabitants of the state in the year one thousand eight hundred and ninety-five, and every ten years thereafter; and at the first session after such enumeration, and also after each enumeration, made by the authority of the United States, the legislature shall apportion and district anew the members of the senate and house of representatives, according to the number of inhabitants, excluding Indians not taxed, soldiers, sailors, and officers of the United States army and navy in active service.

Cited in 15 Wash. 50.

§ 4. Election of Representatives and Term of Office.—Members of the house of representatives shall be elected in the year eighteen hundred and eighty-nine at the time and in the manner provided by this constitution, and shall hold their offices for the term of one year and until their successors shall be elected.

Cited in 49 Wash. 72.

§ 5. Elections, When to be Held.—The next election of the members of the house of representatives after the adoption of this constitution shall be on the first Tuesday after the first Monday of November, eighteen hundred and ninety, and thereafter members of the house of representatives shall be elected biennially, and their term of office shall be two years; and each election shall be on the first Tuesday after the first Monday in November, unless otherwise changed by law.

§ 6. Election and Term of Office of Senators.—After the first election the senators shall be elected by single districts of convenient and contiguous territory at the same time and in the same manner as members of the house of representatives are required to be elected, and no representative district shall be divided in the formation of a senatorial district. They shall be elected for the term of four years, one-half of their number retiring every two years. The senatorial districts shall be numbered consecutively, and the senators chosen at the first election had by virtue of this constitution, in odd-numbered districts, shall go out of office at the end of the first year, and

the senators elected in the even-numbered districts shall go out of office at the end of the third year.

Cited in 4 Wash. 14.

§ 7. Qualifications of Legislators.—No person shall be eligible to the legislature who shall not be a citizen of the United States and a qualified voter in the district for which he is chosen.

Cited in 54 Wash. 463.

§ 8. Judges of Their Own Election and Qualification—Quorum.—Each house shall be the judge of the election, returns, and qualifications of its own members, and a majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day and may compel the attendance of absent members in such manner and under such penalties as each house may provide.

Cited in 60 Wash. 423.

§ 9. Rules of Procedure.—Each house may determine the rules of its own proceedings, punish for contempt and disorderly behavior, and, with the concurrence of two-thirds of all the members elected, expel a member, but no member shall be expelled a second time for the same offense.

§ 10. Election of Officers.—Each house shall elect its own officers, and when the lieutenant-governor shall not attend as president, or shall act as governor, the senate shall choose a temporary president. When presiding, the lieutenant-governor shall have the deciding vote in case of an equal division of the senate.

Cited in 29 Wash. 340.

§ 11. Journal, Publicity of Meetings—Adjournments.—Each house shall keep a journal of its proceedings and publish the same, except such parts as require secrecy. The doors of each house shall be kept open, except when the public welfare shall require secrecy. Neither house shall adjourn for more than three days, nor to any place other than that in which they may be sitting, without the consent of the other.

§ 12. Sessions, When—Duration.—The first legislature shall meet on the first Wednesday after the first Monday in November, A. D. 1889. The second legislature shall meet on the first Wednesday after the first Monday in January, A. D. 1891, and sessions of the legislature shall be held biennially thereafter, unless specially convened

by the governor, but the times of meeting of subsequent sessions may be changed by the legislature. After the first legislature the sessions shall not be more than sixty days.

§ 13. Limitation on Members Holding Office in the State.—No member of the legislature during the term for which he is elected shall be appointed or elected to any civil office in the state which shall have been created, or the emoluments of which shall have been increased, during the term for which he was elected.

§ 14. Same, Federal or Other Office.—No person being a member of congress, or holding any civil or military office under the United States or any other power, shall be eligible to be a member of the legislature; and if any person after his election as a member of the legislature shall be elected to congress or be appointed to any other office, civil or military, under the government of the United States, or any other power, his acceptance thereof shall vacate his seat: Provided, that officers in the militia of the state who receive no annual salary, local officers, and postmasters, whose compensation does not exceed three hundred dollars per annum, shall not be ineligible.

§ 15. Writs of Election to Fill Vacancies.—The governor shall issue writs of election to fill such vacancies as may occur in either house of the legislature.

§ 16. Privileges from Arrest.—Members of the legislature shall be privileged from arrest in all cases except treason, felony, and breach of the peace; they shall not be subject to any civil process during the session of the legislature, nor for fifteen days next before the commencement of each session.

§ 17. Freedom of Debate.—No member of the legislature shall be liable in any civil action or criminal prosecution whatever for words spoken in debate.

§ 18. Style of Laws.—The style of the laws of the state shall be: "Be it enacted by the legislature of the state of Washington"; and no laws shall be enacted except by bill.

§ 19. Bill to Contain One Subject.—No bill shall embrace more than one subject, and that shall be expressed in the title.

Cited in 1 Wash. 294, 307, 311, 387; 2 Wash. 495; 3 Wash. 275; 6 Wash. 149; 10 Wash. 149; 15 Wash. 10, 481; 17 Wash. 450, 634; 19

Wash. 398, 443, 448; 21 Wash. 383; 24 Wash. 256; 25 Wash. 126; 28 Wash. 321; 31 Wash. 192; 35 Wash. 166, 341; 36 Wash. 32, 537; 38 Wash. 312; 39 Wash. 185; 40 Wash. 407; 41 Wash. 4; 42 Wash. 193, 194, 499; 43 Wash. 664; 46 Wash. 597; 48 Wash. 44, 71; 49 Wash. 623; 50 Wash. 518; 54 Wash. 233; 66 Wash. 230, 612, 613; 70 Wash. 529, 532; 71 Wash. 596; 75 Wash. 85, 616; 76 Wash. 317; 78 Wash. 105, 110, 111, 117; 79 Wash. 231, 639; 80 Wash. 362; 81 Wash. 491, 606; 82 Wash. 646; 83 Wash. 13; 86 Wash. 434.

§ 20. Origin and Amendment of Bills.—Any bill may originate in either house of the legislature, and a bill passed by one house may be amended in the other.

§ 21. Yeas and Nays.—The yeas and nays of the members of either house shall be entered on the journal on the demand of one-sixth of the members present.

§ 22. Passage of Bills.—No bill shall become a law unless, on its final passage, the vote be taken by yeas and nays, the names of the members voting for and against the same be entered on the journal of each house, and a majority of the members elected to each house be recorded thereon as voting in its favor.

§ 23. Compensation of Members.—Each member of the legislature shall receive for his services five dollars for each day's attendance during the session, and ten cents for every mile he shall travel in going to and returning from the place of meeting of the legislature, on the most usual route.

§ 24. Lotteries and Divorce.—The legislature shall never authorize any lottery, or grant any divorce.

Cited in 19 Wash. 40.

§ 25. Extra Compensation, Prohibited. — The legislature shall never grant any extra compensation to any public officer, agent, servant, or contractor after the services shall have been rendered or the contract entered into, nor shall the compensation of any public officer be increased or diminished during his term of office.

Cited in 4 Wash. 92; 6 Wash. 258; 7 Wash. 450; 9 Wash. 232; 19 Wash. 488; 21 Wash. 439; 22 Wash. 268; 47 Wash. 375; 48 Wash. 465; 54 Wash. 456.

See infra, Art. III, § 25, compensation of state officers.

§ 26. Suits Against the State.—The legislature shall direct by law in what manner and in what courts suits may be brought against the state.

Cited in 2 Wash. 497; 18 Wash. 75; 27 Wash. 291; 68 Wash. 331; 86 Wash. 688.

§ 27. Elections—Viva Voce Vote.—In all elections by the legislature the members shall vote viva voce, and their votes shall be entered on the journal.

§ 28. Special Legislation.—The legislature is prohibited from enacting any private or special laws in the following cases:—

1. For changing the names of persons, or constituting one person the heir at law of another.

2. For laying out, opening, or altering highways, except in cases of state roads extending into more than one county, and military roads to aid in the construction of which lands shall have been or may be granted by congress.

3. For authorizing persons to keep ferries wholly within this state.

4. For authorizing the sale or mortgage of real or personal property of minors, or others under disability.

5. For assessment or collection of taxes or for extending the time for collection thereof.

6. For granting corporate powers or privileges.

7. For authorizing the apportionment of any part of the school fund.

8. For incorporating any town or village, or to amend the charter thereof.

9. From giving effect to invalid deeds, wills, or other instruments.

10. Releasing or extinguishing, in whole or in part, the indebtedness, liability, or other obligation of any person or corporation to this state, or to any municipal corporation therein.

11. Declaring any person of age, or authorizing any minor to sell, lease, or encumber his or her property.

12. Legalizing, except as against the state, the unauthorized or invalid act of any officer.

13. Regulating the rate of interest on money.

14. Remitting fines, penalties, or forfeitures.

15. Providing for the management of common schools.

16. Authorizing the adoption of children.

17. For limitation of civil or criminal action.

18. Changing county lines, locating or changing county seats: Provided, This shall not be construed to apply to the creation of new counties.

Cited in 3 Wash. 11; 7 Wash. 231, 232; 15 Wash. 140; 33 Wash. 503; 43 Wash. 64; 64 Wash. 73, 74; 69 Wash. 293, 294; 79 Wash. 231.

See Art. XI, § 10.

§ 29. Convict Labor.—After the first day of January, eighteen hundred and ninety, the labor of convicts of this state shall not be let out by contract to any person, copartnership, company, or corporation, and the legislature shall by law provide for the working of convicts for the benefit of the state.

§ 30. Bribery or Corrupt Solicitation.—The offense of corrupt solicitation of members of the legislature, or of public officers of the state or any municipal division thereof, and any occupation or practice of solicitation of such members or officers to influence their official action, shall be defined by law, and shall be punished by fine and imprisonment. Any person may be compelled to testify in any lawful investigation or judicial proceeding against any person who may be charged with having committed the offense of bribery or corrupt solicitation, or practice of solicitation, and shall not be permitted to withhold his testimony on the ground that it may criminate himself or subject him to public infamy, but such testimony shall not afterwards be used against him in any judicial proceeding, except for perjury in giving testimony; and any person convicted of either of the offenses aforesaid shall, as part of the punishment therefor, be disqualified from ever holding any position of honor, trust, or profit in this state. A member who has a private interest in any bill or measure proposed or pending before the legislature shall disclose the fact to the house of which he is a member, and shall not vote thereon.

Cited in 67 Wash. 520.

§ 31. Laws, When to Take Effect.—No law, except appropriation bills, shall take effect until ninety days after the adjournment of the session at which it was enacted, unless in case of any emergency (which emergency must be expressed in the preamble or in the body of the act) the legislature shall otherwise direct by a vote of two-thirds of all the members elected to each house; said vote to be taken by yeas and nays and entered on the journals.

Cited in 24 Wash. 419; 25 Wash. 612; 55 Wash. 482; 73 Wash. 398; 84 Wash. 305, 310.

§ 32. Laws, How Signed.—No bill shall become a law until the same shall have been signed by the presiding officer of each of the two houses in open session, and under such rules as the legislature shall prescribe.

§ 33. Ownership of Lands by Aliens, Prohibited—Exceptions.—The ownership of lands by aliens, other than those who in good

faith have declared their intention to become citizens of the United States, is prohibited in this state, except where acquired by inheritance, under mortgage or in good faith in the ordinary course of justice in the collection of debts; and all conveyances of lands hereafter made to any alien directly, or in trust for such alien, shall be void: Provided, that the provisions of this section shall not apply to lands containing valuable deposits of minerals, metals, iron, coal, or fire clay, and the necessary land for mills and machinery to be used in the development thereof and the manufacture of the products therefrom. Every corporation, the majority of the capital stock of which is owned by aliens, shall be considered an alien for the purposes of this prohibition.

Cited in 16 Wash. 167, 172, 375; 18 Wash. 664; 19 Wash. 85; 29 Wash. 230; 33 Wash. 546; 45 Wash. 340; 46 Wash. 105, 221; 81 Wash. 163; 84 Wash. 143.

§ 34. Bureau of Statistics, Agriculture and Immigration.—There shall be established in the office of the secretary of state a bureau of statistics, agriculture, and immigration, under such regulations as the legislature may provide.

§ 35. Protection of Employees.—The legislature shall pass necessary laws for the protection of persons working in mines, factories, and other employments dangerous to life or deleterious to health, and fix pains and penalties for the enforcement of the same.

§ 36. When Bills must be Introduced.—No bill shall be considered in either house unless the time of its introduction shall have been at least ten days before the final adjournment of the legislature, unless the legislature shall otherwise direct by a vote of two-thirds of all the members elected to each house, said vote to be taken by yeas and nays and entered upon the journal, or unless the same be at a special session.

§ 37. Revision or Amendment.—No act shall ever be revised or amended by mere reference to its title, but the act revised or the section amended shall be set forth at full length.

Cited in 9 Wash. 65; 14 Wash. 486; 26 Wash. 482; 32 Wash. 281, 473; 40 Wash. 457; 50 Wash. 520; 51 Wash. 17; 55 Wash. 517; 59 Wash. 77; 62 Wash. 125; 64 Wash. 81; 68 Wash. 56; 70 Wash. 530; 78 Wash. 105, 110; 80 Wash. 362; 82 Wash. 647; 83 Wash. 53.

§ 38. Limitation on Amendments.—No amendment to any bill shall be allowed which shall change the scope and object of the bill.

Cited in 64 Wash. 81; 80 Wash. 362.

§ 39. Free Transportation to Public Officers Prohibited.—It shall not be lawful for any person holding public office in this state to accept or use a pass or to purchase transportation from any railroad or other corporation, other than as the same may be purchased by the general public, and the legislature shall pass laws to enforce this provision.

Cited in 45 Wash. 584.

ARTICLE III.

The Executive.

Cited in 68 Wash. 150.

§ 1. Executive Department.—The executive department shall consist of a governor, lieutenant-governor, secretary of state, treasurer, auditor, attorney general, superintendent of public instruction, and a commissioner of public lands, who shall be severally chosen by the qualified electors of the state at the same time and place of voting as for the members of the legislature.

Cited in 4 Wash. 25, 26; 28 Wash. 497; 33 Wash. 459; 47 Wash. 608; 59 Wash. 493; 74 Wash. 579; 79 Wash. 638.

§ 2. Governor, Term of Office.—The supreme executive power of this state shall be vested in a governor, who shall hold his office for a term of four years, and until his successor is elected and qualified.

Cited in 28 Wash. 16, 498; 29 Wash. 337.

§ 3. Other Executive Officers, Terms of Office.—The lieutenant-governor, secretary of state, treasurer, auditor, attorney general, superintendent of public instruction, and commissioner of public lands shall hold their offices for four years respectively, and until their successors are elected and qualified.

Cited in 4 Wash. 26; 28 Wash. 16; 29 Wash. 338; 59 Wash. 494.

§ 4. Returns of Elections, Canvass, etc.—The returns of every election for the officers named in the first section of this article shall be sealed up and transmitted to the seat of government by the returning officers, directed to the secretary of state, who shall deliver the same to the speaker of the house of representatives at the first meeting of the house thereafter, who shall open, publish, and declare the result thereof in the presence of a majority of the members of both houses. The person having the highest number of votes shall be declared duly elected, and a certificate thereof shall be given to

such person, signed by the presiding officers of both houses; but if any two or more shall be highest and equal in votes for the same office, one of them shall be chosen by the joint vote of both houses. Contested elections for such officers shall be decided by the legislature in such manner as shall be decided by law. The terms of all officers named in section one of this article shall commence on the second Monday in January after their election, until otherwise provided by law.

§ 5. General Duties of Governor.—The governor may require information in writing from the officers of the state upon any subject relating to the duties of their respective offices, and shall see that the laws are faithfully executed.

Cited in 19 Wash. 637; 28 Wash. 498.

§ 6. Messages.—He shall communicate at every session by message to the legislature the condition of the affairs of the state, and recommend such measures as he shall deem expedient for their action.

§ 7. Extra Legislative Sessions.—He may, on extraordinary occasions, convene the legislature by proclamation, in which shall be stated the purposes for which the legislature is convened.

Cited in 35 Wash. 130.

§ 8. Commander-in-Chief.—He shall be commander-in-chief of the military in the state, except when they shall be called into the service of the United States.

§ 9. Pardoning Power.—The pardoning power shall be vested in the governor, under such regulations and restrictions as may be prescribed by law.

Cited in 3 Wash. 611; 20 Wash. 79; 47 Wash. 280.

§ 10. Vacancy in.—In case of the removal, resignation, death, or disability of the governor, the duties of the office shall devolve upon the lieutenant-governor, and in case of a vacancy in both the offices of governor and lieutenant-governor, the duties of governor shall devolve upon the secretary of state, who shall act as governor until the disability be removed or a governor be elected.

Cited in 29 Wash. 338.
See infra, § 16.
This section is amended: See 6th Amendment.

§ 11. Remission of Fines and Forfeitures.—The governor shall have power to remit fines and forfeitures, under such regulations as may be prescribed by law, and shall report to the legislature at its next meeting each case of reprieve, commutation, or pardon granted, and the reasons for granting the same, and also the names of all persons in whose favor remission of fines and forfeitures shall have been made, and the several amounts remitted, and the reasons for the remission.

Cited in 20 Wash. 79.

§ 12. Veto Power.—Every act which shall have passed the legislature shall be, before it becomes a law, presented to the governor. If he approves, he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, which house shall enter the objections at large upon the journal, and proceed to reconsider. If, after such reconsideration, two-thirds of the members present shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of the members present, it shall become a law; but in all such cases the vote of both houses shall be determined by the yeas and nays, and the names of the members voting for or against the bill shall be entered upon the journal of each house respectively. If any bill shall not be returned by the governor within five days, Sundays excepted, after it shall be presented to him, it shall become a law without his signature, unless the general adjournment shall prevent its return, in which case it shall become a law unless the governor, within ten days next after the adjournment, Sundays excepted, shall file such bill, with his objections thereto, in the office of the secretary of state, who shall lay the same before the legislature at its next session, in like manner as if it had been returned by the governor. If any bill presented to the governor contain several sections or items, he may object to one or more sections or items while approving other portions of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the section or sections, item or items, to which he objects, and the reasons therefor, and the section or sections, item or items, so objected to, shall not take effect unless passed over the governor's objection, as hereinbefore provided.

Cited in 55 Wash. 482.

Veto power withheld from initiated and referred measures: See 7th Amendment.

§ 13. Vacancy in Appointive Office.—When, during a recess of the legislature, a vacancy shall happen in any office the appointment to which is vested in the legislature, or when at any time a vacancy shall have occurred in any other state office for the filling of which vacancy no provision is made elsewhere in this constitution, the governor shall fill such vacancy by appointment, which shall expire when a successor shall have been elected and qualified.

Cited in 9 Wash. 199; 59 Wash. 494.

See infra, Art. XIII, § 1, appointment of officers.

§ 14. Salary.—The governor shall receive an annual salary of four thousand dollars, which may be increased by law, but shall never exceed six thousand dollars per annum.

Cited in 35 Wash. 173.

§ 15. Commissions, How Issued.—All commissions shall issue in the name of the state, shall be signed by the governor, sealed with the seal of the state, and attested by the secretary of state.

§ 16. Lieutenant-governor, Duties and Salary.—The lieutenant-governor shall be presiding officer of the state senate, and shall discharge such other duties as may be prescribed by law. He shall receive an annual salary of one thousand dollars, which may be increased by the legislature, but shall never exceed three thousand dollars per annum.

Cited in 29 Wash. 340.

See supra, Art. II, § 10; Art. III, § 10.

§ 17. Secretary of State, Duties and Salary.—The secretary of state shall keep a record of the official acts of the legislature and the executive department of the state, and shall, when required, lay the same, and all matters relative thereto, before either branch of the legislature, and shall perform such other duties as shall be assigned him by law. He shall receive an annual salary of twenty-five hundred dollars, which may be increased by the legislature, but shall never exceed three thousand dollars per annum.

Cited in 20 Wash. 79.

§ 18. Seal.—There shall be a seal of the state kept by the secretary of state for official purposes, which shall be called "The seal of the state of Washington."

See infra, Art. XVIII, § 1, seal of the state.

§ 19. State Treasurer, Duties and Salary.—The treasurer shall perform such duties as shall be prescribed by law. He shall receive an annual salary of two thousand dollars, which may be increased by the legislature, but shall never exceed four thousand dollars per annum.

Cited in 35 Wash. 174.

§ 20. State Auditor, Duties and Salary.—The auditor shall be auditor of public accounts, and shall have such powers and perform such duties in connection therewith as may be prescribed by law. He shall receive an annual salary of two thousand dollars, which may be increased by the legislature, but shall never exceed three thousand dollars per annum.

Cited in 83 Wash. 13.

§ 21. Attorney General, Duties and Salary.—The attorney general shall be the legal adviser of the state officers, and shall perform such other duties as may be prescribed by law. He shall receive an annual salary of two thousand dollars, which may be increased by the legislature, but shall never exceed thirty-five hundred dollars per annum.

Cited in 28 Wash. 498; 35 Wash. 172, 174, 175; 42 Wash. 655; 79 Wash. 638.

§ 22. Superintendent of Public Instruction, Duties and Salary.—The superintendent of public instruction shall have supervision over all matters pertaining to public schools, and shall perform such specific duties as may be prescribed by law. He shall receive an annual salary of twenty-five hundred dollars, which may be increased by law, but shall never exceed four thousand dollars per annum.

Cited in 35 Wash. 174.

§ 23. Commissioner of Public Lands—Compensation.—The commissioner of public lands shall perform such duties and receive such compensation as the legislature may direct.

Cited in 47 Wash. 608; 74 Wash. 579, 583.

§ 24. Records, Where Kept, etc.—The governor, secretary of state, treasurer, auditor, superintendent of public instruction, commissioner of public lands, and attorney general shall severally keep the public records, books, and papers relating to their respective offices at the seat of government, at which place also the governor, secretary of state, treasurer, and auditor shall reside.

§ 25. Qualifications.—No person except a citizen of the United States and a qualified elector of this state shall be eligible to hold any state office, and the state treasurer shall be ineligible for the term succeeding that for which he was elected. The compensation for state officers shall not be increased or diminished during the term for which they shall have been elected. The legislature may, in its discretion, abolish the offices of the lieutenant-governor, auditor and commissioner of public lands.

Cited in 6 Wash. 497; 47 Wash. 375, 609, 610; 51 Wash. 587; 54 Wash. 456.

See infra, § 14, Art. IV, of judges may be increased.
See infra, Art. XI, § 8.
See supra, § 25, Art. II, of officers generally not to be increased, etc.

ARTICLE IV.

The Judiciary.

§ 1. Judicial Power, Where Vested.—The judicial power of the state shall be vested in the supreme court, superior courts, justices of the peace, and such inferior courts as the legislature may provide.

Cited in 3 Wash. 611; 7 Wash. 224; 19 Wash. 21, 310; 20 Wash. 56; 23 Wash. 702; 71 Wash. 594; 82 Wash. 625, 626.

§ 2. Supreme Court.—The supreme court shall consist of five judges, a majority of whom shall be necessary to form a quorum and pronounce a decision. The said court shall always be open for the transaction of business except on nonjudicial days. In the determination of causes, all decisions of the court shall be given in writing, and the grounds of the decision shall be stated. The legislature may increase the number of judges of the supreme court from time to time, and may provide for separate departments of said court.

Cited in 29 Wash. 342; 53 Wash. 553, 554; 55 Wash. 286.

§ 3. Election and Terms of Supreme Judges.—The judges of the supreme court shall be elected by the qualified electors of the state at large, at the general state election, at the times and places at which state officers are elected, unless some other time be provided by the legislature. The first election of judges of the supreme court shall be at the election which shall be held upon the adoption of this constitution, and the judges elected thereat shall be classified by lot, so that two shall hold their office for the term of three years, two for the term of five years, and one for the term of seven years. The lot shall be drawn by the judges who shall for that purpose assemble

at the seat of government, and they shall cause the result thereof to be certified to the secretary of state, and filed in his office. The judge having the shortest term to serve, not holding his office by appointment or election to fill a vacancy, shall be the chief justice, and shall preside at all sessions of the supreme court, and in case there shall be two judges having in like manner the same short term, the other judges of the supreme court shall determine which of them shall be chief justice. In case of the absence of the chief justice, the judge having in like manner the shortest or next shortest term to serve shall preside. After the first election the terms of judges elected shall be six years from and after the second Monday in January next succeeding their election. If a vacancy occur in the office of a judge of the supreme court, the governor shall appoint a person to hold the office until the election and qualification of a judge to fill the vacancy, which election shall take place at the next succeeding general election, and the judge so elected shall hold the office for the remainder of the unexpired term. The term of office of the judges of the supreme court first elected shall commence as soon as the state shall have been admitted into the Union, and continue for the term herein provided, and until their successors are elected and qualified. The sessions of the supreme court shall be held at the seat of government until otherwise provided by law.

Cited in 29 Wash. 343, 349; 59 Wash. 494.

§ 4. Jurisdiction.—The supreme court shall have original jurisdiction in habeas corpus and quo warranto and mandamus as to all state officers, and appellate jurisdiction in all actions and proceedings, excepting that its appellate jurisdiction shall not extend to civil actions at law for the recovery of money or personal property when the original amount in controversy or the value of the property does not exceed the sum of two hundred dollars, unless the action involves the legality of a tax, impost, assessment, toll, municipal fine, or the validity of a statute. The supreme court shall also have power to issue writs of mandamus, review, prohibition, habeas corpus, certiorari, and all other writs necessary and proper to the complete exercise of its appellate and revisory jurisdiction. Each of the judges shall have power to issue writs of habeas corpus to any part of the state upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself, or before the supreme court, or before any superior court of the state, or any judge thereof.

Cited in 1 Wash. 367, 383; 2 Wash. 160; 3 Wash. 60, 62, 78, 690, 701; 6 Wash. 167, 497, 499; 7 Wash. 238; 8 Wash. 271; 9 Wash. 372, 638; 10

Wash. 226; 12 Wash. 684; 13 Wash. 170; 14 Wash. 255; 15 Wash. 671, 697; 16 Wash. 385, 418; 17 Wash. 6; 18 Wash. 693; 19 Wash. 10; 20 Wash. 98; 21 Wash. 112, 604; 22 Wash. 161, 633; 24 Wash. 542; 26 Wash. 283; 28 Wash. 5, 476; 29 Wash. 494; 30 Wash. 224; 31 Wash. 639; 32 Wash. 53, 451, 511; 37 Wash. 260, 261, 510; 40 Wash. 475, 683; 41 Wash. 152, 360; 48 Wash. 67; 49 Wash. 502, 505; 51 Wash. 310; 54 Wash. 125; 56 Wash. 69; 60 Wash. 222; 68 Wash. 149, 150; 69 Wash. 141; 71 Wash. 287; 78 Wash. 518, 676; 82 Wash. 592, 594; 86 Wash. 93, 94, 140.

§ 5. Superior Court—Election of Judges, Terms of, etc.—There shall be in each of the organized counties of this state a superior court, for which at least one judge shall be elected by the qualified electors of the county at the general election: Provided, that until otherwise directed by the legislature one judge only shall be elected for the counties of Spokane and Stevens; one judge for the county of Whitman; one judge for the counties of Lincoln, Okanogan, Douglas, and Adams; one judge for the counties of Walla Walla and Franklin; one judge for the counties of Columbia, Garfield, and Asotin; one judge for the counties of Kittitas, Yakima, and Klickitat; one judge for the counties of Clark, Skamania, Pacific, Cowlitz, and Wahkiakum; one judge for the counties of Thurston, Chehalis, Mason, and Lewis; one judge for the county of Pierce; one judge for the county of King; one judge for the counties of Jefferson, Island, Kitsap, San Juan, and Clallam; and one judge for the counties of Whatcom, Skagit, and Snohomish. In any county where there shall be more than one superior judge, there may be as many sessions of the superior court at the same time as there are judges thereof, and whenever the governor shall direct a superior judge to hold court in any county other than that for which he has been elected, there may be as many sessions of the superior court in said county at the same time as there are judges therein or assigned to duty therein by the governor, and the business of the court shall be so distributed and assigned by law, or, in the absence of legislation therefor, by such rules and orders of court as shall best promote and secure the convenient and expeditious transaction thereof. The judgments, decrees, orders, and proceedings of any session of the superior court held by any one or more of the judges of such court shall be equally effectual as if all the judges of said court presided at such session. The first superior judges elected under this constitution shall hold their offices for the period of three years, and until their successors shall be elected and qualified, and thereafter the term of office of all superior judges in this state shall be for four years from the second Monday in January next succeeding their election, and until their

successors are elected and qualified. The first election of judges of the superior court shall be at the election held for the adoption of this constitution. If a vacancy occurs in the office of judge of the superior court, the governor shall appoint a person to hold the office until the election and qualification of a judge to fill the vacancy, which election shall be at the next succeeding general election, and the judge so elected shall hold office for the remainder of the unexpired term.

Cited in 4 Wash. 717; 15 Wash. 404; 19 Wash. 21; 20 Wash. 222; 29 Wash. 351; 42 Wash. 27; 54 Wash. 384, 386, 392, 393; 59 Wash. 594; 70 Wash. 469; 71 Wash. 485; 82 Wash. 625, 626.

§ 6. Jurisdiction of Superior Courts.—The superior court shall have original jurisdiction in all cases in equity and in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand or the value of the property in controversy amounts to one hundred dollars, and in all criminal cases amounting to felony, and in all cases of misdemeanor not otherwise provided for by law; of actions of forcible entry and detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate, of divorce, and for annulment of marriage; and for such special cases and proceedings as are not otherwise provided for. The superior court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court; and said court shall have the power of naturalization and to issue papers therefor. They shall have such appellate jurisdiction in cases arising in justices' and other inferior courts in their respective counties as may be prescribed by law. They shall always be open, except on nonjudicial days, and their process shall extend to all parts of the state. Said courts and their judges shall have power to issue writs of mandamus, quo warranto, review, certiorari, prohibition, and writs of habeas corpus, on petition by or on behalf of any person in actual custody in their respective counties. Injunctions and writs of prohibition and of habeas corpus may be issued and served on legal holidays and nonjudicial days.

Cited in 2 Wash. 3, 545, 665; 3 Wash. 62, 93; 12 Wash. 439; 14 Wash. 263, 605; 15 Wash. 671; 16 Wash. 116, 354, 361; 21 Wash. 162; 24 Wash. 547; 27 Wash. 83, 182; 31 Wash. 13, 222, 306; 32 Wash. 53; 33 Wash. 172; 37 Wash. 260; 43 Wash. 228; 46 Wash. 405; 47 Wash. 484; 50 Wash. 655; 54 Wash. 389; 55 Wash. 42; 57 Wash. 628; 58 Wash. 180; 68 Wash. 490; 75 Wash. 241; 82 Wash. 625, 626; 85 Wash. 200; 86 Wash. 176; 87 Wash. 153.

§ 7. Exchange of Judges—Judge Pro Tempore.—The judge of any superior court may hold a superior court in any county at the request of the judge of the superior court thereof, and upon the request of the governor it shall be his duty to do so. A case in the superior court may be tried by a judge pro tempore, who must be a member of the bar, agreed upon in writing by the parties litigant or their attorneys of record, approved by the court, and sworn to try the case.

Cited in 12 Wash. 172.

§ 8. Absence of Judicial Officer.—Any judicial officer who shall absent himself from the state for more than sixty consecutive days shall be deemed to have forfeited his office: Provided, that in cases of extreme necessity the governor may extend the leave of absence such time as the necessity therefor shall exist.

§ 9. Removal of Judges, Attorney General, etc.—Any judge of any court of record, the attorney general, or any prosecuting attorney may be removed from office by joint resolution of the legislature, in which three-fourths of the members elected to each house shall concur, for incompetency, corruption, malfeasance, or delinquency in office, or other sufficient cause stated in such resolution. But no removal shall be made unless the officer complained of shall have been served with a copy of the charges against him as the ground of removal, and shall have an opportunity of being heard in his defense. Such resolution shall be entered at length on the journal of both houses, and on the question of removal the ayes and nays shall also be entered on the journal.

§ 10. Justices of the Peace.—The legislature shall determine the number of justices of the peace to be elected in incorporated cities or towns and in precincts, and shall prescribe by law the powers, duties and jurisdiction of justices of the peace: Provided, that such jurisdiction granted by the legislature shall not trench upon the jurisdiction of superior or other courts of record, except that justices of the peace may be made police justices of incorporated cities and towns. In incorporated cities or towns having more than five thousand inhabitants, the justices of the peace shall receive such salary as may be provided by law, and shall receive no fees for their own use.

Cited in 2 Wash. 3; 4 Wash. 92, 93; 15 Wash. 49; 25 Wash. 267; 31 Wash. 306; 41 Wash. 48; 54 Wash. 455; 57 Wash. 627; 58 Wash. 27; 78 Wash. 624.

See supra, Art. IV, § 6.

§ 11. Courts of Record.—The supreme court and the superior court shall be courts of record, and the legislature shall have power to provide that any of the courts of this state, excepting justices of the peace, shall be courts of record.

Cited in 58 Wash. 27.

§ 12. Inferior Courts.—The legislature shall prescribe by law the jurisdiction and powers of any of the inferior courts which may be established in pursuance of this constitution.

Cited in 71 Wash. 594.

§ 13. Salaries of Judicial Officers—How Paid, etc.—No judicial officer, except court commissioners and unsalaried justices of the peace, shall receive to his own use any fees or perquisites of office. The judges of the supreme court and judges of the superior courts shall severally, at stated times, during their continuance in office, receive for their services the salaries prescribed by law therefor, which shall not be increased after their election, nor during the term for which they shall have been elected. The salaries of the judges of the supreme court shall be paid by the state. One-half of the salary of each of the superior court judges shall be paid by the state, and the other one-half by the county or counties for which he is elected. In cases where a judge is provided for more than one county, that portion of his salary which is to be paid by the counties shall be apportioned between or among them according to the assessed value of their taxable property, to be determined by the assessment next preceding the time for which such salary is to be paid.

Cited in 47 Wash. 375; 54 Wash. 456; 82 Wash. 625, 626.

§ 14. Salaries of Supreme and Superior Court Judges.—Each of the judges of the supreme court shall receive an annual salary of four thousand dollars ($4,000); each of the superior court judges shall receive an annual salary of three thousand dollars ($3,000), which said salaries shall be payable quarterly. The legislature may increase the salaries of the judges herein provided.

Cited in 82 Wash. 625, 626.

§ 15. Ineligibility of Judges.—The judges of the supreme court and the judges of the superior court shall be ineligible to any other office or public employment than a judicial office or employment during the term for which they shall have been elected.

Cited in 13 Wash. 63; 70 Wash. 469, 478.

§ 16. Charging Juries.—Judges shall not charge juries with respect to matters of fact, nor comment thereon, but shall declare the law.

Cited in 3 Wash. 42, 43, 121; 4 Wash. 445; 5 Wash. 125; 6 Wash. 487; 7 Wash. 250, 341, 343; 9 Wash. 333; 13 Wash. 663; 14 Wash. 680; 15 Wash. 183; 20 Wash. 236; 22 Wash. 246; 23 Wash. 659; 24 Wash. 653; 26 Wash. 269; 32 Wash. 66; 35 Wash. 334, 569; 36 Wash. 366; 39 Wash. 202; 41 Wash. 647; 47 Wash. 46; 49 Wash. 28; 50 Wash. 569; 53 Wash. 261; 58 Wash. 529; 61 Wash. 404; 62 Wash. 384; 65 Wash. 675; 69 Wash. 400; 72 Wash. 176; 75 Wash. 341; 81 Wash. 123; 83 Wash. 522; 85 Wash. 223.

§ 17. Eligibility of Judges.—No person shall be eligible to the office of judge of the supreme court or judge of a superior court unless he shall have been admitted to practice in the courts of record of this state or of the territory of Washington.

§ 18. Supreme Court Reporter.—The judges of the supreme court shall appoint a reporter for the decisions of that court, who shall be removable at their pleasure. He shall receive such annual salary as shall be prescribed by law.

Cited in 64 Wash. 329.

§ 19. Judges may not Practice Law.—No judge of a court of record shall practice law in any court of this state during his continuance in office.

§ 20. Decisions, When to be Made.—Every case submitted to a judge of a superior court for his decision shall be decided by him within ninety days from the submission thereof: Provided, that if within said period of ninety days a rehearing shall have been ordered, then the period within which he is to decide shall commence at the time the cause is submitted upon such a rehearing.

Cited in 33 Wash. 202.

§ 21. Publication of Opinions.—The legislature shall provide for the speedy publication of opinions of the supreme court, and all opinions shall be free for publication by any person.

§ 22. Clerk of Supreme Court.—The judges of the supreme court shall appoint a clerk of that court, who shall be removable at their pleasure, but the legislature may provide for the election of the clerk of the supreme court and prescribe the term of his office. The clerk of the supreme court shall receive such compensation by salary only as shall be provided by law.

§ 23. Court Commissioners.—There may be appointed in each county, by the judge of the superior court having jurisdiction therein, one or more court commissioners, not exceeding three in number, who shall have authority to perform like duties as a judge of the superior court at chambers, subject to revision by such judge, to take depositions and to perform such other business connected with the administration of justice as may be prescribed by law.

Cited in 27 Wash. 83; 44 Wash. 616; 49 Wash. 317.

§ 24. Rules for Superior Courts.—The judges of the superior courts shall, from time to time, establish uniform rules for the government of the superior courts.

§ 25. Reports of Superior Court Judges.—Superior judges shall, on or before the first day of November in each year, report in writing to the judges of the supreme court such defects and omissions in the laws as their experience may suggest, and the judges of the supreme court shall, on or before the first day of January in each year, report in writing to the governor such defects and omissions in the laws as they may believe to exist.

§ 26. Clerk of the Superior Court.—The county clerk shall be, by virtue of his office, clerk of the superior court.

§ 27. Style of Process.—The style of all process shall be "The State of Washington," and all prosecutions shall be conducted in its name and by its authority.

Cited in 14 Wash. 240; 19 Wash. 41; 20 Wash. 491.

§ 28. Oath of Judges.—Every judge of the supreme court, and every judge of a superior court shall, before entering upon the duties of his office, take and subscribe an oath that he will support the constitution of the United States and the constitution of the state of Washington, and will faithfully and impartially discharge the duties of judge to the best of his ability, which oath shall be filed in the office of the secretary of state.

ARTICLE V.

Impeachment.

§ 1. Impeachment—Power of and Procedure.—The house of representatives shall have the sole power of impeachment. The concurrence of a majority of all the members shall be necessary to an im-

peachment. All impeachments shall be tried by the senate, and when sitting for that purpose, the senators shall be upon oath or affirmation to do justice according to law and evidence. When the governor or lieutenant-governor is on trial, the chief justice of the supreme court shall preside. No person shall be convicted without a concurrence of two-thirds of the senators elected.

§ 2. Officers Liable to.—The governor and other state and judicial officers, except judges and justices of courts not of record, shall be liable to impeachment for high crimes or misdemeanors, or malfeasance in office, but judgment in such cases shall extend only to removal from office and disqualification to hold any office of honor, trust, or profit in the state. The party, whether convicted or acquitted, shall, nevertheless, be liable to prosecution, trial, judgment, and punishment according to law.

Cited in 6 Wash. 497.

§ 3. Removal from Office.—All officers not liable to impeachment shall be subject to removal for misconduct or malfeasance in office, in such manner as may be provided by law.

Cited in 6 Wash. 498; 8 Wash. 417; 19 Wash. 332; 56 Wash. 234; 59 Wash. 496.

ARTICLE VI.

Elections and Elective Rights.

§ 1. Qualifications of Electors.—All male persons of the age of twenty-one years or over, possessing the following qualifications, shall be entitled to vote at all elections: They shall be citizens of the United States; they shall have lived in the state one year, and in the county ninety days, and in the city, town, ward or precinct thirty days immediately preceding the election at which they offer to vote; they shall be able to read and speak the English language: Provided, that Indians not taxed shall never be allowed the elective franchise: And further provided, That this amendment shall not effect [affect] the right of franchise of any person who is now a qualified elector of this state. The legislature shall enact laws defining the manner of ascertaining the qualifications of voters as to their ability to read and speak the English language, and providing for punishment of persons voting or registering in violation of the provisions of this section.

Cited in 8 Wash. 65; 12 Wash. 382; 13 Wash. 150, 362, 707; 42 Wash. 32.

This section is amended: See 2d and 5th Amendments, infra.

§ 2. School Elections—Franchise, How Extended.—The legislature may provide that there shall be no denial of the elective franchise at any school election on account of sex.

Cited in 13 Wash. 362, 707.

§ 3. Who Disqualified.—All idiots, insane persons, and persons convicted of infamous crime unless restored to their civil rights, are excluded from the elective franchise.

Cited in 13 Wash. 362; 69 Wash. 270, 271.

§ 4. Residence, Contingencies Affecting.—For the purpose of voting and eligibility to office, no person shall be deemed to have gained a residence by reason of his presence, or lost it by reason of his absence, while in the civil or military service of the state or of the United States, nor while a student at any institution of learning, nor while kept at public expense at any poorhouse or other asylum, nor while confined in public prison, nor while engaged in the navigation of the waters of this state or of the United States, or of the high seas.

Cited in 13 Wash. 362; 51 Wash. 556; 83 Wash. 434.

§ 5. Voter—When Privileged from Arrest.—Voters shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at elections and going to and returning therefrom. No elector shall be required to do military duty on the day of any election except in time of war or public danger.

Cited in 28 Wash. 16.

§ 6. Ballot.—All elections shall be by ballot. The legislature shall provide for such method of voting as will secure to every elector absolute secrecy in preparing and depositing his ballot.

Cited in 12 Wash. 382; 60 Wash. 373; 78 Wash. 84, 85.

§ 7. Registration.—The legislature shall enact a registration law, and shall require a compliance with such law before any elector shall be allowed to vote: Provided, that this provision is not compulsory upon the legislature, except as to cities and towns having a population of over five hundred inhabitants. In all other cases the legislature may or may not require registration as a prerequisite to the right to vote, and the same system of registration need not be adopted for both classes.

Cited in 13 Wash. 145.

§ 8. Elections, Time of Holding.—The first election of county and district officers not otherwise provided for in this constitution, shall be on the Tuesday next after the first Monday in November, eighteen hundred and ninety, and thereafter all elections for such officers shall be held biennially on the Tuesday next succeeding the first Monday in November. The first election of all state officers not otherwise provided for in this constitution, after the election held for the adoption of this constitution, shall be on the Tuesday next after the first Monday in November, eighteen hundred and ninety-two, and the elections for such state officers shall be held in every fourth year thereafter on the Tuesday succeeding the first Monday in November.

Cited in 4 Wash. 717, 720; 5 Wash. 460, 461; 9 Wash. 532; 16 Wash. 573; 53 Wash. 552; 59 Wash. 494; 81 Wash. 19.

See infra, Art. XXVII, § 14.

ARTICLE VII.

Revenue and Taxation.

Cited in 74 Wash. 279; 84 Wash. 536, 538.

§ 1. Annual State Tax.—All property in the state not exempt under the laws of the United States, or under this constitution, shall be taxed in proportion to its value, to be ascertained as provided by law. The legislature shall provide by law for an annual tax sufficient, with other sources of revenue, to defray the estimated ordinary expenses of the state for each fiscal year. And for the purpose of paying the state debt, if there be any, the legislature shall provide for levying a tax annually, sufficient to pay the annual interest and principal of such debt within twenty years from the final passage of the law creating the debt.

Cited in 3 Wash. 304; 17 Wash. 12; 18 Wash. 252; 20 Wash. 678; 21 Wash. 54, 554; 23 Wash. 77; 28 Wash. 100; 29 Wash. 163; 30 Wash. 445; 35 Wash. 31; 39 Wash. 179; 45 Wash. 639; 50 Wash. 173; 65 Wash. 176; 75 Wash. 85; 79 Wash. 231, 233; 82 Wash. 626; 85 Wash. 350.

§ 2. Taxation—Uniformity and Equality—Exemption.—The legislature shall provide by law a uniform and equal rate of assessment and taxation on all property in the state, according to its value in money, and shall prescribe such regulations by general law as shall secure a just valuation for taxation of all property, so that every person and corporation shall pay a tax in proportion to the value of his, her, or its property: Provided, that a deduction of debts from credits may be authorized; Provided, further, that the property of

the United States, and of the state, counties, school districts, and other municipal corporations, and such other property as the legislature may by general laws provide, shall be exempt from taxation.

Cited in 5 Wash. 146; 6 Wash. 254; 7 Wash. 107, 271; 8 Wash. 549; 14 Wash. 267; 17 Wash. 112, 452; 18 Wash. 253, 276; 20 Wash. 152, 683; 21 Wash. 101, 554; 28 Wash. 258; 29 Wash. 164; 30 Wash. 447; 35 Wash. 483; 37 Wash. 16; 44 Wash. 66, 468; 48 Wash. 482; 49 Wash. 173; 50 Wash. 173, 177; 62 Wash. 410; 65 Wash. 176, 532; 59 Wash. 322; 70 Wash. 50, 52; 71 Wash. 322; 75 Wash. 85; 78 Wash. 55; 79 Wash. 231, 233; 82 Wash. 626; 85 Wash. 350, 628.

This section is amended: See 3d Amendment, infra.

§ 3. Assessment of Corporate Property.—The legislature shall provide by general law for the assessing and levying of taxes on all corporation property as near as may be by the same methods as are provided for the assessing and levying of taxes on individual property.

Cited in 75 Wash. 85; 84 Wash. 539.

§ 4. No Surrender of Power or Suspension of Tax on Corporate Property.—The power to tax corporations and corporate property shall not be surrendered or suspended by any contract or grant to which the state shall be a party.

§ 5. Taxes, How Levied.—No tax shall be levied except in pursuance of law; and every law imposing a tax shall state distinctly the object of the same, to which only it shall be applied.

Cited in 14 Wash. 381; 17 Wash. 141; 28 Wash. 45; 30 Wash. 445; 31 Wash. 146; 36 Wash. 454; 50 Wash. 256; 79 Wash. 328, 329, 330; 85 Wash. 271.

§ 6. Taxes, How Paid.—All taxes levied and collected for state purposes shall be paid in money only into the state treasury.

Cited in 65 Wash. 532.

§ 7. Annual Statement.—An accurate statement of the receipts and expenditures of the public moneys shall be published annually in such manner as the legislature may provide.

§ 8. Tax to Cover Deficiencies.—Whenever the expenses of any fiscal year shall exceed the income, the legislature may provide for levying a tax for the ensuing fiscal year, sufficient, with other sources of income, to pay the deficiency, as well as the estimated expenses of the ensuing fiscal year.

§ 9. Special Assessments or Taxation for Local Improvements.—The legislature may vest the corporate authorities of cities, towns, and villages with power to make local improvements by special assessment, or by special taxation of property benefited. For all corporate purposes, all municipal corporations may be vested with authority to assess and collect taxes, and such taxes shall be uniform in respect to persons and property within the jurisdiction of the body levying the same.

Cited in 2 Wash. 586, 668, 670; 4 Wash. 134; 6 Wash. 255; 11 Wash. 594; 15 Wash. 316; 20 Wash. 63, 279; 21 Wash. 554; 25 Wash. 306; 30 Wash. 446; 35 Wash. 584, 585, 589; 39 Wash. 180; 40 Wash. 147; 42 Wash. 41, 498; 44 Wash. 353, 354; 47 Wash. 203; 62 Wash. 434; 63 Wash. 468, 469; 77 Wash. 222, 575; 78 Wash. 97; 79 Wash. 231, 233; 82 Wash. 281; 85 Wash. 290, 537.

ARTICLE VIII.

Public Indebtedness.

Cited in 74 Wash. 16.

§ 1. Limitation on State Debt.—The state may, to meet casual deficits or failure in revenues or for expenses not provided for, contract debts, but such debts, direct and contingent, singly or in the aggregate, shall not at any time exceed four hundred thousand dollars ($400,000), and the moneys arising from the loans creating such debts shall be applied to the purpose for which they were obtained, or to repay the debts so contracted, and to no other purpose whatever.

Cited in 12 Wash. 542; 16 Wash. 572; 21 Wash. 208; 74 Wash. 19-21.

§ 2. Powers Extended in Certain Cases.—In addition to the above limited power to contract debts, the state may contract debts to repel invasion, suppress insurrection, or to defend the state in war, but the money arising from the contracting of such debts shall be applied to the purpose for which it was raised, and to no other purpose whatever.

Cited in 12 Wash. 542; 74 Wash. 19-21.

§ 3. Special Indebtedness, How Authorized.—Except the debt specified in sections one and two of this article, no debts shall hereafter be contracted by or on behalf of this state, unless such debt shall be authorized by law for some single work or object to be distinctly specified therein, which law shall provide ways and means, exclusive of loans, for the payment of the interest on such debt as

it falls due, and also to pay and discharge the principal of such debt within twenty years from the time of the contracting thereof. No such law shall take effect, until it shall, at a general election, have been submitted to the people and have received a majority of all the votes cast for and against it at such election, and all moneys raised by authority of such law shall be applied only to the specific object therein stated, or to the payment of the debt thereby created, and such law shall be published in at least one newspaper in each county, if one be published therein, throughout the state, for three months next preceding the election at which it is submitted to the people.

Cited in 1 Wash. 301; 22 Wash. 542; 25 Wash. 583; 35 Wash. 514; 49 Wash. 74; 74 Wash. 19, 21.

§ 4. Moneys Disbursed Only by Appropriations.—No moneys shall ever be paid out of the treasury of this state, or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made within two years from the first day of May next after the passage of such appropriation act, and every such law making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object to which it is to be applied, and it shall not be sufficient for such law to refer to any other law to fix such sum.

Cited in 3 Wash. 137; 7 Wash. 192; 13 Wash. 322; 19 Wash. 661; 51 Wash. 556; 52 Wash. 689; 74 Wash. 26, 27.

§ 5. Credit not to be Loaned.—The credit of the state shall not, in any manner, be given or loaned to or in aid of any individual, association, company, or corporation.

Cited in 35 Wash. 513.

§ 6. Limitations upon Municipal Indebtedness.—No county, city, town, school district, or other municipal corporation shall for any purpose become indebted in any manner to an amount exceeding one and one-half per centum of the taxable property in such county, city, town, school district, or other municipal corporation, without the assent of three-fifths of the voters therein voting at an election to be held for that purpose, nor in cases requiring such assent shall the total indebtedness at any time exceed five per centum on the value of the taxable property therein, to be ascertained by the last assessment for state and county purposes previous to the incurring of such indebtedness, except that in incorporated cities the assess-

ment shall be taken from the last assessment for city purposes: Provided, that no part of the indebtedness allowed in this section shall be incurred for any purpose other than strictly county, city, town, school district, or other municipal purposes: Provided further, that any city or town, with such assent, may be allowed to become indebted to a larger amount, but not exceeding five per centum additional for supplying such city or town with water, artificial light, and sewers, when the works for supplying such water, light, and sewers shall be owned and controlled by the municipality.

Cited in 1 Wash. 298, 318; 2 Wash. 675, 679; 4 Wash. 148, 150; 5 Wash. 146, 454; 6 Wash. 430, 435; 7 Wash. 271; 8 Wash. 397, 402; 12 Wash. 370, 526; 13 Wash. 698; 15 Wash. 11, 317, 375; 16 Wash. 570; 19 Wash. 448; 21 Wash. 208; 22 Wash. 410; 25 Wash. 310, 581; 26 Wash. 232, 239; 28 Wash. 12; 37 Wash. 16; 42 Wash. 302, 656; 43 Wash. 76; 45 Wash. 524; 48 Wash. 76; 49 Wash. 73; 62 Wash. 446; 64 Wash. 356; 67 Wash. 111, 112; 70 Wash. 291, 301–303; 72 Wash. 90; 75 Wash. 208–210; 80 Wash. 155, 353; 81 Wash. 185, 367, 404; 82 Wash. 138, 279, 283; 84 Wash. 673.

§ 7. Credit not to be Loaned.—No county, city, town, or other municipal corporation shall hereafter give any money or property, or loan its money or credit, to or in aid of any individual, association, company, or corporation, except for the necessary support of the poor and infirm, or become directly or indirectly the owner of any stock in or bonds of any association, company, or corporation.

Cited in 5 Wash. 146; 7 Wash. 271; 15 Wash. 11; 16 Wash. 574; 18 Wash. 624; 20 Wash. 537; 36 Wash. 454; 70 Wash. 322; 79 Wash. 156; 80 Wash. 353.

ARTICLE IX.

Education.

§ 1. Preamble.—It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex.

Cited in 13 Wash. 699; 16 Wash. 576; 17 Wash. 139; 40 Wash. 105.

§ 2. Public School System.—The legislature shall provide for a general and uniform system of public schools. The public school system shall include common schools, and such high schools, normal schools, and technical schools as may hereafter be established. But the entire revenue derived from the common school fund, and the state tax for common schools, shall be exclusively applied to the support of the common schools.

Cited in 6 Wash. 121; 29 Wash. 595; 51 Wash. 501; 70 Wash. 300.

§ 3. Funds for Support of.—The principal of the common school fund shall remain permanent and irreducible. The said fund shall be derived from the following named sources, to wit: Appropriations and donations by the state to this fund; donations and bequests by individuals to the state or public for common schools; the proceeds of lands and other property which revert to the state by escheat and forfeiture; the proceeds of all property granted to the state, when the purpose of the grant is not specified or is uncertain; funds accumulated in the treasury of the state for the disbursement of which provision has not been made by law; the proceeds of the sale of timber, stone, minerals, or other property from school and state lands, other than those granted for specific purposes; all moneys received from persons appropriating timber, stone, minerals, or other property from school and state lands other than those granted for specific purposes, and all moneys other than rental recovered from persons trespassing on said lands; five per centum of the proceeds of the sale of public lands lying within the state which shall be sold by the United States subsequent to the admission of the state into the Union, as approved by section thirteen of the act of congress enabling the admission of the state into the Union; the principal of all funds arising from the sale of lands and other property which have been and hereafter may be granted to the state for the support of common schools. The legislature may make further provisions for enlarging said fund. The interest accruing on said fund, together with all rentals and other revenues derived therefrom, and from lands and other property devoted to the common school fund, shall be exclusively applied to the current use of the common schools.

Cited in 51 Wash. 501.

§ 4. Sectarian Control or Influence Prohibited.—All schools maintained or supported wholly or in part by the public funds shall be forever free from sectarian control or influence.

§ 5. Loss of Permanent Fund to Become State Debt.—All losses to the permanent common school or any other state educational fund which shall be occasioned by defalcation, mismanagement, or fraud of the agents or officers controlling or managing the same shall be audited by the proper authorities of the state. The amount so audited shall be a permanent funded debt against the state in favor of the particular fund sustaining such loss, upon which not less than six per cent annual interest shall be paid. The amount of liability

so created shall not be counted as a part of the indebtedness authorized and limited elsewhere in this constitution.

Cited in 21 Wash. 393.

See infra, Art. XVI, § 5, investment of permanent school fund.

ARTICLE X.

Militia.

§ 1. Who Liable to Military Duty.—All able-bodied male citizens of this state between the ages of eighteen and forty-five years, except such as are exempt by laws of the United States or by the laws of this state, shall be liable to military duty.

§ 2. Organization—Discipline—Officers—Power to Call Out.—The legislature shall provide by law for organizing and disciplining the militia in such manner as it may deem expedient, not incompatible with the constitution and laws of the United States. Officers of the militia shall be elected or appointed in such manner as the legislature shall from time to time direct, and shall be commissioned by the governor. The governor shall have power to call forth the militia to execute the laws of the state to suppress insurrections and repel invasions.

Cited in 3 Wash. 397.

§ 3. Soldiers' Home.—The legislature shall provide by law for the maintenance of a soldiers' home for honorably discharged Union soldiers, sailors, marines and members of the state militia disabled while in the line of duty, and who are bona fide citizens of the state.

§ 4. Public Arms.—The legislature shall provide by law for the protection and safe keeping of the public arms.

§ 5. Privilege from Arrest.—The militia shall, in all cases, except treason, felony and breach of the peace, be privileged from arrest during the attendance at musters and elections of officers, and in going to and returning from the same.

§ 6. Exemption from Military Duty.—No person or persons having conscientious scruples against bearing arms shall be compelled to do militia duty in time of peace: Provided, such person or persons shall pay an equivalent for such exemption.

ARTICLE XI.

County, City and Township Organization.

§ 1. Existing Counties Recognized.—The several counties of the territory of Washington existing at the time of the adoption of this constitution are hereby recognized as legal subdivisions of this state.

§ 2. County Seats—Location and Removal.—No county seat shall be removed unless three-fifths of the qualified electors of the county voting on the proposition at a general election shall vote in favor of such removal, and three-fifths of all votes cast on the proposition shall be required to relocate a county seat. A proposition of removal shall not be submitted in the same county more than once in four years.

Cited in 1 Wash. 301; 8 Wash. 65; 12 Wash. 435; 25 Wash. 583; 49 Wash. 74.

§ 3. New Counties.—No new county shall be established which shall reduce any county to a population less than four thousand, nor shall a new county be formed containing a less population than two thousand. There shall be no territory stricken from any county unless a majority of the voters living in such territory shall petition therefor, and then only under such other conditions as may be prescribed by a general law applicable to the whole state. Every county which shall be enlarged or created from territory taken from any other county or counties shall be liable for a just proportion of the existing debts and liabilities of the county or counties from which such territory shall be taken: Provided, that in such accounting neither county shall be charged with any debt or liability then existing, incurred in the purchase of any county property or in the purchase or construction of any county buildings then in use or under construction which shall fall within and be retained by the county: Provided further, that this shall not be construed to affect the rights of creditors.

Cited in 24 Wash. 551; 47 Wash. 462, 466; 54 Wash. 386; 72 Wash. 329.

§ 4. County Government and Township Organization.—The legislature shall establish a system of county government, which shall be uniform throughout the state, and by general laws shall provide for township organization, under which any county may organize

whenever a majority of the qualified electors of such county voting at a general election shall so determine; and whenever a county shall adopt township organization the assessment and collection of the revenue shall be made, and the business of such county and the local affairs of the several townships therein, shall be managed and transacted in the manner prescribed by such general law.

Cited in 49 Wash. 75; 54 Wash. 383; 58 Wash. 496, 497; 70 Wash. 300; 79 Wash. 231, 237; 82 Wash. 630.

§ 5. Election and Compensation of County Officers.—The legislature, by general and uniform laws, shall provide for the election in the several counties of boards of county commissioners, sheriffs, county clerks, treasurers, prosecuting attorneys, and other county, township, or precinct and district officers, as public convenience may require, and shall prescribe their duties and fix their term of office. It shall regulate the compensation of all such officers, in proportion to their duties, and for that purpose may classify the counties by population. And it shall provide for the strict accountability of such officers for all fees which may be collected by them, and for all public moneys which may be paid to them, or officially come into their possession.

Cited in 5 Wash. 461; 6 Wash. 162, 163; 7 Wash. 114; 9 Wash. 378, 531; 14 Wash. 119; 16 Wash. 573; 24 Wash. 429, 554; 25 Wash. 266; 28 Wash. 498; 37 Wash. 430; 46 Wash. 273; 47 Wash. 701; 53 Wash. 552; 54 Wash. 153, 456; 59 Wash. 486; 63 Wash. 468, 469; 65 Wash. 418; 68 Wash. 190; 79 Wash. 237.

§ 6. Vacancies in County, etc., Offices, How Filled.—The board of county commissioners in each county shall fill all vacancies occurring in any county, township, precinct, or road district office of such county by appointment, and officers thus appointed shall hold office till the next general election, and until their successors are elected and qualified.

Cited in 5 Wash. 398; 7 Wash. 115; 9 Wash. 378; 11 Wash. 437; 37 Wash. 273.

§ 7. Tenure of Office Limited to Two Terms.—No county officer shall be eligible to hold his office more than two terms in succession.

Cited in 6 Wash. 161, 163; 12 Wash. 59; 53 Wash. 551.

§ 8. Salaries and Limitations Affecting.—The legislature shall fix the compensation by salaries of all county officers, and of constables in cities having a population of five thousand and upwards, except that public administrators, surveyors, and coroners may or may not

be salaried officers. The salary of any county, city, town, or municipal officers shall not be increased or diminished after his election or during his term of office, nor shall the term of any such officer be extended beyond the period for which he is elected or appointed.

Cited in 4 Wash. 803; 6 Wash. 258; 9 Wash. 232; 11 Wash. 437; 13 Wash. 202; 14 Wash. 256, 483; 19 Wash. 398; 21 Wash. 84; 22 Wash. 268; 24 Wash. 429; 25 Wash. 265; 35 Wash. 175, 176; 47 Wash. 375; 48 Wash. 464; 54 Wash. 455, 456.

§ 9. State Taxes not to be Released or Commuted.—No county, nor the inhabitants thereof, nor the property therein, shall be released or discharged from its or their proportionate share of taxes to be levied for state purposes, nor shall commutation for such taxes be authorized in any form whatever.

Cited in 35 Wash. 38.

§ 10. Incorporation of Municipalities.—Corporations for municipal purposes shall not be created by special laws; but the legislature, by general laws, shall provide for the incorporation, organization, and classification, in proportion to population, of cities and towns, which laws may be altered, amended, or repealed. Cities and towns heretofore organized or incorporated may become organized under such general laws whenever a majority of the electors voting at a general election shall so determine, and shall organize in conformity therewith; and cities or towns heretofore or hereafter organized and all charters thereof framed or adopted by authority of this constitution shall be subject to and controlled by general laws. Any city containing a population of twenty thousand inhabitants or more shall be permitted to frame a charter for its own government consistent with and subject to the constitution and laws of this state, and for such purpose the legislative authority of such city may cause an election to be had, at which election there shall be chosen by the qualified electors of said city fifteen freeholders thereof, who shall have been residents of said city for a period of at least two years preceding their election, and qualified electors, whose duty it shall be to convene within ten days after their election, and prepare and propose a charter for such city. Such proposed charter shall be submitted to the qualified electors of said city, and if a majority of such qualified electors voting thereon ratify the same, it shall become the charter of said city, and shall become the organic law thereof, and supersede any existing charter, including amendments thereto, and all special laws inconsistent with such charter. Said proposed charter shall be published in two daily

newspapers published in said city for at least thirty days prior to the day of submitting the same to the electors for their approval, as above provided. All elections in this section authorized shall only be had upon notice, which notice shall specify the object of calling such election, and shall be given for at least ten days before the day of election in all election districts of said city. Said elections may be general or special elections, and, except as herein provided, shall be governed by the law regulating and controlling general or special elections in said city. Such charter may be amended by proposals therefor submitted by the legislative authority of such city to the electors thereof at any general election, after notice of said submission published as above specified, and ratified by a majority of the qualified electors voting thereon. In submitting any such charter or amendment thereto, any alternate article or proposition may be presented for the choice of the voters, and may be voted on separately without prejudice to others.

Cited in 1 Wash. 301, 486; 2 Wash. 138, 144, 585; 3 Wash. 8–11; 4 Wash. 86, 136, 145, 774, 775; 6 Wash. 146, 251; 7 Wash. 231, 232; 8 Wash. 279, 668; 13 Wash. 19; 14 Wash. 293, 606; 16 Wash. 386; 19 Wash. 41; 25 Wash. 304, 583; 26 Wash. 504; 28 Wash. 721; 35 Wash. 580; 42 Wash. 29; 48 Wash. 630; 50 Wash. 161, 162; 51 Wash. 178; 53 Wash. 435; 55 Wash. 239; 56 Wash. 230, 233; 58 Wash. 473; 62 Wash. 108, 315; 64 Wash. 73, 76, 79, 329; 67 Wash. 43, 61, 242; 68 Wash. 689; 69 Wash. 293, 294; 70 Wash. 300, 355, 356, 358, 546; 73 Wash. 58; 75 Wash. 655, 656; 76 Wash. 333; 77 Wash. 224; 78 Wash. 97, 207.

See supra, Art. VIII, § 3, authority to incur and limit of indebtedness.

§ 11. Police and Sanitary Regulations.—Any county, city, town, or township, may make and enforce within its limits all such local, police, sanitary, and other regulations as are not in conflict with general laws.

Cited in 14 Wash. 294; 16 Wash. 573; 26 Wash. 275; 28 Wash. 722; 58 Wash. 496, 497; 61 Wash. 445; 67 Wash. 46; 73 Wash. 58, 61; 75 Wash. 655, 656; 77 Wash. 224; 78 Wash. 207; 80 Wash. 106; 83 Wash. 326.

§ 12. Assessment and Collection of Taxes in Municipalities.—The legislature shall have no power to impose taxes upon counties, cities, towns, or other municipal corporations, or upon the inhabitants or property thereof, for county, city, town, or other municipal purposes, but may by general laws vest in the corporate authorities thereof the power to assess and collect taxes for such purposes.

Cited in 2 Wash. 586; 6 Wash. 255, 258, 369; 13 Wash. 53; 15 Wash. 317; 22 Wash. 574; 26 Wash. 276; 28 Wash. 45; 35 Wash. 584; 37 Wash. 16; 42 Wash. 28; 44 Wash. 354; 51 Wash. 17; 57 Wash. 623; 63 Wash. 468, 470; 65 Wash. 526; 81 Wash. 489; 82 Wash. 626, 627, 629.

§ 13. Private Property, When may be Taken for Public Debt.—Private property shall not be taken or sold for the payment of the corporate debt of any public or municipal corporation, except in the mode provided by law for the levy and collection of taxes.

Cited in 4 Wash. 154.

§ 14. Private Use of Public Funds Prohibited.—The making of profit out of county, city, town, or other public money, or using the same for any purpose not authorized by law, by any officer having the possession or control thereof, shall be a felony, and shall be prosecuted and punished as prescribed by law.

Cited in 12 Wash. 295; 18 Wash. 624.

§ 15. Deposit of Public Funds.—All moneys, assessments, and taxes belonging to or collected for the use of any county, city, town, or other public or municipal corporation, coming into the hands of any officer thereof, shall immediately be deposited with the treasurer, or other legal depositary, to the credit of such city, town, or other corporation respectively, for the benefit of the funds to which they belong.

Cited in 4 Wash. 154; 35 Wash. 515.

ARTICLE XII.

Corporations Other Than Municipal.

§ 1. Corporations, how Formed.—Corporations may be formed under general laws, but shall not be created by special acts. All laws relating to corporations may be altered, amended, or repealed by the legislature at any time, and all corporations doing business in this state may, as to such business, be regulated, limited, or restrained by law.

Cited in 19 Wash. 498; 51 Wash. 390; 67 Wash. 44, 383; 80 Wash. 171.

§ 2. Existing Charters.—All existing charters, franchises, special or exclusive privileges, under which an actual and bona fide organization shall not have taken place, and business been commenced in good faith, at the time of the adoption of this constitution, shall thereafter have no validity.

§ 3. Existing Charters not to be Extended nor Forfeiture Remitted.—The legislature shall not extend any franchise or charter, nor remit the forfeiture of any franchise or charter of any corpora-

tion now existing, or, which shall hereafter exist under the laws of this state.

Cited in 67 Wash. 383.

§ 4. Liability of Stockholders.—Each stockholder in all incorporated companies, except corporations organized for banking or insurance purposes, shall be liable for the debts of the corporation to the amount of his unpaid stock, and no more, and one or more stockholders may be joined as parties defendant in suits to recover upon this liability.

Cited in 64 Wash. 299, 300; 78 Wash. 609; 80 Wash. 389.

§ 5. Term "Corporation," Defined—Right to Sue and be Sued.—The term "corporations," as used in this article, shall be construed to include all associations and joint stock companies having any powers or privileges of corporations not possessed by individuals or partnerships, and all corporations shall have the right to sue and shall be subject to be sued in all courts in like cases as natural persons.

§ 6. Limitations upon Issuance of Stock.—Corporations shall not issue stock, except to bona fide subscribers therefor, or their assignees; nor shall any corporation issue any bond or other obligation for the payment of money, except for money or property received or labor done. The stock of corporations shall not be increased, except in pursuance of a general law, nor shall any law authorize the increase of stock, without the consent of the person or persons holding the larger amount in value of the stock, nor without due notice of the proposed increase having been previously given in such manner as may be prescribed by law. All fictitious increase of stock or indebtedness shall be void.

Cited in 69 Wash. 328; 74 Wash. 247; 78 Wash. 525.

§ 7. Foreign Corporations.—No corporation organized outside the limits of this state shall be allowed to transact business within the state on more favorable conditions than are prescribed by law to similar corporations organized under the laws of this state.

Cited in 18 Wash. 454; 35 Wash. 343; 43 Wash. 375; 46 Wash. 493; 47 Wash. 119, 121; 51 Wash. 621; 76 Wash. 639; 79 Wash. 295; 80 Wash. 328.

§ 8. Alienation of Franchise not to Release Liabilities.—No corporation shall lease or alienate any franchise, so as to relieve the

franchise, or property held thereunder, from the liabilities of the lessor or grantor, lessee or grantee, contracted or incurred in the operation, use, or enjoyment of such franchise or any of its privileges.

Cited in 8 Wash. 286, 287; 86 Wash. 322.

§ 9. State not to Loan Its Credit or Subscribe for Stock.—The state shall not in any manner loan its credit, nor shall it subscribe to or be interested in the stock of any company, association or corporation.

Cited in 35 Wash. 513.

§ 10. Eminent Domain Affecting.—The exercise of the right of eminent domain shall never be so abridged or construed as to prevent the legislature from taking the property and franchises of incorporated companies, and subjecting them to public use the same as the property of individuals.

Cited in 32 Wash. 595; 57 Wash. 430.

§ 11. Prohibition Against Issuance of Money and Liability of Stockholders in Banks.—No corporation, association, or individual shall issue or put in circulation as money anything but the lawful money of the United States. Each stockholder of any banking or insurance corporation or joint stock association shall be individually and personally liable equally and ratably, and not one for another, for all contracts, debts, and engagements of such corporation or association accruing while they remain such stockholders, to the extent of the amount of their stock therein at the par value thereof, in addition to the amount invested in such shares.

Cited in 13 Wash. 678; 19 Wash. 235; 21 Wash. 225, 613; 24 Wash. 381; 36 Wash. 266; 80 Wash. 389.

§ 12. Receiving Deposits by Bank After Insolvency.—Any president, director, manager, cashier, or other officer of any banking institution who shall receive or assent to the reception of deposits after he shall have knowledge of the fact that such banking institution is insolvent or in failing circumstances, shall be individually responsible for such deposits so received.

Cited in 35 Wash. 151; 60 Wash. 385.

§ 13. Common Carriers, Regulation of.—All railroad, canal, and other transportation companies are declared to be common carriers, and subject to legislative control. Any association or corporation

organized for the purpose, under the laws of this state, shall have the right to connect at the state line with railroads of other states. Every railroad company shall have the right with its road, whether the same is now constructed or may hereafter be constructed, to intersect, cross, or connect with any other railroad, and when such railroads are of the same or similar gauge they shall, at all crossings and at all points where a railroad shall begin or terminate at or near any other railroad, form proper connections so that the cars of any such railroad companies may be speedily transferred from one railroad to another. All railroad companies shall receive and transport each the other's passengers, tonnage, and cars, without delay or discrimination.

Cited in 31 Wash. 466; 36 Wash. 661; 76 Wash. 638; 80 Wash. 324, 325, 328.

§ 14. Prohibition Against Combinations by Carriers.—No railroad company or other common carrier shall combine or make any contract with the owners of any vessel that leaves port or makes port in this state, or with any common carrier, by which combination or contract the earnings of one doing the carrying are to be shared by the other not doing the carrying.

Cited in 51 Wash. 349.

§ 15. Prohibition Against Discriminating Charges.—No discrimination in charges or facilities for transportation shall be made by any railroad or other transportation company between places or persons, or in the facilities for the transportation of the same classes of freight or passengers within this state, or coming from or going to any other state. Persons and property transported over any railroad, or by any other transportation company, or individual, shall be delivered at any station, landing, or port at charges not exceeding the charges for the transportation of persons and property of the same class, in the same direction, to any more distant station, port, or landing. Excursion and commutation tickets may be issued at special rates.

Cited in 32 Wash. 225; 76 Wash. 639; 80 Wash. 328.
See infra, § 21.

§ 16. Prohibition Against Consolidation of Competing Lines.—No railroad corporation shall consolidate its stock, property, or franchises with any other railroad corporation owning a competing line.

Cited in 51 Wash. 349; 80 Wash. 170.

§ 17. Rolling Stock, Personalty for Purposes of Taxation.—The rolling stock and other movable property belonging to any railroad company or corporation in this state shall be considered personal property, and shall be liable to taxation and to execution and sale in the same manner as the personal property of individuals, and such property shall not be exempted from execution and sale.

Cited in 14 Wash. 361.

§ 18. Maximum Rates for Transportation.—The legislature shall pass laws establishing reasonable maximum rates of charges for the transportation of passengers and freight, and to correct abuses and to prevent discrimination and extortion in the rates of freight and passenger tariffs on the different railroads and other common carriers in the state, and shall enforce such laws by adequate penalties. A railroad and transportation commission may be established, and its powers and duties fully defined by law.

Cited in 67 Wash. 44.

§ 19. Telegraph and Telephone Companies.—Any association or corporation, or the lessees or managers thereof, organized for the purpose, or any individual, shall have the right to construct and maintain lines of telegraph and telephone within this state, and said companies shall receive and transmit each other's messages without delay or discrimination, and all of such companies are hereby declared to be common carriers and subject to legislative control. Railroad corporations organized or doing business in this state shall allow telegraph and telephone corporations and companies to construct and maintain telegraph lines on and along the rights of way of such railroads and railroad companies, and no railroad corporation organized or doing business in this state shall allow any telegraph corporation or company any facilities, privileges, or rates for transportation of men or material or for repairing their lines not allowed to all telegraph companies. The right of eminent domain is hereby extended to all telegraph and telephone companies. The legislature shall, by general law of uniform operation, provide reasonable regulations to give effect to this section.

Cited in 24 Wash. 57; 77 Wash. 33; 85 Wash. 42.

See supra, Art. I, § 16, eminent domain.

§ 20. Prohibition Against Free Transportation for Public Officers. No railroad or other transportation company shall grant free passes, or sell tickets or passes at a discount, other than as sold to the public generally, to any member of the legislature, or to any person

holding any public office within this state. The legislature shall pass laws to carry this provision into effect.

Cited in 10 Wash. 312; 45 Wash. 584.

§ 21. **Express Companies.**—Railroad companies, now or hereafter organized or doing business in this state shall allow all express companies organized or doing business in this state transportation over all lines of railroad owned or operated by such railroad companies upon equal terms with any other express company; and no railroad corporation organized or doing business in this state shall allow any express corporation or company any facilities, privileges, or rates for transportation of men or materials or property carried by them, or for doing the business of such express companies, not allowed to all express companies.

Cited in 76 Wash. 639, 640.

See supra, § 15.

§ 22. **Monopolies and Trusts.**—Monopolies and trusts shall never be allowed in this state, and no incorporated company, copartnership, or association of persons in this state shall directly or indirectly combine or make any contract with any other incorporated company, foreign or domestic, through their stockholders, or the trustees, or assignees of such stockholders, or with any copartnership or association of persons, or in any manner whatever, for the purpose of fixing the price or limiting the production or regulating the transportation of any product or commodity. The legislature shall pass laws for the enforcement of this section by adequate penalties, and in case of incorporated companies, if necessary for that purpose, may declare a forfeiture of their franchise.

Cited in 23 Wash. 20; 32 Wash. 225; 35 Wash. 515; 51 Wash. 349; 82 Wash. 294.

ARTICLE XIII.

State Institutions.

§ 1. **Educational, Reformatory and Penal Institutions.**—Educational, reformatory, and penal institutions, those for the benefit of blind, deaf, dumb, or otherwise defective youth, for the insane or idiotic, and such other institutions as the public good may require, shall be fostered and supported by the state, subject to such regulations as may be provided by law. The regents, trustees, or commissioners of all such institutions existing at the time of the adoption of this constitution, and of such as shall thereafter be established

by law, shall be appointed by the governor, by and with the advice and consent of the senate; and upon all nominations made by the governor, the question shall be taken by ayes and noes, and entered upon the journal.

Cited in 9 Wash. 197.

ARTICLE XIV.

Seat of Government.

§ 1. State Capital, Location of.—The legislature shall have no power to change or to locate the seat of government of this state; but the question of the permanent location of the seat of government of the state shall be submitted to the qualified electors of the territory, at the election to be held for the adoption of this constitution. A majority of all the votes cast at said election, upon said question, shall be necessary to determine the permanent location of the seat of government for the state; and no place shall ever be the seat of government which shall not receive a majority of the votes cast on that matter. In case there shall be no choice of location at said first election, the legislature shall, at its first regular session after the adoption of this constitution, provide for submitting to the qualified electors of the state, at the next succeeding general election, thereafter, the question of choice of location between the three places for which the highest number of votes shall have been cast at the said first election. Said legislature shall provide further, that in case there shall be no choice of location at said second election, the question of choice between the two places for which the highest number of votes shall have been cast shall be submitted in like manner to the qualified electors of the state at the next ensuing general election: Provided, that until the seat of government shall have been permanently located as herein provided the temporary location shall remain at the city of Olympia.

Cited in 25 Wash. 583; 49 Wash. 74; 55 Wash. 287.

§ 2. Change of State Capital.—When the seat of government shall have been located as herein provided, the location thereof shall not thereafter be changed except by a vote of two-thirds of all the qualified electors of the state voting on that question, at a general election, at which the question of location of the seat of government shall have been submitted by the legislature.

Cited in 49 Wash. 74; 54 Wash. 383.

§ 3. Restrictions on Appropriations for Capitol Buildings.—The legislature shall make no appropriations or expenditures for capitol

buildings or grounds, except to keep the territorial capitol buildings and grounds in repair, and for making all necessary additions thereto, until the seat of government shall have been permanently located, and the public buildings are erected at the permanent capital in pursuance of law.

Colo., VIII, 4; Mont., X, 4.

ARTICLE XV.

Harbors and Tide Waters.

§ 1. Harbor Line Commission and Restraint on Disposition of Certain Tide-lands.—The legislature shall provide for the appointment of a commission whose duty it shall be to locate and establish harbor lines in the navigable waters of all harbors, estuaries, bays, and inlets of this state, wherever such navigable waters lie within or in front of the corporate limits of any city, or within one mile thereof on either side. The state shall never give, sell, or lease to any private person, corporation, or association any rights whatever in the waters beyond such harbor lines, nor shall any of the area lying between any harbor line and the line of ordinary high tide, and within not less than fifty feet nor more than six hundred feet of such harbor line (as the commission shall determine) be sold or granted by the state, nor its rights to control the same relinquished, but such area shall be forever reserved for landings, wharves, streets, and other conveniences of navigation and commerce.

Cited in 1 Wash. 301; 2 Wash. 260; 4 Wash. 9; 7 Wash. 120, 152; 13 Wash. 65; 19 Wash. 46; 22 Wash. 100; 53 Wash. 219, 220; 54 Wash. 533–535, 539–541; 64 Wash. 321, 323, 324, 334; 71 Wash. 107; 76 Wash. 164; 81 Wash. 17.

See infra, Art. XVII, tide-lands.

§ 2. Leasing and Maintenance of Wharves, Docks, etc.—The legislature shall provide general laws for the leasing of the right to build and maintain wharves, docks, and other structures, upon the areas mentioned in section 1 of this article, but no lease shall be made for any term longer than thirty years, or the legislature may provide by general laws for the building and maintaining upon such area wharves, docks, and other structures.

Cited in 1 Wash. 301; 13 Wash. 65; 22 Wash. 101; 54 Wash. 533–535, 539–541; 81 Wash. 17.

§ 3. Extension of Streets Over Tide-lands.—Municipal corporations shall have the right to extend their streets over intervening tide-lands to and across the area reserved as herein provided.

Cited in 4 Wash. 9, 10; 6 Wash. 333, 334, 387; 7 Wash. 156; 10 Wash. 462; 11 Wash. 231; 13 Wash. 65; 17 Wash. 658; 19 Wash. 429; 53 Wash. 220; 56 Wash. 660; 64 Wash. 322, 324.

ARTICLE XVI.

School and Granted Lands.

§ 1. Disposition of.—All the public lands granted to the state are held in trust for all the people, and none of such lands, nor any estate or interest therein, shall ever be disposed of unless the full market value of the estate or interests disposed of, to be ascertained in such manner as may be provided by law, be paid or safely secured to the state; nor shall any lands which the state holds by grant from the United States (in any case in which the manner of disposal and minimum price are so prescribed) be disposed of except in the manner and for at least the price prescribed in the grant thereof, without the consent of the United States.

Cited in 7 Wash. 152; 51 Wash. 55, 56; 57 Wash. 613; 63 Wash. 575; 71 Wash. 107; 74 Wash. 575, 576, 585.

§ 2. Manner and Terms of Sale.—None of the lands granted to the state for educational purposes shall be sold otherwise than at public auction to the highest bidder; and the value thereof, less the improvements, shall, before any sale, be appraised by a board of appraisers, to be provided by law, the terms of payment also to be prescribed by law, and no sale shall be valid unless the sum bid be equal to the appraised value of said land. In estimating the value of such lands for disposal, the value of improvements thereon shall be excluded: Provided, that the sale of all school and university land heretofore made by the commissioners of any county or the university commissioners, when the purchase price has been paid in good faith, may be confirmed by the legislature.

Cited in 7 Wash. 217; 51 Wash. 55, 56; 57 Wash. 613; 74 Wash. 575, 576.

§ 3. Limitations on Sales.—No more than one-fourth of the land granted to the state for educational purposes shall be sold prior to January first, eighteen hundred and ninety-five, and not more than one-half prior to January first, nineteen hundred and five: Provided, that nothing herein shall be so construed as to prevent the state from selling the timber or stone off of any of the state lands in such manner and on such terms as may be prescribed by law: And provided further, that no sale of timber lands shall be valid unless the full value of such lands is paid or secured to the state.

Cited in 74 Wash. 588.

§ 4. How Much may be Offered in Certain Cases.—Platting of. No more than one hundred and sixty acres of any granted lands of

the state shall be offered for sale in one parcel, and all lands within the limits of any incorporated city, or within two miles of the boundary of any incorporated city, where the valuation of such lands shall be found by appraisement to exceed one hundred dollars per acre shall, before the same be sold, be platted into lots and blocks of not more than five acres in a block, and not more than one block shall be offered for sale in one parcel.

Cited in 74 Wash. 584.

§ 5. Investment of Permanent School Fund.—None of the permanent school fund shall ever be loaned to private persons or corporations, but it may be invested in national, state, county, or municipal bonds.

Cited in 7 Wash. 271, 272; 21 Wash. 208, 392; 40 Wash. 100; 74 Wash. 17, 19.

This section is amended: See 1st Amendment, infra.

ARTICLE XVII.

Tide-lands.

§ 1. Declaration of State Ownership.—The state of Washington asserts its ownership to the beds and shores of all navigable waters in the state up to and including the line of ordinary high tide in waters where the tide ebbs and flows, and up to and including the line of ordinary high water within the banks of all navigable rivers and lakes: Provided, that this section shall not be construed so as to debar any person from asserting his claim to vested rights in the courts of the state.

Cited in 2 Wash. 245, 259, 265, 279; 5 Wash. 159; 7 Wash. 152; 11 Wash. 233; 18 Wash. 499; 24 Wash. 644; 40 Wash. 373, 418, 419; 49 Wash. 68, 131; 54 Wash. 91; 60 Wash. 505; 63 Wash. 464; 64 Wash. 166; 70 Wash. 445, 448; 76 Wash. 163, 194; 77 Wash. 192, 193; 79 Wash. 90; 81 Wash. 548; 84 Wash. 255, 381; 86 Wash. 229.

See supra, Art. XV, harbors and tide waters.

§ 2. Disclaimer of Certain Lands.—The state of Washington disclaims all title in and claim to all tide, swamp, and overflowed lands patented by the United States: Provided, the same is not impeached for fraud.

Cited in 2 Wash. 245, 259, 279, 615; 4 Wash. 469; 11 Wash. 233; 14 Wash. 3; 19 Wash. 302; 27 Wash. 497; 32 Wash. 613; 40 Wash. 362, 364, 365, 371, 374; 42 Wash. 49; 65 Wash. 221, 222; 70 Wash. 451; 79 Wash. 91; 81 Wash. 550.

ARTICLE XVIII.

State Seal.

§ 1. Seal of the State.—The seal of the state of Washington shall be a seal encircled with the words, "The seal of the state of Washington," with the vignette of General George Washington as the central figure, and beneath the vignette the figures "1889."

ARTICLE XIX.

Exemptions.

Cited in 66 Wash. 167.

§ 1. Exemptions—Homesteads, etc.—The legislature shall protect by law from forced sale a certain portion of the homestead and other property of all heads of families.

Cited in 20 Wash. 7; 14 Wash. 520; 43 Wash. 182; 78 Wash. 548; 55 Wash. 516.

ARTICLE XX.

Public Health and Vital Statistics.

§ 1. Board of Health and Bureau of Vital Statistics.—There shall be established by law a state board of health and a bureau of vital statistics in connection therewith, with such powers as the legislature may direct.

§ 2. Regulations Concerning Medicine, Surgery and Pharmacy.—The legislature shall enact laws to regulate the practice of medicine and surgery, and the sale of drugs and medicines.

ARTICLE XXI.

Water and Water Rights.

§ 1. Public Use of Water.—The use of the waters of this state for irrigation, mining, and manufacturing purposes shall be deemed a public use.

Cited in 20 Wash. 458; 39 Wash. 668; 59 Wash. 628; 67 Wash. 558; 81 Wash. 558.

ARTICLE XXII.

Legislative Apportionments.

§ 1. Senatorial Apportionment. — Until otherwise provided by law, the state shall be divided into twenty-four senatorial districts,

and said districts shall be constituted and numbered as follows: The counties of Stevens and Spokane shall constitute the first district, and be entitled to one senator; the county of Spokane shall constitute the second district, and be entitled to three senators; the county of Lincoln shall constitute the third district, and be entitled to one senator; the counties of Okanogan, Lincoln, Adams, and Franklin shall constitute the fourth district, and be entitled to one senator; the county of Whitman shall constitute the fifth district, and be entitled to three senators; the counties of Garfield and Asotin shall constitute the sixth district, and be entitled to one senator; the county of Columbia shall constitute the seventh district, and be entitled to one senator; the county of Walla Walla shall constitute the eighth district, and be entitled to two senators; the counties of Yakima and Douglas shall constitute the ninth district, and be entitled to one senator; the county of Kittitas shall constitute the tenth district, and be entitled to one senator; the counties of Klickitat and Skamania shall constitute the eleventh district, and be entitled to one senator; the county of Clarke shall constitute the twelfth district, and be entitled to one senator; the county of Cowlitz shall constitute the thirteenth district, and be entitled to one senator; the county of Lewis shall constitute the fourteenth district, and be entitled to one senator; the counties of Pacific and Wahkiakum shall constitute the fifteenth district, and be entitled to one senator; the county of Thurston shall constitute the sixteenth district, and be entitled to one senator; the county of Chehalis shall constitute the seventeenth district, and be entitled to one senator; the county of Pierce shall constitute the eighteenth district, and be entitled to three senators; the county of King shall constitute the nineteenth district, and be entitled to five senators; the counties of Mason and Kitsap shall constitute the twentieth district, and be entitled to one senator; the counties of Jefferson, Clallam, and San Juan shall constitute the twenty-first district, and be entitled to one senator; the county of Snohomish shall constitute the twenty-second district, and shall be entitled to one senator; the counties of Skagit and Island shall constitute the twenty-third district, and be entitled to one senator; the county of Whatcom shall constitute the twenty-fourth district, and be entitled to one senator.

§ 2. Apportionment of Representatives.—Until otherwise provided by law, the representatives shall be divided among the several counties of the state in the following manner: The county of Adams shall have one representative; the county of Asotin shall have one

representative; the county of Chehalis shall have two representatives; the county of Clarke shall have three representatives; the county of Clallam shall have one representative; the county of Columbia shall have two representatives; the county of Cowlitz shall have one representative; the county of Douglas shall have one representative; the county of Franklin shall have one representative; the county of Garfield shall have one representative; the county of Island shall have one representative; the county of Jefferson shall have two representatives; the county of King shall have eight representatives; the county of Klickitat shall have two representatives; the county of Kittitas shall have two representatives; the county of Kitsap shall have one representative; the county of Lewis shall have two representatives; the county of Lincoln shall have two representatives; the county of Mason shall have one representative; the county of Okanogan shall have one representative; the county of Pacific shall have one representative; the county of Pierce shall have six representatives; the county of San Juan shall have one representative; the county of Skamania shall have one representative; the county of Snohomish shall have two representatives; the county of Skagit shall have two representatives; the county of Spokane shall have six representatives; the county of Stevens shall have one representative; the county of Thurston shall have two representatives; the county of Walla Walla shall have three representatives; the county of Wahkiakum shall have one representative; the county of Whatcom shall have two representatives; the county of Whitman shall have five representatives; the county of Yakima shall have one representative.

ARTICLE XXIII.

Amendments.

§ 1. How Made.—Any amendment or amendments to this constitution may be proposed in either branch of the legislature; and if the same shall be agreed to by two-thirds of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, with the ayes and noes thereon, and be submitted to the qualified electors of the state for their approval, at the next general election; and if the people approve and ratify such amendment or amendments, by a majority of the electors voting thereon, the same shall become part of this constitution, and proclamation thereof shall be made by the governor: Provided, that if more than one amendment be submitted, they shall

be submitted in such a manner that the people may vote for or against such [each] amendment separately. The legislature shall also cause the amendments that are to be submitted to the people to be published for at least three months next preceding the election, in some weekly newspaper, in every county where a newspaper is published throughout the state.

Cited in 1 Wash. 301; 25 Wash. 583; 49 Wash. 74; 76 Wash. 320, 325; 77 Wash. 580.

§ 2. Constitutional Conventions.—Whenever two-thirds of the members elected to each branch of the legislature shall deem it necessary to call a convention to revise or amend this constitution, they shall recommend to the electors to vote at the next general election for or against a convention; and if a majority of all the electors voting at said election shall have voted for a convention, the legislature shall at the next session provide by law for calling the same; and such convention shall consist of a number of members, not less than that of the most numerous branch of the legislature.

Cited in 1 Wash. 301; 49 Wash. 75.

§ 3. Submission to the People.—Any constitution adopted by such convention shall have no validity until it has been submitted to and adopted by the people.

ARTICLE XXIV.

Boundaries.

§ 1. State Boundaries.—The boundaries of the state of Washington shall be as follows: Beginning at a point in the Pacific Ocean one marine league due west of and opposite the middle of the mouth of the north ship channel of the Columbia River, thence running easterly to and up the middle channel of said river and where it is divided by islands up the middle of the widest channel thereof to where the forty-sixth parallel of north latitude crosses said river, near the mouth of the Walla Walla River; thence east on said forty-sixth parallel of latitude to the middle of the main channel of the Shoshone or Snake River; thence follow down the middle of the main channel of Snake River to a point opposite the mouth of the Kooskooskia or Clear Water River; thence due north to the forty-ninth parallel of north latitude; thence west along said forty-ninth parallel of north latitude to the middle of the channel which separates Vancouver's Island from the continent, that is to

say to a point in longitude one hundred and twenty-three degrees, nineteen minutes, and fifteen seconds west; thence following the boundary line between the United States and British possessions through the channel which separates Vancouver's Island from the continent to the termination of the boundary line between the United States and British possessions at a point in the Pacific Ocean equidistant between Bonnilla Point, on Vancouver's Island, and Tatoosh Island lighthouse; thence running in a southerly course and parallel with the coast line, keeping one marine league off shore, to place of beginning.

ARTICLE XXV.

Jurisdiction.

§ 1. Authority of the United States.—The consent of the state of Washington is hereby given to the exercise by the congress of the United States of exclusive legislation in all cases whatsoever over such tract or parcels of land as are now held or reserved by the government of the United States for the purpose of erecting or maintaining thereon forts, magazines, arsenals, dock-yards, lighthouses, and other needful buildings, in accordance with the provisions of the seventeenth paragraph of the eighth section of the first article of the constitution of the United States: Provided, that a sufficient description by metes and bounds, and an accurate plat or map of each such tract or parcel of land be filed in the proper office of record in the county in which the same is situated, together with copies of the orders, deeds, patents, or other evidences in writing of the title of the United States: And provided, that all civil process issued from the courts of this state, and such criminal process as may issue under the authority of this state, against any person charged with crime in cases arising outside of such reservations, may be served and executed thereon in the same mode and manner and by the same officers as if the consent herein given had not been made.

Cited in 40 Wash. 246.

ARTICLE XXVI.

Compact With the United States.

The following ordinance shall be irrevocable without the consent of the United States and the people of this state:—

First. That perfect toleration of religious sentiment shall be secured, and that no inhabitant of this state shall ever be molested in person or property on account of his or her mode of religious worship.

Second. That the people inhabiting this state do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries of this state, and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States, and that the lands belonging to citizens of the United States residing without the limits of this state shall never be taxed at a higher rate than the lands belonging to residents thereof, and that no taxes shall be imposed by the state on lands or property therein belonging to or which may be hereafter purchased by the United States or reserved for use: Provided, that nothing in this ordinance shall preclude the state from taxing, as other lands are taxed, any lands owned or held by any Indian who has severed his tribal relations, and has obtained from the United States or from any person a title thereto by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any act of congress containing a provision exempting the lands thus granted from taxation, which exemption shall continue so long and to such an extent as such act of congress may prescribe.

Third. The debts and liabilities of the territory of Washington, and payment of the same, are hereby assumed by this state.

Fourth. Provision shall be made for the establishment and maintenance of systems of public schools free from sectarian control, which shall be open to all the children of said state.

Cited in 26 Wash. 672; 32 Wash. 613; 38 Wash. 129.

ARTICLE XXVII.

Schedule.

In order that no inconvenience may arise by reason of a change from a territorial to a state government, it is hereby declared and ordained as follows:—

§ 1. Existing Rights, Actions and Contracts Saved.—No existing rights, actions, suits, proceedings, contracts, or claims shall be affected by a change in the form of government, but all shall continue as if no such change had taken place; and all process which may have been issued under the authority of the territory of Wash-

ington previous to its admission into the Union shall be as valid as if issued in the name of the state.

§ 2. Laws in Force Continued.—All laws now in force in the territory of Washington which are not repugnant to this constitution shall remain in force until they expire by their own limitation, or are altered or repealed by the legislature: Provided, that this section shall not be so construed as to validate any act of the legislature of Washington Territory granting shore or tide-lands to any person, company, or any municipal or private corporation.

Cited in 2 Wash. 258; 4 Wash. 26; 8 Wash. 472; 11 Wash. 233; 13 Wash. 362; 14 Wash. 310; 22 Wash. 132, 548; 28 Wash. 498; 43 Wash. 182; 47 Wash. 206; 51 Wash. 56.

§ 3. Debts, Fines, etc., to Inure to the State.—All debts, fines, penalties, and forfeitures which have accrued or may hereafter accrue to the territory of Washington shall inure to the state of Washington.

§ 4. Recognizances. — All recognizances heretofore taken or which may be taken before the change from a territorial to a state government shall remain valid, and shall pass to and may be prosecuted in the name of the state, and all bonds executed to the territory of Washington, or to any county or municipal corporation, or to any officer or court in his or its official capacity, shall pass to the state authorities and their successors in office, for the uses therein expressed, and may be sued for and recovered accordingly; and all the estate, real, personal, and mixed, and all judgments, decrees, bonds, specialties, choses in action, and claims or debts, of whatever description belonging to the territory of Washington shall inure to and vest in the state of Washington, and may be sued for and recovered in the same manner and to the same extent by the state of Washington as the same could have been by the territory of Washington.

§ 5. Criminal Prosecutions and Penal Actions. — All criminal prosecutions and penal actions which may have arisen, or which may arise, before the change from a territorial to a state government, and which shall then be pending, shall be prosecuted to judgment and execution in the name of the state. All offenses committed against the laws of the territory of Washington, before the change from a territorial to state government, and which shall not be prosecuted before such change, may be prosecuted in the name and by

the authority of the state of Washington, with like effect as though such change had not taken place; and all penalties incurred shall remain the same as if this constitution had not been adopted. All actions at law and suits in equity which may be pending in any of the courts of the territory of Washington at the time of a change from a territorial to a state government shall be continued and transferred to the court of the state having jurisdiction of the subject matter thereof.

Cited in 2 Wash. 3; 6 Wash. 159.

§ 6. **Retention of Territorial Officers.**—All officers now holding their office under the authority of the United States, or of the territory of Washington, shall continue to hold and exercise their respective offices until they shall be superseded by the authority of the state.

Cited in 6 Wash. 161, 163; 8 Wash. 472; 28 Wash. 16, 498.

§ 7. **Constitutional Officers, When Elected.**—All officers provided for in this constitution, including a county clerk for each county, when no other time is fixed for their election, shall be elected at the election to be held for the adoption of this constitution on the first Tuesday of October, eighteen hundred and eighty-nine.

§ 8. **Change of Courts—Transfer of Causes.**—Whenever the judge of the superior court of any county, elected or appointed under the provisions of this constitution, shall have qualified, the several causes then pending in the district court of the territory, except such causes as would have been within the exclusive jurisdiction of the United States district court, had such court existed at the time of the commencement of such causes within such county, and the records, papers, and proceedings of said district court, and the seal and other property pertaining thereto, shall pass into the jurisdiction and possession of the superior court of such county. And where the same judge is elected for two or more counties, it shall be the duty of the clerk of the district court having custody of such papers and records to transmit to the clerk of such county or counties other than that in which such records are kept the original papers in all cases pending in such district court and belonging to the jurisdiction of such county or counties, together with transcript of so much of the records of said district court as relate to the same; and until the district courts of the territory shall be superseded in manner aforesaid, the said district courts and the judges thereof shall continue with the same jurisdiction and powers, to be exercised in the

same judicial districts respectively, as heretofore constituted under the laws of the territory. Whenever a quorum of the judges of the supreme court of the state shall have been elected and qualified, the causes then pending in the supreme court of the territory, except such causes as would have been within the exclusive jurisdiction of the United States circuit court had such court existed at the time of the commencement of such causes, and the papers, records, and proceedings of said court, and the seal and other property pertaining thereto, shall pass into the jurisdiction and possession of the supreme court of the state, and until so superseded the supreme court of the territory and the judges thereof shall continue with like powers and jurisdiction as if this constitution had not been adopted.

§ 9. Seals of Courts and Municipalities.—Until otherwise provided by law, the seal now in use in the supreme court of the territory shall be the seal of the supreme court of the state. The seal of the superior courts of the several counties of the state shall be, until otherwise provided by law, the vignette of General George Washington, with the words "Seal of the superior court of —— county" surrounding the vignette. The seal of municipalities and of all county officers of the territory shall be the seals of such municipalities and county officers, respectively, under the state, until otherwise provided by law.

§ 10. Probate Court, Transfer of.—When the state is admitted into the Union, and the superior courts in their respective counties organized, the books, records, papers, and proceedings of the probate court in each county, and all causes and matters of administration pending therein shall, upon the expiration of the term of office of the probate judges, on the second Monday in January, eighteen hundred and ninety-one, pass into the jurisdiction and possession of the superior court of the same county created by this constitution, and the said court shall proceed to final judgment or decree, order, or other determination in the several matters and causes as the territorial probate court might have done if this constitution had not been adopted. And until the expiration of the term of office of the probate judges, such probate judges shall perform the duties now imposed upon them by the laws of the territory. The superior courts shall have appellate and revisory jurisdiction over the decisions of the probate courts as now provided by law until such latter courts expire by limitation.

Cited in 34 Wash. 308.

§ 11. Duties of First Legislature.—The legislature, at its first session, shall provide for the election of all officers whose election is not provided for elsewhere in this constitution, and fix the time for the commencement and duration of their term.

§ 12. Election Contests for Superior Judges, How Decided.—In case of a contest of election between candidates at the first general election under this constitution for judges of the superior courts, the evidence shall be taken in the manner prescribed by the territorial laws, and the testimony so taken shall be certified to the secretary of state, and said officer together with the governor and treasurer of state, shall review the evidence and determine who is entitled to the certificate of election.

§ 13. Representation in Congress.—One representative in the congress of the United States shall be elected from the state at large at the first election provided for in this constitution, and thereafter at such times and places and in such manner as may be prescribed by law. When a new apportionment shall be made by congress, the legislature shall divide the state into congressional districts, in accordance with such apportionment. The vote cast for representative in congress at the first election shall be canvassed and the result determined in the manner provided for by the laws of the territory for the canvass of the vote for delegate in congress.

§ 14. Duration of Term of Certain Officers.—All district, county, and precinct officers who may be in office at the time of the adoption of this constitution, and the county clerk of each county elected at the first election, shall hold their respective offices until the second Monday of January, A. D. eighteen hundred and ninety-one, and until such time as their successors may be elected and qualified, in accordance with the provisions of this constitution; and the official bonds of all such officers shall continue in full force and effect as though this constitution had not been adopted, and such officers shall continue to receive the compensation now provided until the same be changed by law.

Cited in 5 Wash. 459, 460.

§ 15. Election on Adoption of Constitution, How to be Conducted.—The election held at the time of the adoption of this constitution shall be held and conducted in all respects according to the laws of the territory; and the votes cast at said election for all officers (where no other provisions are made in this constitution), and for the adoption of this constitution, and the several separate

articles, and the location of the state capital, shall be canvassed and returned in the several counties in the manner provided by territorial laws, and shall be returned to the secretary of the territory in the manner provided by the Enabling Act.

§ 16. When Constitution to Take Effect.—The provisions of this constitution shall be in force from the day on which the president of the United States shall issue his proclamation declaring the state of Washington admitted into the Union, and the terms of all officers elected at the first election under the provisions of this constitution shall commence on the Monday next succeeding the issue of said proclamation, unless otherwise provided herein.

Cited in 2 Wash. 3.

§ 17. Separate Articles.—The following separate articles shall be submitted to the people for adoption or rejection at the election for the adoption of this constitution:—

Separate article No. 1. "All persons, male and female, of the age of twenty-one years or over, possessing the qualifications provided by this constitution, shall be entitled to vote at all elections."

Separate article No. 2. "It shall not be lawful for any individual, company, or corporation, within the limits of this state, to manufacture, or cause to be manufactured, or to sell, or offer for sale, or in any manner dispose of any alcoholic, malt, or spirituous liquors, except for medicinal, sacramental, or scientific purposes."

If a majority of the ballots cast at said election on said separate articles be in favor of the adoption of either of said separate articles, then such separate article so receiving a majority shall become a part of this constitution, and shall govern and control any provision of the constitution in conflict therewith.

§ 18. Ballot.—The form of ballot to be used in voting for or against this constitution, or for or against the separate articles, or for the permanent location of the seat of government, shall be,—

1. For the constitution, ——.
   Against the constitution, ——.
2. For woman suffrage article, ——.
   Against woman suffrage article, ——.
3. For prohibition article,——.
   Against prohibition article, ——.

[The result of the election was against both woman suffrage and prohibition.]

4. For the permanent location of the seat of government. [Name of place voted for.]

§ 19. Appropriation.—The legislature is hereby authorized to appropriate from the state treasury sufficient money to pay any of the expenses of this convention not provided for by the Enabling Act of congress.

CERTIFICATE.

We, the undersigned, members of the convention to form a constitution for the state of Washington, which is to be submitted to the people for their adoption or rejection, do hereby declare this to be the constitution formed by us, and in testimony thereof, do hereunto set our hands, this the twenty-second day of August, Anno Domini one thousand eight hundred and eighty-nine.

JOHN P. HOYT, President.
J. J. BROWNE.
N. G. BLALOCK.
JOHN F. GOWEY.
FRANK M. DALLAM.
JAMES Z. MOORE.
E. H. SULLIVAN.
GEORGE TURNER.
AUSTIN MIRES.
M. M. GODMAN.
GWIN HICKS.
WM. F. PROSSER.
LOUIS SOHNS.
A. A. LINDSLEY.
J. J. WEISENBURGER.
P. C. SULLIVAN.
R. S. MORE.
THOMAS T. MINOR.
J. J. TRAVIS.
ARNOLD J. WEST.
CHARLES T. FAY.
CHARLES P. COEY.
ROB'T F. STURDEVANT.
JOHN A. SHOUDY.
ALLEN WEIR.
W. B. GRAY.
TRUSTEN P. DYER.
GEO. H. JONES.
B. L. SHARPSTEIN.
H. M. LILLIS.
J. F. VAN NAME.
ALBERT SCHOOLEY.
H. C. WILSON.
T. M. REED.
S. H. MANLY.
RICHARD JEFFS.
FRANCIS HENRY.

GEORGE COMEGYS.
OLIVER H. JOY.
DAVID E. DURIE.
D. BUCHANAN.
JOHN R. KINNEAR.
GEORGE W. TIBBETTS.
H. W. FAIRWEATHER.
THOMAS C. GRIFFITTS.
C. H. WARNER.
J. P. T. McCROSKEY.
S. G. COSGROVE.
THOS. HAYTON.
SAM'L H. BERRY.
D. J. CROWLEY.
J. T. McDONALD.
JOHN M. REED.
EDWARD ELDRIDGE.
GEORGE H. STEVENSON.
SILVIUS A. DICKEY.
HENRY WINSOR.
THEODORE L. STILES.
JAMES A. BURK.
JOHN McREAVY.
R. O. DUNBAR.
MORGAN MORGANS.
JAS. POWER.
B. B. GLASCOCK.
O. A. BOWEN.
HARRISON CLOTHIER.
MATT. J. McELROY.
J. T. ESHELMAN.
ROBERT JAMIESON.
HIRAM E. ALLEN.
H. F. SUKSDORF.

Attest:
JNO. I. BOOGE, Chief Clerk.

[The signatures of seventy-one members are appended to the constitution. The four whose signatures are not attached are James Hungate of Whitman County, Lewis Neace of Walla Walla County, J. C. Kellogg of Island County, and W. L. Newton of King County.]

CONSTITUTIONAL AMENDMENTS.

AMENDMENT 1.

Article 16. Section 5. **Investment of School Fund.**—None of the permanent school fund of this state shall ever be loaned to private persons or corporations, but it may be invested in national, state, county, municipal, or school district bonds.

Adopted November, 1894.

AMENDMENT 2.

Article 6. Section 1. **Qualifications of Voters.**—All male persons of the age of twenty-one years or over, possessing the following qualifications, shall be entitled to vote at all elections: They shall be citizens of the United States; they shall have lived in the state one year, and in the county ninety days, and in the city, town, ward, or precinct thirty days immediately preceding the election at which they offer to vote; they shall be able to read and speak the English language: Provided, that Indians not taxed shall never be allowed the elective franchise. And further provided, that this amendment shall not affect the right of franchise of any person who is now a qualified elector of this state. The legislature shall enact laws defining the manner of ascertaining the qualifications of voters as to their ability to read and speak the English language, and providing for punishment of persons voting or registering in violation of the provisions of this section.

Approved November, 1896.

See Amendment 5, infra.

AMENDMENT 3.

Article 7, Section 2, was amended by adding the following proviso: "And provided further, that the legislature shall have power, by appropriate legislation, to exempt personal property to the amount of $300 for each head of a family liable to assessment and taxation under the provisions of the laws of this state of which the individual is the actual bona fide owner."

Approved November, 1900.

AMENDMENT 4.

Article 1. Section 11. Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaran-

teed to every individual, and no one shall be molested or be disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for or applied to any religious worship, exercise, or instruction, or support of any religious establishment. Provided, however, that this article shall not be so construed as to forbid the employment by the state of a chaplain for the state penitentiary, and for such of the state reformatories as in the discretion of the legislature may seem justified. No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony.

Approved November, 1904.

AMENDMENT 5.

Article Six (VI) was amended by striking from said article all of sections one (1) and two (2) and inserting in lieu thereof the following, to be known as section one (1):

Section 1. All persons of the age of twenty-one years or over, possessing the following qualifications, shall be entitled to vote at all elections: They shall be citizens of the United States; they shall have lived in the state one year, and in the county ninety days, and in the city, town, ward or precinct thirty days immediately preceding the election at which they offer to vote; they shall be able to read and speak the English language, Provided, that Indians not taxed shall never be allowed the elective franchise. And further provided, that this amendment shall not affect the rights of franchise of any person who is now a qualified elector of this state. The legislative authority shall enact laws defining the manner of ascertaining the qualifications of voters as to their ability to read and speak the English language, and providing for punishment of persons voting or registering in violation of the provision of this section. There shall be no denial of the elective franchise at any election on account of sex. [L. 1909, p. 26, § 1.]

Approved November, 1910.

AMENDMENT 6.

Article III, Section 10. In case of the removal, resignation, death or disability of the governor, the duties of the office shall

devolve upon the lieutenant-governor; and in case of a vacancy in both the offices of governor and lieutenant-governor, the duties of the governor shall devolve upon the secretary of state. In addition to the line of succession to the office and duties of governor as hereinabove indicated, if the necessity shall arise, in order to fill the vacancy in the office of governor, the following state officers shall succeed to the duties of governor, and in the order named, viz.: Treasurer, auditor, attorney general, superintendent of public instruction and commissioner of public lands. In case of the death, disability, failure or refusal of the person regularly elected to the office of governor to qualify at the time provided by law, the duties of the office shall devolve upon the person regularly elected to and qualified for the office of lieutenant-governor who shall act as governor until the disability be removed, or a governor be elected; and in case of the death, disability, failure or refusal of both the governor and the lieutenant-governor elect to qualify, the duties of the governor shall devolve upon the secretary of state; and in addition to the line of succession to the office and duties of governor as hereinabove indicated, if there shall be the failure or refusal of any officer named above to qualify, and if the necessity shall arise by reason thereof, then in that event in order to fill the vacancy in the office of governor, the following state officers shall succeed to the duties of governor in the order named, viz: Treasurer, auditor, attorney general, superintendent of public instruction and commissioner of public lands. Any person succeeding to the office of governor as in this section provided, shall perform the duties of such office until the disability be removed, or a governor be elected and qualified; and if a vacancy occur more than thirty days before the next general election occurring within two years after the commencement of the term, a person shall be elected at such election to fill the office of governor for the remainder of the unexpired term. [L. 1909, p. 642, § 1.]

Approved November, 1910.

AMENDMENT 7.

Article II, Section 1. **Legislative Powers, Where Vested.**—The legislative authority of the state of Washington shall be vested in the legislature, consisting of a senate and house of representatives, which shall be called the legislature of the state of Washington, but the people reserve to themselves the power to propose bills, laws, and to enact or reject the same at the polls, independent of the

legislature, and also reserve power, at their own option, to approve or reject at the polls any act, item, section or part of any bill, act or law passed by the legislature.

(a) Initiative. The first power reserved by the people is the initiative. Ten per centum, but in no case more than fifty thousand, of the legal voters shall be required to propose any measure by such petition, and every such petition shall include the full text of the measure as proposed. Initiative petitions shall be filed with the secretary of state not less than four months before the election at which they are to be voted upon, or not less than ten days before any regular session of the legislature. If filed at least four months before the election at which they are to be voted upon, he shall submit the same to the vote of the people at the said election. If such petitions are filed not less than ten days before any regular session of the legislature, he shall transmit the same to the legislature as soon as it convenes and organizes. Such initiative measure shall take precedence over all other measures in the legislature except appropriation bills and shall be either enacted or rejected without change or amendment by the legislature before the end of such regular session. If any such initiative measure shall be enacted by the legislature it shall be subject to the referendum petition, or it may be enacted and referred by the legislature to the people for approval or rejection at the next regular election. If it is rejected or if no action is taken upon it by the legislature before the end of such regular session, the secretary of state shall submit it to the people for approval or rejection at the next ensuing regular general election. The legislature may reject any measure so proposed by initiative petition and propose a different one dealing with the same subject, and in such event both measures shall be submitted by the secretary of state to the people for approval or rejection at the next ensuing regular general election. When conflicting measures are submitted to the people the ballots shall be so printed that a voter can express separately by making one cross (X) for each, two preferences, first, as between either measure and neither, and secondly, as between one and the other. If the majority of those voting on the first issue is for neither, both fail, but in that case the votes on the second issue shall nevertheless be carefully counted and made public. If a majority voting on the first issue is for either, then the measure receiving a majority of the votes on the second issue shall be law.

(b) Referendum. The second power reserved by the people is the referendum, and it may be ordered on any act, bill, law, or any part thereof passed by the legislature, except such laws as may be neces-

sary for the immediate preservation of the public peace, health or safety, support of the state government and its existing public institutions, either by petition signed by the required percentage of the legal voters, or by the legislature as other bills are enacted. Six per centum, but in no case more than thirty thousand, of the legal voters shall be required to sign and make a valid referendum petition.

(c) No act, law, or bill subject to referendum shall take effect until ninety days after the adjournment of the session at which it was enacted. No act, law, or bill approved by a majority of the electors voting thereon shall be amended or repealed by the legislature within a period of two years following such enactment. But such enactment may be amended or repealed at any general regular or special election by direct vote of the people thereon.

(d) The filing of a referendum petition against one or more items, sections or parts of any act, law or bill shall not delay the remainder of the measure from becoming operative. Referendum petitions against measures passed by the legislature shall be filed with the secretary of state not later than ninety days after the final adjournment of the session of the legislature which passed the measure on which the referendum is demanded. The veto power of the governor shall not extend to measures initiated by or referred to the people. All elections on measures referred to the people of the state shall be had at the biennial regular elections, except when the legislature shall order a special election. Any measure initiated by the people or referred to the people as herein provided shall take effect and become the law if it is approved by a majority of the votes cast thereon: Provided, that the vote cast upon such question or measure shall equal one-third of the total votes cast at such election and not otherwise. Such measure shall be in operation on and after the thirtieth day after the election at which it is approved. The style of all bills proposed by initiative petition shall be: "Be it enacted by the people of the state of Washington." This section shall not be construed to deprive any member of the legislature of the right to introduce any measure. The whole number of electors who voted for governor at the regular gubernatorial election last preceding the filing of any petition for the initiative or for the referendum shall be the basis on which the number of legal voters necessary to sign such petition shall be counted. All such petitions shall be filed with the secretary of state, who shall be guided by the general laws in submitting the same to the people until additional legislation shall especially provide there-

for. This section is self-executing, but legislation may be enacted especially to facilitate its operation.

The legislature shall provide methods of publicity of all laws or parts of laws, and amendments to the constitution referred to the people with arguments for and against the laws and amendments so referred, so that each voter of the state shall receive the publication at least fifty days before the election at which they are to be voted upon. [L. '11, p. 136, § 1.]

Approved November, 1912.

AMENDMENT 8.

Article One (I) was amended by adding the two following sections:

Section 33. **Recall of Elective Officers.**—Every elective public officer in the state of Washington except judges of courts of record is subject to recall and discharge by the legal voters of the state, or of the political subdivision of the state, from which he was elected whenever a petition demanding his recall, reciting that such officer has committed some act or acts of malfeasance or misfeasance while in office, or has violated his oath of office, stating the matters complained of, signed by the percentages of the qualified electors thereof, hereinafter provided, the percentage required to be computed from the total number of votes cast for all candidates for his said office to which he was elected at the preceding election, is filed with the officer with whom a petition for nomination, or certificate for nomination, to such office must be filed under the laws of this state, and the same officer shall call a special election as provided by the general election laws of this state, and the result determined as therein provided.

Section 34. **Same.**—The legislature shall pass the necessary laws to carry out the provisions of section thirty-three (33) of this article, and to facilitate its operation and effect without delay; Provided, that the authority hereby conferred upon the legislature shall not be construed to grant to the legislature any exclusive power of lawmaking nor in any way limit the initiative and referendum powers reserved by the people. The percentages required shall be state officers, other than judges, senators and representatives, city officers of cities of the first class, school district boards in cities of the first class; county officers of counties of the first, second and third classes, twenty-five per cent. Officers of all other political subdivisions, cities, towns, townships, precincts and school districts not herein mentioned, and state senators and representatives, thirty-five per cent. [L. '11, p. 504, § 1.]

Approved November, 1912.

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By EUGENE G. KREIDER.

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CODES OF PROCEDURE

AND

GENERAL LAWS

OF THE

STATE OF WASHINGTON.

VOLUME I.

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CHAPTER I.

The Supreme Court.

Judges of: See "State Officers," § 9040 et seq., infra.
Clerk, reporter, etc.: See "State Officers," § 9057 et seq., infra.

§ 1. Jurisdiction.—The supreme court shall have original jurisdiction in habeas corpus and quo warranto and mandamus as to all state officers, and appellate jurisdiction in all actions and proceedings, excepting that its appellate jurisdiction shall not extend to civil actions at law for the recovery of money or personal property, when the original amount in controversy or the value of the property does not exceed the sum of two hundred dollars, unless the action involves the legality of a tax, impost, assessment, toll, municipal fine, or the validity of a statute. The supreme court shall also have power to issue writs of mandamus, review, prohibition, habeas corpus, certiorari, and all other writs necessary and proper to the complete exercise of its appellate and revisory jurisdiction. Each of the judges shall have power to issue writs of habeas corpus to any part of the state, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself or before the supreme court, or before any superior court of the state, or any judge thereof. [L. '90, p. 322, § 6; 2 H. C., § 1; Const., Art. IV, § 4.]

Cited in 22 Wash. 362; 32 Wash. 53; 37 Wash. 511; 41 Wash. 152; 51 Wash. 310.

§ 2. Is a Court of Record—General Powers.—The supreme court shall be a court of record, and shall be vested with all power and authority necessary to carry into complete execution all its judgments, decrees, and determinations in all matters within its jurisdiction, according to the rules and principles of the common law, and

the constitution and laws of this state. [L. '90, p. 323, § 10; 2 H. C., § 2; Const., Art. IV, § 11.]

Cited in 6 Wash. 159.

§ 3. Court House and Rooms—Furnishing.—If proper rooms in which to hold the court, for the accommodation of the officers thereof, are not provided by the state, together with attendants, furniture, fuel, lights, record books and stationery, suitable and sufficient for the transaction of business, the court, or any three justices thereof, may direct the clerk of the supreme court to provide the same; and the expense thereof, certified by any three justices to be correct, shall be paid out of the state treasury, out of any funds therein not otherwise appropriated. Such moneys shall be subject to the order of the clerk of the supreme court, and be by him disbursed on proper vouchers, and accounted for by him in annual settlements with the state auditor. [L. '90, p. 322, § 4; 2 H. C., § 3; Const., Art. IV, § 2.]

The first part of this section is omitted, as it is covered by the next section.

§ 4. Is Always Open—Sessions.—The supreme court shall always be open for the transaction of business except on nonjudicial days. It shall hold regular sessions for the hearing of causes en banc, and in each of its departments, at the capital of the state [on the second Mondays of January, May, and October of each year]. Special sessions at the same place may be held at such other times as may be prescribed by the judges of such court. [L. '09, p. 36, § 7.]

Cited in 1 Wash. 268; 2 Wash. 369; 44 Wash. 148.

See infra, § 64, business authorized to be transacted on nonjudicial days.

§ 5. Effect of Adjournments.—Adjournments from day to day, or from time to time, are to be construed as recesses in the sessions, and shall not prevent the court from sitting at any time. [L. '90, p. 323, § 7; 2 H. C., § 4.]

§ 6. Style of Process.—Its process shall run in the name of the "state of Washington," bear test in the name of the chief justice, be signed by the clerk of the court, dated when issued, sealed with the seal of the court, and made returnable according to law, or such rule or orders as may be prescribed by the court. [L. '90, p. 323, § 11; 2 H. C., § 7.]

§ 7. The Seal.—The seal of the supreme court shall be the vignette of George Washington, with the words "Seal of the Supreme Court, State of Washington," surrounding the vignette. [L. '90, p. 324, § 17; 2 H. C., § 8; Const., Art. XXVII, § 9.]

§ 8. Two Departments—Assignment of Judges—Quorum.—There shall be two departments of the supreme court, denominated respectively department one and department two. The chief justice shall assign four of the associate judges to each department and such assignment may be changed by him from time to time: Provided, that the associate judges shall be competent to sit in either department and may interchange with one another by agreement among themselves, or if no such agreement be made, as ordered by the chief justice. The chief justice may sit in either department and shall preside when so sitting, but the judges assigned to each department shall select one of their number as presiding judge. Each of the departments shall have the power to hear and determine causes, and all questions arising therein, subject to the provisions in relation to the court en banc. The presence of three judges shall be necessary to transact any business in either of the departments, except such as may be done at chambers, but one or more of the judges may from time to time adjourn to the same effect as if all were present, and a concurrence of three judges shall be necessary to pronounce a decision in each department: Provided, that if three do not concur, the cause shall be reheard in the same department or transmitted to the other department, or to the court en banc. [L. '09, p. 34, § 3. For former laws relating to quorum, see L. '90, p. 322, § 5; 2 H. C., § 5; Bal. Code, § 4654; L. '05, p. 14, § 2. See, also, Const., Art. IV, § 2.]

Cited in 53 Wash. 554, 555.

§ 9. Apportionment of Business—Order for Hearings en Banc.—The chief justice shall from time to time apportion the business to the departments, and may, in his discretion, before a decision is pronounced, order any cause pending before the court to be heard and determined by the court en banc. When a cause has been allotted to one of the departments and a decision pronounced therein, the chief justice, together with any two associate judges, may order such cause to be heard and decided by the court en banc. Any four judges may, either before or after decision by a department, order a cause to be heard en banc. [L. '09, p. 34, § 4.]

§ 10. Decisions of Department—Finality—Rehearings.—The decision of a department, except in cases otherwise ordered as herein-

after provided, shall not become final until thirty days after the filing thereof, during which period a petition for rehearing, or for a hearing en banc, may be filed, the filing of either of which, except as hereinafter otherwise provided, shall have the effect of suspending such decision until the same shall have been disposed of. If no such petition be filed the decision of a department shall become final thirty days from the date of its filing, unless during such thirty-day period an order for a hearing en banc shall have been made: Provided, that if for any cause the chief justice or a majority of the department rendering any decision shall be of the opinion that such decision should go into effect prior to thirty days after its filing, it shall go into effect, and a judgment issue thereon, any time after its filing and prior to such thirty-day period, upon being in writing approved by the chief justice and any two associate judges who took no part in rendering such decision. The effect of granting a petition for a rehearing, or of ordering a cause once decided by department to be heard en banc, shall be to vacate and set aside the decision. Whenever a decision shall become final, as herein provided, a judgment shall issue thereon. [L. '09, p. 35, § 4.]

Cited in 53 Wash. 554, 555.

§ 11. Hearings en Banc—Quorum—Finality of Decision.—The chief justice, or any four judges, may convene the court en banc at any time, and the chief justice shall be the presiding judge of the court when so convened. The presence of five judges shall be necessary to transact any business, and a concurrence of five judges present at the argument shall be necessary to pronounce a decision in the court en banc: Provided, that if five of the judges so present do not concur in a decision, then reargument shall be ordered and all the judges qualified to sit in the cause shall hear the argument, but to render a decision a concurrence of five judges shall be necessary; and every decision of the court en banc shall be final except in cases in which no previous decision has been rendered in one of the departments, and in such cases the decision of the court en banc shall become final thirty days after its filing, unless during such period a petition for rehearing be filed. The filing of such petition within such period shall have the effect of suspending the decision until disposed of by the concurrence of five judges: Provided, that if for any cause five judges shall be of the opinion that such decision should go into effect prior to thirty days after its filing, it shall go into effect any time after its filing and prior to such thirty-day period upon being in writing approved by six judges of such court. When-

ever a decision shall become final as herein provided, a judgment shall issue thereon. [L. '09, p. 35, § 5.]

Cited in 53 Wash. 554, 555.

§ 12. Acting Chief Justice.—In case of the absence of the chief justice, or his inability to act, the judge having the shortest term to serve, not holding his office by appointment or election to fill a vacancy, shall perform the duties and exercise the powers of the chief justice during such absence or inability to act. In case there shall be two or more judges having in like manner the same short term, the other judges of the supreme court shall determine which of them shall perform the duties and exercise the powers of the chief justice during such absence or inability to act. [L. '09, p. 36, § 6.]

§ 13. Rules of Practice and Form of Process. The supreme court may from time to time institute such rules of practice and prescribe such forms of process to be used in such court and in the court en banc and each of its departments, and for the keeping of the dockets, records and proceedings, and for the regulation of such court, including the court en banc and in departments, as may be deemed most conducive to the due administration of justice. [L. '09, p. 36, § 8. Cf. L. '90, p. 323, § 12; 2 H. C., § 6; Bal. Code, § 4655.]

§ 14. Effect of Judgment.—The judgments and decrees of the supreme court shall be final and conclusive upon all the parties properly before the court. [L. '90, p. 323, § 8; 2 H. C., § 9.]

CHAPTER II.

Superior Courts.

Judges of: See "State Officers," § 9050 et seq., infra.

§ 15. Original Jurisdiction of Superior Courts.—The superior courts shall have original jurisdiction in all cases in equity, and in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand or the value of the property in controversy amounts to one hundred dollars, and in all criminal cases amounting to felony, and in all cases of misdemeanor not otherwise provided for by law; of actions of forcible entry and detainer; of proceedings in insolvency; of actions to prevent or abate

a nuisance; of all matters of probate, of divorce, and for annulment of marriage, and for such special cases and proceedings as are not otherwise provided for; and shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court, and shall have the power of naturalization, and to issue papers therefor. Said courts and their judges shall have power to issue writs of mandamus, quo warranto, review, certiorari, prohibition, and writs of habeas corpus, on petition by or on behalf of any person in actual custody in their respective counties. Injunctions and writs of prohibition and of habeas corpus may be issued on legal holidays and nonjudicial days. [L. '90, p. 342, § 5; 2 H. C., § 10; Const., Art. IV, § 6.]

Cited in 32 Wash. 53; 43 Wash. 228; 68 Wash. 490.

§ 16. Naturalization of Aliens.—The superior courts of the several counties shall have jurisdiction, and it shall be their duty to hear applications and proofs by aliens to become citizens of the United States, and to grant certificates of citizenship to such applicants, in accordance with section 2165 of the Revised Statutes of the United States. [L. '86, p. 113, § 1; Const., Art. IV, § 6.]

§ 17. Appellate Jurisdiction.—The superior courts shall have such appellate jurisdiction in cases arising in justices' and other inferior courts in their respective counties as may be prescribed by law. [L. '90, p. 343, § 6; 2 H. C., § 12; Const., Art. IV, § 6.]

Cited in 60 Wash. 548.

§ 18. Are Courts of Record—Always Open—Sessions.—The superior courts are courts of record, and shall be always open, except on nonjudicial days. They shall hold their sessions at the county seats of the several counties, respectively. They shall hold regular and special sessions in the several counties of this state at such times as may be prescribed by the judge or judges thereof. [L. '90, p. 343, § 7; 2 H. C., § 13. Cf. L. '91, p. 89, § 1; 2 H. C., § 41; Bal. Code, § 4708; Const., Art. IV, §§ 6, 11.]

Cited in 54 Wash. 392.

§ 26. Effect of Adjournments.—Adjournments from day to day, or from time to time, are to be construed as recesses in the sessions, and shall not prevent the court from sitting at any time. [L. '90, p. 343, § 8; 2 H. C., § 14.]

§ 27. Judge of Another County to Sit—Designation by Governor.—Whenever a judge of the superior court of any county in this

state, or a majority of such judges in any county in which there is more than one judge of said court, shall request the governor of the state to direct a judge of the superior court of any other county to hold a session of the superior court of any such county as is first herein above mentioned, the governor shall thereupon request and direct a judge of the superior court of some other county, making such selection as the governor shall deem to be most consistent with the state of judicial business in other counties, to hold a session of the superior court in the county the judge shall have requested the governor as aforesaid. Such request and direction by the governor shall be made in writing, and shall specify the county in which he directs the superior judge to whom the same is addressed to hold such session of the superior court, and the period during which he is to hold such session. Thereupon it shall be the duty of the superior judge so requested, and he is hereby empowered, to hold a session of the superior court of the county specified by the governor, at the seat of judicial business thereof, during the period specified by the governor, and in such quarters as the county commissioners of said county may provide for the holding of such session. [L. '90, p. 343, § 10; 2 H. C., § 15; L. '93, p. 67, § 1; Const., Art. IV, § 7.]

Cited in 12 Wash. 172.

§ 28. Sessions Held at Request of Another Judge.—Whenever a like request shall be addressed by the judge, or by a majority of the judges (if there be more than one) of the superior court of any county to the superior judge of any other county, he is hereby empowered, if he deem it consistent with the state of judicial business in the county or counties whereof he is a superior judge (and in such case it shall be his duty to comply with such request), to hold a session of the superior court of the county the judge or judges whereof shall have made such request, at the seat of judicial business of such county, in such quarters as shall be provided for such session by the board of county commissioners, and during such period as shall have been specified in the request, or such shorter period as he may deem necessary by the state of judicial business in the county or counties whereof he is a superior judge. [L. '90, p. 343, § 10; 2 H. C., § 15; L. '93, p. 68, § 2; Const., Art. IV, § 7.]

Cited in 12 Wash. 172; 55 Wash. 70.

§ 29. Number of Sessions at Same Time—Effect of Acts of Visiting Judge.—In any county where there shall be more than one superior judge, or in which a superior judge of another county may be

holding a session of the superior court, as in this chapter provided, there may be as many sessions of the superior court at the same time as there are judges thereof, or assigned to duty therein by the governor, or responding to a request made as provided in the last preceding section. In such cases the business of the court shall be so distributed and assigned by law, or in the absence of legislation therefor, by such rules and orders of the court as shall best promote and secure the convenient and expeditious transaction thereof. Judgments, decrees, orders and proceedings of any session of the superior court held by one or more of the judges of said court, or by any judge of the superior court of another county pursuant to the provisions of this chapter, shall be equally effectual as if all the judges of such court presided at such session. [L. '90, p. 341, § 2; 2 H. C., § 16; L. '93, p. 68, § 3.]

Cited in 25 Wash. 146.

"Chapter" in this section, refers to §§ 27–30.

§ 30. Expenses of Judge Called to Another County.—Any judge of the superior court in any county in this state who shall hold a session of the superior court of any other county, in pursuance of the provisions of this chapter, shall be entitled to receive from the county in which he shall hold such sessions the amount of his actual traveling expenses from his residence to the place where he shall hold such sessions, and on his return to his residence, and of the actual traveling expenses of his sojourn at the place where he shall hold such sessions during the continuance thereof. The county clerk of such county shall, upon the presentation to him by such judge of a statement of such expenses, verified by his affidavit, issue to such judge a certificate that he is entitled to the amount thereof; and upon presentation of such certificate to the auditor of such county he shall draw a warrant on the general fund of such county for the amount in favor of such judge. [L. '93, p. 69, § 4; Const., Art. IV, § 14.]

§ 32. Jurisdiction—Process—Venue.—The process of the superior courts shall extend to all parts of the state: Provided, that all actions for the recovery of the possession of, quieting the title to, or for the enforcement of liens upon real estate shall be commenced in the county in which the real estate, or any part thereof, affected by such action or actions is situated. [L. '90, p. 343, § 9; 2 H. C., § 17; Const., Art. IV, § 6.]

See Const., Art. IV, § 27, style of process.

§ 35. Process, to Whom Directed.—Unless otherwise provided by statute, all process issuing out of the [superior] court shall be di-

rected to the sheriff of the county in which it is to be served, and be by him executed according to law. [L. '91, p. 84, § 5; 2 H. C., § 795.]

§ 36. Judges to Establish Uniform Rules.—The judges of the superior courts shall, from time to time, establish uniform rules for the government of the superior courts. [L. '90, p. 344, § 13; 2 H. C., § 18; Const., Art. IV, § 24.]

Cited in 76 Wash. 461.

§ 38. Seal.—The seals of the superior courts of the several counties of the state shall be, until otherwise provided by law, the vignette of General George Washington, with the words, "Seal of the Superior Court of —— County, State of Washington," surrounding the vignette. [L. '90, p. 345, § 17; 2 H. C., § 19; Const., Art. XXVII, § 9.]

Cited in 20 Wash. 96.

§ 39. Limit of Time for Decision.—Every case submitted to a judge of a superior court for his decision shall be decided by him within ninety days from the submission thereof: Provided, that if within said period of ninety days a rehearing shall have been ordered, then the period within which he is to decide shall commence at the time the cause is submitted upon such rehearing, and upon willful failure of any judge so to do, he shall be deemed to have forfeited his office. [L. '90, p. 344, § 12; 2 H. C., § 20; Const., Art. IV, § 20.]

Cited in 21 Wash. 630.

§ 40. Judges Pro Tempore—Appointment—Oath—Compensation. A case in the superior court of any county may be tried by a judge pro tempore, who must be a member of the bar, agreed upon in writing by the parties litigant, or their attorneys of record, approved by the court, and sworn to try the case; and his action in the trial of such cause shall have the same effect as if he were the judge of such court. A judge pro tempore shall, before entering upon his duties in any cause, take and subscribe the following oath or affirmation:—

I do solemnly swear (or affirm, as the case may be) that I will support the constitution of the United States and the constitution of the state of Washington, and that I will faithfully discharge the duties of the office of judge pro tempore in the cause wherein —— is plaintiff and —— defendant, according to the best of my ability.

He shall receive a compensation of ten dollars for each day engaged in said trial, to be paid in the same manner as the salary

of the superior judge. [L. '90, p. 343, § 11; 2 H. C., § 21; Const., Art. IV, § 7.]

Cited in 3 Wash. 693; 25 Wash. 603.

§ 41. Powers of Judge in Other Counties of His District.—Any judge of the superior court of the state of Washington shall have power, in any county within his district: (1) To sign all necessary orders and papers in probate matters pending in any other county in his district; (2) to issue restraining orders, and to sign the necessary orders of continuance in actions or proceedings pending in any other county in his district; (3) to decide and rule upon all motions, demurrers, issues of fact or other matters that may have been submitted to him in any other county. All such rulings and decisions shall be in writing and shall be filed immediately with the clerk of the proper county: Provided, that nothing herein contained shall authorize the judge to hear any matter outside of the county wherein the cause or proceeding is pending, except by consent of the parties. [L. '01, p. 76, § 1.]

Cited in 57 Wash. 589.

§ 42. Decisions and Rulings Out of His Own District.—Any judge of the superior court of the state of Washington who shall have heard any cause, either upon motion, demurrer, issue of fact, or other matter in any county out of his district, may decide, rule upon, and determine the same in any county in this state, which decision, ruling and determination shall be in writing and shall be filed immediately with the clerk of the county where such cause is pending. [L. '01, p. 77, § 2.]

Cited in 55 Wash. 40; 70 Wash. 9; 86 Wash. 496.

§ 42-1. Official Court Reporter—Appointment—Term.—It shall be the duty of each superior court judge in counties or judicial districts in the state of Washington having a population of over thirty thousand inhabitants to appoint a stenographer to be attached to the court holden by him, (except, for the sake of economy, where in counties or judicial districts having more than one judge there is not sufficient trial work to require the services of two or more official reporters, the judges of such courts may, provided their trial dockets can be satisfactorily arranged so as not to delay the trials of cases, appoint one official reporter jointly to act as official reporter for their respective courts), who shall have had at least three years' experience as a skilled, practical court reporter, or who upon examination shall

be able to report and transcribe accurately one hundred fifty words per minute of the judge's charge or one hundred seventy-five words of testimony for five consecutive minutes; said test of efficiency, in the event of inability to meet the qualifications as to length of time of experience, to be given by a committee of three of the attorneys of the county or district in which the said stenographer is seeking to act as official reporter, and such stenographer shall thereupon become an officer of the court and shall be designated and known as the official reporter for the court or district for which he is appointed. Each official reporter so appointed shall hold office during the term of office of the judge appointing him, but may be removed for incompetency, misconduct or neglect of duty, and before entering upon the discharge of his duties shall take an oath to perform faithfully the duties of his office, and file a bond in the sum of two thousand dollars ($2,000) for the faithful discharge of his duties. No person shall be appointed to the office of official reporter who is not a citizen of and a duly qualified elector in the state of Washington. [L. '13, p. 386, § 1.]

Cited in 79 Wash. 228–231; 84 Wash. 467.

§ 42–2. Duties of Reporter.—It shall be the duty of each official reporter appointed under this act to attend every term of the superior court in the county or judicial district for which he is appointed, at such times as the judge presiding may direct; and upon the trial of any cause in any court, if either party to the suit or action, or his attorney, request the services of the official reporter, the presiding judge shall grant such request, or upon his own motion such presiding judge may order a full report of the testimony, exceptions taken, and all other oral proceedings; in which case the official reporter shall cause accurate shorthand notes of the oral testimony, exceptions taken, and other oral proceedings had, to be taken, except when the judge and attorneys dispense with his services with respect to any portion of the proceedings therein, which notes shall be filed in the office of the clerk of the superior court where such trial is had. [L. '13, p. 387, § 2.]

§ 42–3. Compensation of Reporter.—Each official reporter so appointed shall be paid a compensation at the rate of ten dollars ($10) per diem for every day that he is actually in attendance upon said court pursuant to the direction of the court, which compensation shall be paid out of the county treasury where such court is held, as other expenses of the court are paid; and the sworn statement of the

official reporter as to the number of days' attendance upon the court, when certified as correct by the judge presiding, shall be a sufficient voucher to the county auditor, upon which he shall draw his warrant upon the treasurer of the county in favor of the official reporter. [L. '13, p. 387, § 3.]

§ 42–4. Additional Fees to be Paid Reporter.—In each civil action hereafter commenced the sum of one dollar ($1) shall be paid by the plaintiff at the time of the filing of the complaint to the clerk of the court, and at the time of the appearance of the defendant, or any defendant appearing separately, there shall be paid in to the clerk of the court one dollar ($1), and these sums so paid shall be taxed as costs in the case, and collected from the unsuccessful party in said action, and shall be known as stenographers' costs, and shall be paid by the clerk of said court into the county treasury of the county in which said action is commenced. [L. '13, p. 387, § 4.]

§ 42–5. Transcript of Notes—Fees.—When shorthand notes have been taken in any cause as in this act provided, if the court, or either party to the suit or action, or his attorney, requests a transcript of the notes into longhand, the official reporter shall make, or cause to be made, with reasonable diligence, full and accurate typewritten transcript of the testimony and other proceedings, which shall, when certified to, as hereinafter provided, be filed with the clerk of the court where such trial is had for the use of the court or parties to the action. The fees of the reporter for making such transcript shall be fifteen cents per folio of one hundred words for the original copy, and five cents per folio for each carbon copy ordered before the original is made, or made at the same time as the original, and when such transcript is ordered by any party to any such suit or action said fees shall be paid forthwith by the party ordering the same, and in all cases where a transcript is made as provided for under the provisions of this act the cost thereof shall be taxable as costs in the case, and shall be so taxed as other costs in the case are taxed: Provided, that when the defendant in any criminal cause shall present to the judge presiding satisfactory proof, by affidavit or otherwise, that he is unable to pay for such transcript, the presiding judge, if in his opinion justice will thereby be promoted, may order said transcript to be made by the official reporter, in which case the official reporter shall be paid for preparing said transcript ten cents per folio for the original copy and five cents per folio for each carbon copy ordered at the same time as the original or made at the

same time as the original, which transcript fee shall be paid in like manner as the per diem fees are paid as specified in section 42–3. [L. '13, p. 388, § 5.]

§ 42–6. Transcript Accorded Verity.—The report of the official reporter, when transcribed and certified as being a correct transcript of the stenographic notes of the testimony, or other oral proceedings had in the matter, shall be prima facie a correct statement of such testimony or other oral proceedings had, and the same may thereafter, in any civil cause, be read in evidence as competent testimony, when satisfactory proof is offered to the judge presiding that the witness originally giving such testimony is then dead or without the jurisdiction of the court, subject, however, to all objections the same as though such witness were present and giving such testimony in person. [L. '13, p. 389, § 6.]

§ 42–7. Subsequent Transcript.—When the official reporter who has taken notes in any cause, shall thereafter cease to be such official reporter, any transcript thereafter made by him therefrom, or made by any competent person under the direction of the court, and duly certified to by the person making the same, under oath, as a full, true and correct transcript of said notes, the same shall have full force and effect the same as though certified by an official reporter of said court. [L. '13, p. 389, § 7.]

§ 42–8. Reporter Pro Tem.—In the event of the absence or inability of the official reporter to act, the presiding judge may appoint a competent stenographer to act pro tem, who shall perform the same duties as the official reporter, and whose report when certified to, shall have the same legal effect as the certified report of the official reporter. The reporter pro tem shall possess the qualifications and take the oath prescribed for the official reporter, and shall file a like bond, and shall receive the same compensation. [L. '13, p. 389, § 8.]

§ 42–9. Court Amanuensis.—In all counties or judicial districts, except counties of the first class, such official reporter shall act as amanuensis to the court where he is appointed, and the court may allow him per diem therefor, as provided in this act: Provided, that in no event shall the per diem for such work exceed ten days in any one calendar month. [L. '13, p. 389, § 9.]

§ 42–10. Court Files Accessible to Reporters.—Official reporters or reporters pro tem may, without order of court, upon giving a

proper receipt therefor, procure at all reasonable hours from the office of the clerk of the court, any files or exhibits necessary for use in the preparation of statements of fact or transcribing portions of testimony or proceedings in any cause reported by them. [L. '13, p. 389, § 10.]

§ 42-11. Office Expenses.—Necessary supplies for reporting and for preparation of transcripts in criminal cases shall be furnished by the county. Typewriters and all other supplies in all other cases shall be furnished by the stenographers. In counties where arrangements can be made therefor, suitable office room shall be furnished the official reporter. [L. '13, p. 390, § 11.]

§ 42-12. Substituted Reporters.—At the request of either party to an action an official reporter from the same or any other district in the state may be substituted for the official reporter of the court in which the action is being tried for the purpose of reporting the trial of said action: Provided, that the party or parties to the action requesting such substitution pay or secure to be paid to the clerk of the court the necessary traveling and hotel expenses of the official reporters so substituted as aforesaid. [L. '13, p. 390, § 12.]

§ 42-13. Application of Act.—This act shall not apply to any county having a population of two hundred thousand, or over. [L. '13, p. 390, § 13.]

Cited in 79 Wash. 228-231.

CHAPTER III.

Justices' Courts.

See "Justices of the Peace and Constables," § 6513 et seq., infra.
Justice Code: See infra, §§ 1755-1924.

§ 43. General Powers of Justices of the Peace.—Every justice of the peace elected in any precinct in this state is hereby authorized to hold a court for the trial of all actions in the next section enumerated, to hear, try, and determine the same according to law; and for that purpose, where no special provision is otherwise made by law, such court shall be vested with all the necessary powers which are possessed by courts of record in this state; and all laws of a general nature shall apply to such justice's court, as far as the same may be applicable, and not inconsistent with the provisions of this

chapter. [L. '54, p. 226, § 22; Cd. '81, § 1709; 2 H. C., § 22; Const., Art. IV, § 10.]

Cited in 11 Wash. 14; 20 Wash. 96, 164.

§ 44. Jurisdiction in Civil Actions and Proceedings.—Every justice of the peace shall have jurisdiction and cognizance of the following civil actions and proceedings:—

1. Of an action arising on contract for the recovery of money only in which the sum claimed is less than one hundred dollars;

2. Of an action for damages for injuries to the person, or for taking or detaining personal property, or for injuring personal property, or for an injury to real property when no issue raised by the answer involves the plaintiff's title to or possession of the same, when the amount of damages claimed is less than one hundred dollars; also of actions to recover possession of personal property, when the value of such property, as alleged in the complaint, is less than one hundred dollars;

3. Of an action for a penalty less than one hundred dollars;

4. Of an action upon a bond conditioned for the payment of money, when the amount claimed is less than one hundred dollars, though the penalty of the bond exceed that sum, the judgment to be given for the sum actually due, not exceeding the amount claimed in the complaint;

5. Of an action on an undertaking or surety bond taken by him or his predecessor in office, when the amount claimed is less than one hundred dollars;

6. Of an action for damages for fraud in the sale, purchase, or exchange of personal property, when the damages claimed are less than one hundred dollars;

7. To take and enter judgment on confession of a defendant, when the amount of the judgment confessed is less than one hundred dollars;

8. To issue writs of attachment upon goods, chattels, moneys, and effects, when the amount is less than one hundred dollars;

9. Of all other actions and proceedings of which jurisdiction is specially confessed [conferred] by statute, when the amount involved is less than one hundred dollars, and the title to or right of possession of or to a lien upon real property is not involved. [L. '54, p. 226, § 23; L. '55, p. 11; L. '73, p. 333, § 17; L. '77, p. 199, § 1; Cd. '81, § 1710; L. '83, p. 44, § 1, subd. 4; L. '91, p. 137, § 1; 2 H. C., § 23; Const., Art. IV, § 10.]

Cited in 20 Wash. 96.

§ 45. Restrictions on Civil Jurisdiction.—The jurisdiction conferred by the last section shall not, however, extend to the following civil actions:—

1. In which the title to real property shall come in question;

2. Nor to an action for the foreclosure of a mortgage, or enforcement of a lien on real estate;

3. Nor to an action for false imprisonment, libel, slander, malicious prosecution, criminal conversation, or seduction;

4. Nor to any action against an executor or administrator as such. [L. '54, p. 227, § 24; Cd. 81, § 1711; 2 H. C., § 24; Const., Art. IV, §§ 6, 10.]

§ 46. Jurisdiction in Criminal Cases—Cities of First and Other Classes.—Justices of the peace shall have jurisdiction concurrent with the superior courts of all misdemeanors and gross misdemeanors committed in or which may be tried in their respective counties: Provided, that justices of the peace in cities of the first class shall in no event impose greater punishment than a fine of five hundred dollars, or imprisonment in the county jail for six months; and justices of the peace other than those elected in cities of the first class shall in no event impose greater punishment than a fine of one hundred dollars, or imprisonment in the county jail for thirty days. [L. '09, p. 377, § 1. Cf. L. '60, p. 279, § 171; L. '73, p. 181, § 184; L. '75, p. 51, § 1; Cd. 81, § 1886; 2 H. C., § 25; L. '01, p. 34, § 1; Const., Art. IV, § 6, 10.]

Cited in 13 Wash. 513; 23 Wash. 579; 25 Wash. 624; 36 Wash. 454; 40 Wash. 405; 43 Wash. 123; 57 Wash. 626, 627; 60 Wash. 239, 240.

See infra, § 1925, practice and trial in criminal actions in justices' courts.

§ 47. Territorial Jurisdiction of Justices—Residence.—The jurisdiction of justices of the peace elected in pursuance of the provisions of this act shall be coextensive with the limits of the county in which they are elected or appointed, and no other or greater, but every justice of the peace shall continue to reside in the precinct for which he was elected or appointed, during his continuance in office. [L. '54, p. 224, § 9; Cd. '81, § 1702; 1 H. C., § 314; see 2 H. C., § 27.]

Cited in 11 Wash. 14; 23 Wash. 579.

§ 48. Office, Where Held—Process.—Every justice of the peace shall keep his office in the precinct for which he may be elected, and not elsewhere; but he may issue process in any place in his county. [L. '54, p. 226, § 20; Cd. '81, § 1707; 2 H. C., § 28.]

Cited in 1 Wash. 387, 388; 2 Wash. 288; 14 Wash. 308; 21 Wash. 396.

§ 49. Not to Office With an Attorney, Except.—No justice of the peace shall hold his office in the same room with a practicing attorney, unless such attorney shall be his law partner; and in that case, such partner shall not be permitted to appear or practice as an attorney in any case tried before such justice of the peace. [L. '54, p. 226, § 21; Cd. '81, §§ 1708, 3294; 2 H. C., § 29.]

CHAPTER IV.

Magistrates.

§ 50. Definition of Magistrate.—A magistrate is an officer having power to issue a warrant for the arrest of a person charged with the commission of a crime. [L. '91, p. 91, § 1; 2 H. C., § 30.]

§ 51. Who are Magistrates.—The following persons are magistrates:—

1. The justices of the supreme court;
2. The superior judges, and justices of the peace;
3. All municipal officers authorized to exercise the powers and perform the duties of a justice of the peace. [L. '91, p. 91, § 2; 2 H. C., § 31.]

CHAPTER V.

Powers and General Provisions.

§ 52. Powers of Courts Respecting Conduct of Judicial Proceedings.—Every court of justice has power,—

1. To preserve and enforce order in its immediate presence;
2. To enforce order in the proceedings before it, or before a person or body empowered to conduct a judicial investigation under its authority;
3. To provide for the orderly conduct of proceedings before it or its officers;
4. To compel obedience to its judgments, decrees, orders, and process, and to the orders of a judge out of court, in an action, suit, or proceeding pending therein;
5. To control, in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every matter appertaining thereto;
6. To compel the attendance of persons to testify in an action, suit, or proceeding therein, in the cases and manner provided by this code;

7. To administer oaths in an action, suit, or proceeding pending therein, and in all other cases where it may be necessary in the exercise of its powers or the performance of its duties. [L. '91, p. 91, § 1; 2 H. C., § 32.]

Cited in 15 Wash. 578; 71 Wash. 496.

§ 53. Court may Punish for Contempt.—For the effectual exercise of the powers specified in the last section, the court may punish for contempt in the cases and the manner provided by law. [L. '91, p. 92, § 2; 2 H. C., § 33.]

Cited in 71 Wash. 497.

See infra, § 1049 et seq., and notes, relating to contempts in general.

See infra, § 58, punishment of contempts by "judicial officer."

§ 54. Judicial Officer Defined—When Disqualified.—A judicial officer is a person authorized to act as a judge in a court of justice. Such officer shall not act as such in a court of which he is a member in any of the following cases:—

1. In an action, suit or proceeding to which he is a party, or in which he is directly interested;

2. When he was not present and sitting as a member of the court at the hearing of a matter submitted for its decision;

3. When he is related to either party by consanguinity or affinity within the third degree. The degree shall be ascertained and computed by ascending from the judge to the common ancestor and descending to the party, counting a degree for each person in both lines, including the judge and party and excluding the common ancestor;

4. When he has been attorney in the action, suit or proceeding in question for either party; but this section does not apply to an application to change the place of trial, or the regulation of the order of business in court. In the cases specified in subdivisions three and four, the disqualification may be waived by the parties, and except in the supreme court shall be deemed to be waived unless an application for a change of the place of trial be made as provided by law. [Cf. L. '91, p. 92, § 3; 2 H. C., § 34; L. '95, p. 63, § 1.]

Cited in 18 Wash. 393.

§ 55. When may Act as Attorney.—Any judicial officer may act as an attorney in any action, suit, or proceeding to which he is a party or in which he is directly interested. A justice of the peace, otherwise authorized by law, may act as an attorney in any court other than the one in which he is judge, except in an action,

suit, or proceeding removed therefrom to another court for review; but no judicial officer shall act as attorney in any court, except as in this section allowed. [L. '91, p. 92, § 4; 2 H. C., § 35; see Cd. '81, § 3293.]

See infra, this title, chapter X, attorneys, in general.

§ 56. Judge as Distinguished from a Court.—A judge may exercise, out of court, all the powers expressly conferred upon a judge as contradistinguished from a court, and not otherwise. [L. '91, p. 92, § 5; 2 H. C., § 36.]

Cited in 43 Wash. 22; 44 Wash. 617.

§ 57. Powers of Judicial Officers.—Every judicial officer has power,—

1. To preserve and enforce order in his immediate presence, and in the proceedings before him, when he is engaged in the performance of a duty imposed upon him by this code or other statute;

2. To compel obedience to his lawful orders, as provided in this code;

3. To compel the attendance of persons to testify in a proceeding pending before him in the cases and manner provided in this code;

4. To administer oaths to persons, in a proceeding pending before him, and in all other cases where it may be necessary, in the exercise of his powers and the performance of his duties. [L. '91, p. 92, § 6; 2 H. C., § 37.]

Cited in 71 Wash. 497.

§ 58. Judicial Officer may Punish for Contempt.—For the effectual exercise of the powers specified in the last preceding section, a judicial officer may punish for contempt in the cases and manner provided by law. [L. '91, p. 93, § 7; 2 H. C., § 38.]

Cited in 71 Wash. 497.

See supra, § 53, punishment of contempt by "court."

See infra, § 1049 et seq., and notes, relating to contempts in general.

§ 59. Judges may Exercise Certain Powers, Where.—The judges of the supreme and superior courts have power in any part of the state to take and certify,—

1. The proof and acknowledgment of a conveyance of real property, or any other written instrument authorized or required to be proved or acknowledged;

2. The acknowledgment of satisfaction of a judgment in any court;

3. An affidavit or deposition to be used in any court of justice or other tribunal of this state;

4. To exercise any other power and perform any other duty conferred or imposed upon them by statute. [L. '91, p. 93, § 8; 2 H. C., § 30.]

Cited in 21 Wash. 203; 54 Wash. 155.

§ 60. When Inferior Judicial Officers may Act.—Every other judicial officer may, within the county, city, district, or precinct in which he is chosen,—

1. Exercise the powers mentioned in subdivisions one, two, and three of the last preceding section;

2. Exercise any other power and perform any other duty conferred or imposed upon him by other statute. [L. '91, p. 93, § 9; 2 H. C., § 40.]

§ 61. Legal Holidays.—The following days are legal holidays, namely: Sunday; the first day of January, commonly called New Year's Day; the fourth day of July; the twenty-second day of February; the twenty-fifth day of December, commonly called Christmas Day; and any day designated by public proclamation of the chief executive of the state as a legal holiday, or as a day of thanksgiving; the day known and observed as Memorial or Decoration Day; and the day on which a general election is held throughout the state. [Cf. L. '88, p. 107, § 1; L. '91, p. 80, § 1; 2 H. C., § 42.]

Cited in 14 Wash. 311; 49 Wash. 2, 3, 6.

§ 61-1. Holiday Follows Sunday.—Whenever any legal holiday, other than Sunday, shall fall upon any Sunday, the day next following such date shall become and be held as a legal holiday. [L. '11, p. 9, § 1.]

§ 62. Labor Day.—The first Monday of September of each year is hereby declared to be a legal holiday in the state of Washington, to be known as Labor Day. [L. '91, p. 39, § 1; 2 H. C., § 43.]

§ 63. Lincoln's Birthday.—The twelfth day of February of each year, the same being the anniversary of the birth of Abraham Lincoln, be and it is hereby declared to be a legal holiday in the state of Washington. [L. '95, p. 6, § 1.]

§ 63-1. Columbus Day.—The twelfth day of October of each year is hereby declared to be a legal holiday to be known as "Columbus Day." [L. '11, p. 390, § 1.]

§ 64. No Courts on Legal Holidays, Except, etc.—No court shall be open, nor shall any judicial business be transacted, on a legal holiday, except,—

1. To give, upon their request, instructions to a jury when deliberating of their verdict;

2. To receive the verdict of a jury;

3. For the exercise of the powers of a magistrate in a criminal action, or in a proceeding of a criminal nature;

4. For hearing an application for writs of habeas corpus, injunction, prohibition, and attachment. [L. '91, p. 80, § 2; 2 H. C., § 44; see Cd. '81, § 1267; Const., Art. IV, § 6.]

Cited in 49 Wash. 3, 6.

§ 65. Sitting Deemed Adjourned Over Legal Holiday.—If any legal holiday happen to be a day appointed for the sitting of a court, or to which it is adjourned, such sitting shall be deemed appointed for or adjourned to the next day which is not a legal holiday. [L. '91, p. 81, § 3; 2 H. C., § 45.]

Cited in 35 Wash. 129.

§ 66. Proceedings may be Adjourned from Time to Time.—A court or judicial officer has power to adjourn any proceeding before it or him, from time to time, as may be necessary, unless otherwise expressly provided by law. [L. '91, p. 93, § 10; 2 H. C., § 46.]

§ 67. Proceedings not to Fail for Want of Judge or Court.—No proceeding in a court of justice, in any action, suit, or proceeding pending therein, is affected by a vacancy in the office of any or all of the judges, or by the failure of a session of the court. [L. '91, p. 89, § 2; 2 H. C., § 47.]

Cited in 1 Wash. 338, 340; 9 Wash. 220.

§ 68. Court may Provide Rooms, etc.—If the proper authority neglects to provide any supreme or superior court with rooms, furniture, fuel, lights, and stationery, suitable and sufficient for the transaction of its business, and for the jury attending upon it, if there be one, the court may order the sheriff to do so, at the place within the county designated by law for holding such court; and the expense incurred by the sheriff in carrying such order into effect, when ascertained and ordered to be paid by the court, is a charge upon the county. [L. '91, p. 93, § 11; 2 H. C., § 48.]

Cited in 3 Wash. 400; 4 Wash. 713; 5 Wash. 165; 14 Wash. 311.

§ 69. Proceeding When Mode not Prescribed.—When jurisdiction is, by the constitution of this state, or by statute, conferred on a court or judicial officer all the means to carry it into effect are also given; and in the exercise of the jurisdiction, if the course of proceeding be not specifically pointed out by statute, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this code. [L. '91, p. 94, § 12; 2 H. C., § 49.]

Cited in 4 Wash. 33; 10 Wash. 575; 16 Wash. 129; 56 Wash. 494; 60 Wash. 422; 71 Wash. 597.

CHAPTER VI.

County Clerks—Clerk of Superior Court.

§ 70. Bond of Clerk—Conditions—When Filed, etc.—Every county clerk, before he enters on the duties of his office, shall enter into bond, payable to the state of Washington, with good and sufficient sureties, as provided by law for other county officers, the amount to be fixed and the bond to be approved by the judge or a majority of the judges presiding over the court of which he is clerk. The bond shall be conditioned that he will faithfully perform the duties of his office, and account for and pay over all moneys which may come into his hands by virtue of his office, and that he, his executors or administrators will deliver to his successor, safe and undefaced, all books, records, papers, seals, apparatus and furniture belonging to his office, and cause said bond to be filed in the office of the county treasurer of his said county, after it has been recorded in a book kept for that purpose by the county aduitor. [L. '95, p. 95, § 1.]

§ 71. Amount of Bond.—The bond of said county clerk shall in no case be in a penal sum less than double the amount of money which said judge or judges, or a majority of them, may, by order of said court entered on the records of said court, fix upon as liable to come into his hands as clerk; and it shall be the duty of the judge or judges of the court of which he is clerk to require that said bond be sufficient, and in a penal sum double the amount of moneys liable to come into the hands of said clerk. [L. '95, p. 96, § 2.]

§ 72. New Bond, When may be Required—Penalty for Failure to File.—When the judge or judges of any court, or a majority of them, shall believe that the clerk of said court has not a good and sufficient bond on file, or that said bond is not large enough in amount, as herein required, the said judge or judges shall enter an

order requiring him, within such time as may be specified in said order, to execute and present to said judge or judges a good and sufficient bond, as hereinbefore described, in such sum as may be fixed by said order; and in case of his failure to make and file said bond within ten days from the expiration of the date fixed by said order for the making of the same, it shall be the duty of the judge or judges of said court to declare the office of said county clerk vacant. [L. '95, p. 96, § 3.]

§ 73. Office—Where Kept—When to be Open.—The office of the clerk of the superior court shall be kept at the county seat of the county of which he is clerk. Each clerk of a superior court shall keep his office open for the transaction of business on every judicial day from eight to twelve in the forenoon, and from one to five in the afternoon. [Cf. Cd. '81, § 2125; L. '91, p. 98, §§ 1, 2; 2 H. C., §§ 71, 72.]

§ 75. What Books to be Kept by County Clerk.—1. He shall, at the expense of the county, provide and keep a book, in which he shall enter all appearances and the time of filing all pleadings in any cause pending in said court;

2. He shall also keep a docket, in which he shall enter, before every session, the titles of all causes pending before said court at such session, in the order in which they were commenced, beginning with criminal cases, noting in separate columns the names of the attorneys, the character of the action, the pleadings upon which it stands at the commencement of the session, leaving a margin opposite each case for the court to enter a short minute of the orders of the session. One copy of this docket he shall furnish for the use of the court, and another for the use of the members of the bar;

3. He shall also provide and keep at each session a minute-book, in which he shall enter the names of witnesses and jurors, with time of attendance, distance of travel, and whatever else is necessary to enable him to make out a complete cost bill;

4. He shall also provide and keep a well-bound book, to be called the order book or journal, in which he shall record the daily proceedings of the court, and enter all verdicts, orders, judgments, and decisions thereof, from which every morning shall be read in open court the proceedings of the previous day, which shall be signed by the judge; but the court shall have full control of all entries in said journal at any time during the same term [session] in which they were made;

5. He shall also provide and keep well-bound books, one for an execution docket, one for a book of levies, and one for a final record, in which he shall make a full and perfect record of all criminal cases in which a final judgment is rendered, and all civil cases in which by any order or final judgment the title to real estate, or any interest therein, is any way affected, and such other final judgments, orders, or decisions as either party may require, and may pay him for recording;

6. He shall also provide and keep such other books as are prescribed by law and required in the discharge of the duties of his office. [Cf. L. '54, p. 366, § 6; L. '63, p. 317, § 6; Cd. '81, § 2179; 1 H. C., § 173.]

Cited in 26 Wash. 227; 29 Wash. 442; 42 Wash. 79; 86 Wash. 383.
See infra, § 444, execution docket.

§ 76. Custody and Delivery of Books, etc.—He shall be responsible for the safe custody and delivery to his successor of all books and papers belonging to his office. [L. '54, p. 367, § 8; Cd. '81, § 2181; 1 H. C., § 175.]

§ 77. Powers and Duties of Clerks of Supreme and Superior Courts.—The clerk of the supreme court, and each clerk of a superior court, has power to take and certify the proof and acknowledgment of a conveyance of real property or any other written instrument, authorized or required to be proved or acknowledged, and to administer oaths in every case when authorized by law; and it is the duty of the clerk of the supreme court, and of each county clerk for each of the courts for which he is clerk,—

1. To keep the seal of the court, and affix it in all cases where he is required by law;

2. To record the proceedings of the court;

3. To keep the records, files and other books and papers appertaining to the court;

4. To file all papers delivered to him for that purpose, in any action or proceeding in the court;

5. To attend the court of which he is clerk, to administer oaths, and receive the verdict of a jury in any action or proceeding therein, in the presence and under the direction of the court;

6. To keep the journal of the proceedings of the court, and, under the direction of the court, to enter its orders, judgments, and decrees;

7. To authenticate, by certificate or transcript, as may be required, the records, files, or proceedings of the court, or any other paper appertaining thereto, and filed with him;

8. To exercise the powers and perform the duties conferred and imposed upon him elsewhere by statute;

9. In the performance of his duties, to conform to the direction of the court. [Cf. L. 58, p. 29, § 1; Cd. '81, § 2184; L. '91, p. 98, § 3; 2 H. C., § 73.]

Cited in 65 Wash. 540.

§ 78. Deputies, Appointment and Powers of.—The clerk of the supreme court, and each clerk of a superior court, may have one or more deputies, to be appointed by such clerk in writing, and to continue during his pleasure. Such deputies have the power to perform any act or duty relating to the clerk's office that their respective principals have, and their respective principals are responsible for their conduct. [L. '91, p. 98, § 4; 2 H. C., § 74.]

§ 81. Clerks not to Practice Law.—Each clerk of a court is prohibited during his continuance in office from acting, or having a partner who acts, as an attorney of the court of which he is clerk. [Cf. L. '54, p. 367, § 10; Cd. '81, § 2183; 1 H. C., § 177; L. '91, p. 99, § 5; 2 H. C., § 75.]

See infra, § 127, restrictions upon clerks practicing law.

CHAPTER VII.

Referees and Court Commissioners.

§ 82. Definition and Powers of.—A referee is a person appointed by the court or a judicial officer, with power,—

1. To try an issue of law or of fact in a civil action or proceeding, and report thereon;

2. To ascertain any other fact in a civil action or proceeding, when necessary for the information of the court, and report the fact, or to take and report the evidence in an action;

3. To execute an order, judgment, or decree, or to exercise any other power or perform any other duty expressly authorized by law. [L. '91, p. 41, § 1; 2 H. C., § 67.]

See infra, § 369 et seq., trial by referees.

§ 83. Appointment, Qualifications, etc., of Court Commissioners. There may be appointed in each county, by the judge of the superior court having jurisdiction therein, a court commissioner for said county. Such commissioner shall be a citizen of the United States and an elector of the county in which he may be appointed, and shall

reside at the county seat of such county, and shall hold his office during the pleasure of the judge appointing him. [L. '95, p. 164, § 1; L. '09, p. 418, § 1; Const., Art. IV, § 23.]

Cited in 44 Wash. 616, 617.

§ 85. Powers of Commissioner—Fees.—Such court commissioner shall have power, authority and jurisdiction, concurrent with the superior court and the judge thereof, in the following particulars:

a. To hear and determine all matters in probate, to make and issue all proper orders therein, and to issue citations in all cases where same are authorized by the probate statutes of this state.

b. To grant and enter defaults and after ten days from the entry thereof, to enter judgment thereon.

c. To issue temporary restraining orders and temporary injunctions, and to fix and approve bonds thereon.

d. To act as referee in all matters and actions referred to him by the superior court as such, with all the powers now conferred upon referees by law.

e. To hear and determine all proceedings supplemental to execution, with all the powers conferred upon the judge of the superior court in such matters.

f. To hear and determine all petitions for the adoption of children, for the dissolution of incorporations, and to change the name of any person.

g. To hear and determine all applications for the commitment of any person to the hospital for the insane, with all the powers of the superior court in such matters: Provided, that in cases where a jury is demanded, same shall be referred to the superior court for trial.

h. To hear and determine all complaints for the commitment of minors to the state reform or industrial school, with all powers conferred upon the superior court in such matters.

i. To grant adjournments, administer oaths, preserve order, compel attendance of witnesses, and to punish for contempts in the refusal to obey or the neglect of his lawful orders made in any matter before him as fully as the judge of the superior court.

j. To take acknowledgments and proofs of deeds, mortgages and all other instruments requiring acknowledgment under the laws of this state, and to take affidavits and depositions in all cases.

k. To provide an official seal, upon which shall be engraved the words "Court Commissioner," and the name of the county for which he may be appointed, and to authenticate his official acts therewith in all cases where same is necessary.

l. To charge and collect, for his own use, the same fees for the official performance of official acts mentioned in subsections "d" and "j" herein as are provided by law for referees and notaries public. [L. '09, p. 419, § 2. Cf. L. '95, pp. 164, 165, §§ 2, 3; Const., Art. IV, § 23.]

Cited in 27 Wash. 83; 49 Wash. 319.

See infra, § 8302, fees of notary.

§ 86. Revision by Superior Court.—All of the acts and proceedings of court commissioners hereunder shall be subject to revision by the superior court. Any party in interest may have such revision upon demand made by written motion, filed with the clerk of the superior court, within ten days after the entry of any order or judgment of the court commissioner. Such revision shall be upon the records of the case, and the findings of fact and conclusions of law entered by the court commissioner, and unless a demand for revision is made within ten days from the entry of the order or judgment of the court commissioner, his orders and judgments shall be and become the orders and judgments of the superior court, and from same an appeal may be taken to the supreme court in all cases where an appeal will lie from like orders and judgments entered by the judge. [L. '09, p. 420, § 3.]

§ 87. Salary.—Every court commissioner appointed hereunder shall be allowed a salary, in addition to the fees herein provided for, in such sum as the board of county commissioners may designate, said salary to be paid at the time and in the manner as the salary of other county officials. [L. '09, p. 420, § 4.]

§ 88. Oath.—Court commissioners appointed hereunder shall, before entering upon the duties of such office, take and subscribe an oath to support the constitution of the United States, the constitution of the state of Washington, and to perform the duties of such office fairly and impartially and to the best of his ability. [L. '09, p. 420, § 5.]

CHAPTER VIII.

Jurors.

Fees of: See "Counties," § 4084 et seq., infra.
Jury trials, challenges, etc.: See infra, § 322 et seq.

§ 89. Jury, Definition of.—A jury is a body of men temporarily selected from the qualified inhabitants of a particular district, and invested with power,—

1. To present or indict a person for a public offense;
2. To try a question of fact. [L. '91, p. 86, § 1; 2 H. C., § 50.]

Cited in 12 Wash. 55; 30 Wash. 142.

§ 90. Different Kinds of Juries.—There shall be three kinds of juries:—

1. A grand jury;
2. A petit jury;
3. A jury of inquest. [L. '91, p. 86, § 2; 2 H. C., § 51.]

§ 91. Grand Jury, Defined.—A grand jury is a body of men, not less than twelve nor more than seventeen in number, impaneled and sworn to inquire of public offenses committed or triable within the county. [L. '91, p. 86, § 3; 2 H. C., § 52.]

Cited in 5 Wash. 500.

§ 92. Petit Jury, Defined.—A petit jury is a body of men, twelve in number in the superior court, and six in number in the courts of justices of the peace, drawn in the superior court by lot from the jurors in attendance upon the court at a particular session, and sworn to try and determine a question of fact; but in justice's court the jury is drawn according to the mode specially provided for such court. [L. '91, p. 87, § 4; 2 H. C., § 53.]

Cited in 12 Wash. 55.

§ 93. Jury of Inquest, Defined.—A jury of inquest is a body of men, six in number, summoned from the qualified inhabitants of a particular district, before the coroner, or other ministerial officer, to inquire of particular facts. [L. '91, p. 87, § 5; 2 H. C., § 54.]

§ 94–1. Qualification of Jurors.—No person shall be competent to serve as a juror in the superior courts of the state of Washington unless he be (1) an elector and taxpayer of the state, (2) a resident of the county in which he is called for service for more than one year preceding such time, (3) over twenty-one years of age, (4) in full possession of his faculties and of sound mind, (5) able to read and write the English language. [L. '11, p. 314, § 1. Cf. L. '09, p. 131, § 1.]

Cited in 82 Wash. 619.

§ 94–2. Persons Exempt.—Officers of the United States and of the state, attorneys at law, school teachers, practicing physicians, licensed embalmers, active members of the fire and police depart-

ments of any municipality, women, and all persons over sixty years of age, shall not be compelled to serve as jurors; and in preparing jury lists, the names of such persons, other than women and persons over sixty years of age, shall, if it be known that they are entitled to be excused from jury service, be omitted from the jury list: Provided, however, that the right of any such person to be excused from jury service shall not be cause for challenge as to his competency if he desires to serve: Provided further, that any woman desiring to be excused from jury service may claim exemption by signing a written or printed notice thereof and returning same to the sheriff before the date for appearance, and if exemption is claimed by reason of sex, no fee shall be allowed for her appearance. And it shall be the duty of the person serving any summons for jury service to inform the person served of this provision. [L. '11, p. 314, § 2.]

§ 94–3. Jury List—Yearly Revision.—Upon the taking effect of this act, the judge or judges of the superior court of each county in this state shall divide the county into not less than three nor more than six jury districts, following the lines of voting precincts and arranging the districts in such manner that the population in each district shall be as nearly equal as may be, and the fixing of the boundaries of the district shall be evidenced by an order made by the court and entered upon its records. During the month of July of each year the county clerk of each county in the state shall make up a jury list containing the names of all the qualified jurors in the county, so far as he may be able to ascertain the same from the latest tax-rolls and poll-books of the county or from any other official sources of information and shall ascertain so far as possible the voting precinct and place of residence of each juror and if these cannot be ascertained, the school district in which he lives. He shall provide boxes sufficient in number to correspond with the number of jury districts fixed by the court, and numbered to correspond therewith, and having written the names of the jurors in each district upon slips of paper, which shall be similar in size, quality of paper, and writing, and shall deposit such slips in the jury-box of the proper district. The jury list shall be revised from year to year, new lists being made up each year, adding thereto the names of new residents, and omitting therefrom the names of persons who may have removed from the county, or who may have served as jurors within five years theretofore (unless they shall be necessary to make up a sufficient list) and the names of the new list shall

be deposited in the box for service for that year, as hereinbefore provided. [L. '11, p. 314, § 3.]

Cited in 82 Wash. 618.

§ 94-4. Jury Terms—Jury, How Drawn.—Jury terms shall commence on the first Monday of each month, and shall end on the Saturday preceding the first Monday of each month, unless the day of commencing or ending said term be changed by order of the judge or judges of the superior court; but it shall not be necessary to call a jury for any term in any county unless the judge or judges of the superior court of that county shall consider that there is sufficient business to be submitted to a jury to require that one be called. When the judge or judges of the superior court of any county shall deem that the public business requires a jury term to be held, he or they shall require the county clerk to draw a jury to serve for the ensuing term, and the county clerk, on the second Saturday of the calendar month preceding the month in which the jury is to be called to serve, shall be blindfolded, and in the presence of the judge or judges or of a court commissioner of the superior court, shall draw from the jury-boxes such number of names as the judge or judges may have ordered to be summoned as jurors for the ensuing term. The names shall be drawn in equal numbers from each jury-box, and before the drawing is made the boxes shall be shaken up so that the slips bearing the names thereon may be thoroughly mixed, and the drawing of the slips shall depend purely upon chance. [L. '11, p. 315, § 4.]

Cited in 76 Wash. 17; 82 Wash. 285; 85 Wash. 385.

§ 94-5. Grand Jurors—How Drawn.—Whenever the judge or judges of the superior court of any county in the state shall desire to summon a grand jury, the names of persons to serve as grand jurors shall be drawn from the jury list, as hereinbefore provided: Provided, however, that the names of the persons who shall serve as grand jurors shall not be stricken from the jury list, and such service shall not excuse them from service upon petit juries, as though they had not been summoned upon the grand jury. [L. '11, p. 316, § 5.]

Cited in 82 Wash. 286.

§ 94-6. Additional Names—Open Venire.—If for any reason the jurors drawn for service upon a petit jury for any term shall not be sufficient to dispose of the pending jury business, or where no

jury is in regular attendance and the business of the court may require the attendance of a jury before a regular term, the judge or judges of the superior court may draw from the jury list such additional names as they may consider necessary, and the persons whose names are so drawn shall thereupon be summoned to serve as jurors forthwith. The judge or judges drawing such additional names, may, in his or their discretion, order and direct that, of such additional jurors, only those living nearest to the county seat or most conveniently reached and found shall be at first summoned by the sheriff, and at any time when a sufficiency of such persons has been summoned and produced in court, such judge or judges may, in his or their discretion, order and direct the sheriff not to summon the remainder of the additional jurors so drawn. By stipulation or agreement made in open court as a part of the record, the parties to any action may agree that an open venire may be issued to make up a jury in that action, and upon order of the court approving such stipulation and directing the number of jurors to be drawn, the clerk shall issue an open venire, and the sheriff shall fill the same by summoning from the bystanders, or elsewhere, a sufficient number of persons to fill the open venire. [L. '11, p. 316, § 6.]

§ 94–7. Excused from Service.—A person summoned as a juror may be excused from acting as such on account of any of the reasons stated in section 94–2 hereof; when his own health requires, on account of death in his family, or of illness in his family of such character that he is required to be in attendance thereupon, or when his business interests would be seriously prejudiced by such service. No person, however, shall be excused from service as a juror on account of business reasons unless his service is such as would lead to the waste or destruction of his property; and unless it shall appear that after having been summoned as a juror he had made every reasonable effort to permit of his serving as a juror without causing waste or destruction of his property. When excused for any of the foregoing reasons, or for any reason deemed sufficient by the court, the name of the juror so excused shall remain upon the jury list from which jurors are drawn, and his name returned to the jury-box from which it was drawn. Any person applying to be excused from jury service for any of the causes herein specified, may be placed upon oath or affirmation to testify truly in all respects as to the cause for such excuse, and that he will answer truly any question put to him by the judge with respect thereto. [L. '11, p. 317, § 7.]

§ 94-8. Separation of Jury.—In no action or proceeding whatever, except felony cases shall the jury sworn to try the issues therein be kept together and in the custody of the officers of the court, save during the actual progress of the trial, until the case shall have been finally submitted to them for their decision. Whenever the jury are kept together in the custody of the officers when the trial is not in progress, they shall be supplied with meals at regular hours, and with comfortable sleeping and toilet accommodations. [L. '11, p. 317, § 8. Cf. 1 Rem. & Bal. Code, § 346, repealed by this act.]

§ 95. Felon not Competent.—A person who has been convicted of a felony is not competent to act as juror. [L. '99, p. 35, § 1; L. '91, p. 87, § 6; 2 H. C., § 55; see L. '88, p. 117, § 1.]

Superseded by 1 Rem. & Bal. Code, § 94, except as to subdivision 6, which is retained.

§ 97. Who are Exempt—Effect of Disqualification on Verdict.—Civil officers of the United States, civil and judicial officers of the state, attorneys at law, ministers of the gospel or priests, school teachers, practicing physicians, locomotive engineers, active members of the fire department of any city or village, all persons who have served twice as a juror within two years, and all persons over sixty years of age, shall not be compelled to serve as jurors; and in preparing jury lists the county commissioners shall omit the names of such persons; but no act of a grand or petit jury shall be invalid by reason of such person or persons aforesaid, qualified in other respects, serving thereon; nor shall any disqualification of any member of a grand or petit jury affect the indictment or verdict, unless the juror for that specific cause was challenged or excepted to before the finding of the indictment or rendition of the verdict, and the challenge or exception overruled, and error specifically assigned upon the overruling of such challenge or exception. [L. '88, p. 117, § 2; L. '91, p. 87, § 7; 2 H. C., § 56.]

Cited in 31 Wash. 78.

See infra, § 111, as to previous service within one year.

See infra, § 7332, militia and employers exempt from jury duty, when.

See infra, § 9320, telegraph employees exempt.

See infra, § 332, exemption a personal privilege.

§ 100. Public Interest as an Excuse.—A person may be excused from acting as a juror when, for any reason, . . . interests . . . of the public will be materially injured by his attendance; but no

person shall be excused on account of the causes in this section mentioned, unless it appear that after he was summoned he could not, by reasonable precaution, have provided against them. [L. '91, p. 87, § 7; 2 H. C., § 57.]

The above portions of § 7 of the act of 1891 are retained.

§ 105. Drawing in Certain Counties in Absence of Judge.—When, pursuant to any statute of this state, there is elected but one judge of the superior court in and for two or more counties, the superior court of any such county may by an order made and entered of record direct that until such order be altered or revoked, the drawing from such box of the names of persons to serve as jurors in that court shall take place in the courtroom in such county and not in open court and without the presence of the judge; and while such order remains in force the drawing shall be made accordingly; but the names of the persons drawn shall nevertheless be entered upon the journal of such court, together with the clerk's certificate prescribed in section 4 of this act, and the judge of the superior court for any such county may, while he is within or without such county, make in writing and sign the order prescribed in said section 4 for drawing persons to serve as jurors; but he shall then forward such order to the clerk of such court in time to reach such clerk on or before 10 o'clock A. M. of the last Saturday in the current month; and such drawing shall then take place at said hour on said Saturday. If at the time when the said judge would otherwise make said order, it appears to the judge of said court that no jury will be needed in the ensuing month, the judge may omit said order, and no jury need be drawn for such ensuing month. [L. '05, p. 275, § 14.]

It is doubtful if this section is in force. "Section 4" is repealed.

§ 106. Irregularities Do not Invalidate.—The failure on the part of any officer to perform the duties required within the time, or other irregularity in said drawing, shall in no way invalidate the selecting, summoning or drawing of said jurors. [Cf. L. '88, p. 116, § 4; L. '90, p. 332, § 2; 2 H. C., § 62.]

Cited in 12 Wash. 291.

§ 107. Proceedings When Venire Set Aside.—If for any cause the court shall see fit to set aside the venire for grand or petit jurors, returned as above provided, an open venire may thereupon issue to the sheriff, who shall thereupon complete the panel by such open

venire as speedily as possible. [Cf. L. '90, p. 332, § 3; L. '91, p. 88, § 8; 2 H. C., § 63.]

Cited in 12 Wash. 295; 17 Wash. 550; 20 Wash. 558.

§ 108. Sheriff to Summon Jurors.—When a venire is delivered to the sheriff, he shall without delay proceed to summon the jurors as therein directed, and shall immediately thereafter make and file in the court a return of his doings thereon. [L. '91, p. 88, § 10; 2 H. C., § 65.]

§ 110. Venire to Fill Incomplete Panel.—If for any cause a sufficient number of grand or petit jurors are not returned by the sheriff in the manner first herein contemplated, or if a sufficient number of grand or petit jurors are not in attendance, the court may order the panel filled by summoning a sufficient number by an open venire issued and directed to the sheriff. [Cf. L. '90, p. 332, § 4; L. '91, p. 88, § 9; 2 H. C., § 64.]

§ 111. Juror not to be Summoned Twice in One Year.—No person shall be summoned as a petit juror in any superior court, upon an open venire, more than once in one year. [L. '91, p. 88, § 11; 2 H. C., § 66.]

Cited in 24 Wash. 257.

For balance of this section, see infra, § 328.

CHAPTER IX.

Attorney General and Prosecuting Attorneys.

Duties of attorney general: See "State Officers," § 9035 et seq., infra.
Duties of prosecutors: See "Counties," § 3958 et seq., infra.

§ 112. Powers and Duties of Attorney General.—The powers and duties of the attorney general, in relation to actions and proceedings in the courts, shall be,—

1. To appear for and represent the state before the supreme court in all cases in which the state is interested;

2. To institute and prosecute all actions and proceedings for or for the use of the state, which may be necessary in the execution of the duties of any state officer;

3. To defend all actions and proceedings against any state officer in his official capacity, in any of the courts of this state or the United States;

4. To consult and advise the several prosecuting attorneys in matters relating to the duties of their office, and when, in his judg-

ment, the interests of the state require, he shall attend the trial of any person accused of a crime, and assist in the prosecution. [L. '91, p. 95, § 2; 2 H. C., § 84.]

Cited in 3 Wash. 66; 21 Wash. 454; 28 Wash. 497.

§ 113. Prosecuting Attorneys Defined.—Prosecuting attorneys are attorneys authorized by law to appear for and represent the state and counties thereof in actions and proceedings before the courts and judicial officers. [L. '91, p. 95, § 3; 2 H. C., § 85.]

Cited in 18 Wash. 224; 21 Wash. 61; 28 Wash. 500.

§ 114. Appointment by the Court.—When from illness or other cause the prosecuting attorney is temporarily unable to perform his duties, the court or judge may appoint some qualified person to discharge the duties of such officer in court until such disability is removed. [L. '91, p. 95, § 5; 2 H. C., § 87.]

Cited in 21 Wash. 62.

§ 115. Deputy Prosecuting Attorneys—Appointment.—The prosecuting attorney of each county may appoint, by and with the consent of the county commissioners, one or more deputies who shall have the same power in all respects as their principal. Such appointment shall be in writing, signed by the prosecuting attorney and filed in the county auditor's office. Each deputy thus appointed shall have the same qualifications required of the prosecuting attorney, but his appointment may be revoked by the prosecuting attorney or county commissioners at will. The prosecuting attorney shall be responsible for the acts of his deputies. [L. '03, p. 7, § 1. Cf. L. '91, p. 96, § 6; 2 H. C., § 88; see L. '86, p. 63, § 17.]

Cited in 33 Wash. 327.

§ 116. General Powers and Duties of Prosecuting Attorneys.—The prosecuting attorney of each county shall have authority and it shall be his duty, subject to the supervisory control and direction of the attorney general, to appear for and represent the state and the county and all school districts in the county in which he is a prosecuting attorney, in all criminal and civil actions and proceedings in such county in which the state or such county or such school district is a party. [L. '11, p. 375, § 1. Cf. L. '91, p. 96, § 7; 2 H. C., § 89.]

Cited in 21 Wash. 61; 28 Wash. 500.

CHAPTER X.

Attorneys and Counselors at Law.

Compensation of: See infra, § 474 et seq.

§ 118. Attorney and Counsel Defined.—An attorney is a person duly admitted to practice law and authorized to appear for and represent a party in the written proceedings in any action or proceeding in any stage thereof. An attorney other than the one who represents the party in the written proceedings may also appear for and represent a party in court or before a judicial officer, and then he is known in the particular action or proceeding as counsel only, and his authority is limited to the acts that are done in the court or before such officer at that time. [L. '91, p. 95, § 1; 2 H. C., § 90; L.'95, p. 178, § 1.]

Cited in 30 Wash. 234.

§ 119. Attorneys to be Admitted.—No person shall be permitted to practice as an attorney and counselor at law or to commence, conduct or defend any action or proceeding in which he is not a party concerned, in any of the courts of this state, either by using or subscribing his own name or the name of any other person, or to solicit business as, or to advertise, or represent himself, in any way, as an attorney or counselor at law, unless he has been previously admitted to practice law in this state. [L. '09, p. 533, § 1. Cf. L. 63, p. 403, § 1; L. '77, p. 321, § 1; Cd. '81, § 3275; L. '91, p. 96, §§ 8, 10; 2 H. C., §§ 91, 93; L. '95, p. 178, § 2; L. '03, p. 391, § 1.]

§ 120. General Qualifications for Admission—Fee.—No person shall hereafter be admitted to practice law in this state except by order of the supreme court, either on motion or by examination. Each applicant for admission shall show by his affidavit to the court that he is over twenty-one years of age, a citizen of the United States and a resident of this state, or has come into this state for the purpose of making it his permanent residence, that he intends to actively engage in the practice of the law as a profession, and that he is not laboring under suspension or disbarment of any court whatsoever, and that he never was suspended or disbarred, by any court, or if so, in what courts and when, and giving the time of reinstatement, and shall also file a certificate of at least two members of the bar of the supreme court to the effect that he is of good moral character and recommending his admission: Provided, that attorneys living outside of this state may practice in the courts of

this state on the same terms and conditions as attorneys of this state are permitted to practice in the courts of their respective states, territories or districts, and not otherwise. The fee for admission shall be twenty-five dollars, to be paid to the clerk of the court at the time of filing his application, and in case the court refuses to admit the applicant the fee shall be returned to him, otherwise to be accounted for as other court fees. It shall be competent for any person to present to the court any reason why an applicant should not be permitted as an attorney and counselor at law in this state. [L. '09, p. 533, § 2. Cf. Cd. '81, § 3276; L. '91, p. 96, § 9; 2 H. C., § 92; L. '95, p. 179, § 4. Cf. L. '97, p. 12, § 1.]

§ 121. Admissions on Motion—Law Graduates—Certificates.—The following applicants may be admitted on motion:

(a) Graduates of the law department of the state university;

(b) Graduates of the law department of Gonzaga University of Spokane: Provided, the entrance requirements are substantially the same and shall remain the same as those required for entrance to the law school of the state university: Provided further, that the course of instruction shall require not less than the same number of hours required for graduation by the said state university and that the course and requirements of study shall be such as to show that the graduates of said university are qualified for admission to practice as attorneys. The state board of bar examiners, appointed by the supreme court, shall be the judges of whether the aforementioned conditions are being complied with and a certificate of said board to that effect shall be conclusive.

(c) Members of the bar of other states having been entitled to practice in the highest courts of record in their respective states for at least two years immediately preceding their application for admission to practice in this state: Provided, that such applicant, upon showing the qualifications as provided in the next preceding section, the court, if satisfied of the applicant's fitness, shall enter an order permitting such applicant to practice law in this state for a period of one year, at the end of which time, the court being satisfied that such applicant is of good moral character and a fit and proper person to practice law in this state, an order shall be entered so admitting such applicant. [L. '15, p. 242, § 1. Cf. L. '09, p. 534, § 3; L. '03, p. 391, § 1.]

§ 122. Notice of Application for Examination—Fee.—All persons making application for admission to the bar as herein provided,

shall file a notice of such application with the clerk of the supreme court at least one week before the date of such examination, as shall be fixed by rule of the supreme court, and shall pay to said clerk the sum of twenty-five dollars, in full for all fees, for filing his application, entering his admission and the issuing of a certificate therefor, and the fee so paid to the clerk shall be accounted for by him as other fees. [L. '95, p. 179, § 5; L. '03, p. 392, § 3; L. '07, p. 407, § 1.]

This section may be superseded. Twenty dollars changed to twenty-five dollars, by § 120, supra.

§ 123. Examinations—Qualifications.—Examinations for admission to the bar shall be held at the state capitol on the first Thursday and Friday after the second Monday in January, May and October, of each year, and shall be both oral and written as to the applicant's knowledge of law, general learning, fitness and qualifications. Nor shall any such applicant be examined unless he shall have filed with the clerk of the supreme court, two months before such examination, a statement in which the time he commenced the study of law is set forth: Provided, the time he applies for admission is at least two years after the time named in such statement. Every applicant shall also present an affidavit by some member of the bar of the supreme court, or a certificate from the dean or head of some law school of approved standing, to the effect that such applicant has regularly and attentively studied law under the direction of the affiant or dean or head of such law school as the case may be, for a period of two years: Provided, that thirty-five full weeks of study in a law school in any one year shall be equivalent to a year's study. [L. '11, p. 158, § 1. Cf. L. '09, p. 534, § 4; L. '95, p. 179, § 3.]

§ 124. Rules—Examining Board—Appointment—Compensation.—The supreme court shall make such other rules as may be necessary for the admission of applicants to practice law, and for the purpose of conducting the examination of applicants, shall appoint a board consisting of three lawyers, who shall severally hold their office for a term of three years unless sooner removed by the court: Provided, however, that the first appointments after the taking effect of this act shall be one member to be appointed for one year, one for two years and one for three years, and thereafter each member shall be appointed for a term of three years, except to fill a vacancy not caused by the expiration of a term. No person shall be eligible as a member of such board unless he shall have been a member in good standing of the bar of the supreme court of this state for not less

than five years immediately preceding his appointment, and no person shall be eligible to succeed himself on such board. Each member of said board shall be allowed ten dollars ($10) per day for each day actually spent in the performance of his duties, and five cents per mile for each mile actually and necessarily traveled in going to and returning from attendance on the court to conduct such examinations. The person having the shortest term to serve on said board shall be chairman thereof, and the clerk of the supreme court shall act as secretary thereof and shall keep the records, files and correspondence of the board. The board of examiners shall meet not later than two days before an examination is to be held to prepare the questions to be answered in writing by the applicants, which questions when prepared shall be kept in a sealed envelope or package and free from inspection in the office of the clerk of the supreme court until required for such examination, and, after the completion of such examination, said questions shall be made public. [L. '11, p. 158, § 2. Cf. L. '09, p. 535, § 5; L. '03, p. 391, § 1.]

§ 125. Oath.—Every person before being admitted to practice law in this state shall take and subscribe the following oath:

I do solemnly swear:

(1) I will support the constitution of the United States and the constitution and laws of the state of Washington;

(2) I will maintain the respect due to courts of justice and judicial officers;

(3) I will not counsel or maintain any suit or proceedings which shall appear to me to be illegal and unjust, nor any defense except such as I believe to be honestly debatable under the law of the land;

(4) I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by an artifice or false statement of facts or law;

(5) I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with his business except from him or with his knowledge and approval;

(6) I will abstain from all offensive personalities, and advance no fact prejudicial to the honor or reputation of a fellow attorney, party or witness, unless required by the justice of the cause with which I am charged;

(7) I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any man's cause for lucre or malice. So help me God. [L. '11, p. 159, § 3. Cf. L. '09, p. 535, § 6.]

§ 126. Revocation of License.—Upon the production of proof to the supreme court that any person admitted to practice law in this state, has been at the time of his admission to practice law, disbarred or suspended from practice in any state or territory of the United States, or that there was pending against such person any proceedings for disbarment or suspension in any such state or territory at the time of his admission to practice here laboring under any disability to practice in the courts, of any such state or territory, or that such person had ever been, at the time of his admission to practice here, convicted of a felony or misdemeanor involving moral turpitude, then said supreme court shall revoke and cancel the certificate of admission granted to such person. The proceedings for the revocation and cancellation of such certificate may be taken by the court of its own motion, or may be taken upon the information of another, and in either case the party shall have the privilege of making his own defense; such proceedings shall be by motion and answer, and evidence may be examined on either side. [L. '09, p. 536, § 7.]

§ 127. Disqualifications.—No person shall practice as an attorney and counselor at law in any court of this state who does not reside in the state, or is not a citizen of the United States, or who holds a commission as judge of any court of record, or who is a sheriff, coroner or deputy sheriff; nor shall the clerk of the supreme court or of the superior court, or the deputy of either, practice in the particular court of which he is clerk or deputy clerk; but nothing herein contained shall prevent attorneys and counselors at law, who reside without this state, practicing in this state, unless the state or territory in which they reside prohibits attorneys and counselors at law residing in this state to practice therein, but nothing herein contained shall prevent any judge of any of the courts of this state from finishing any business by him undertaken in the district, circuit or supreme court of the United States prior to his election as judge. [L. '95, p. 179, § 6.]

§ 128. No Exclusion on the Ground of Sex.—No person shall be excluded from acting as an attorney at law and practicing in all the courts of this state on account of sex. [L. '95, p. 180, § 7.]

§ 129. Duties of Attorneys and Counselors.—It shall be the duty of an attorney and counselor,—

1. To support the constitution of the United States and the laws of the state;

2. To maintain the respect due to the courts of justice and judicial officers;

3. To counsel or maintain such actions, proceedings, or defenses only as appear to him legal and just, except the defense of a person charged with a public offense;

4. To employ, for the purpose of maintaining the causes confided to him, such means only as are consistent with truth, and never to seek to mislead the judge by any artifice or false statement of fact or law;

5. To maintain inviolate the confidence, and at every peril to himself to preserve the secrets, of his client;

6. To abstain from all offensive personality, and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged;

7. Never to reject, from any consideration personal to himself, the cause of the defenseless or oppressed. [L. '63, p. 404, § 5; Cd. '81, § 3279; 2 H. C., § 94.]

Cited in 5 Wash. 332; 18 Wash. 480; 48 Wash. 158.

§ 130. Authority of Attorneys and Counselors.—An attorney and counselor has authority,—

1. To bind his client in any of the proceedings in an action or special proceeding by his agreement duly made, or entered upon the minutes of the court; but the court shall disregard all agreements and stipulations in relation to the conduct of or any of the proceedings in an action or special proceeding, unless such agreement or stipulation be made in open court, or in presence of the clerk, and entered in the minutes by him, or signed by the party against whom the same is alleged, or his attorney;

2. To receive money claimed by his client in an action or special proceeding during the pendency thereof, or after judgment upon the payment thereof, and not otherwise, to discharge the same or acknowledge satisfaction of the judgment;

3. This section shall not prevent a party employing a new attorney, or from issuing an execution upon a judgment, or from taking other proceedings prescribed by statute for its enforcement. [L. '63, p. 404, § 6; Cd. '81, § 3280; 2 H. C., § 95.]

Cited in 7 Wash. 213; 23 Wash. 251, 492; 34 Wash. 234; 41 Wash. 30; 46 Wash. 44; 55 Wash. 40; 57 Wash. 562.

§ 131. Proceedings When Attorney Appears Without Authority.—If it be alleged by a party for whom an attorney appears that he does so without authority, the court may at any stage of the proceedings relieve the party for whom the attorney has assumed to appear from the consequences of his act; it may also summarily, upon motion, compel the attorney to repair the injury to either party consequent upon his assumption of authority. [L. '69, p. 405, § 7; Cd. '81, § 3281; 2 H. C., § 96.]

Cited in 21 Wash. 436.

§ 132. Attorney may be Required to Show Authority.—The court or a judge may, on motion of either party, and on showing reasonable grounds therefor, require the attorney for the adverse party, or for any one of several adverse parties, to produce or prove the authority under which he appears, and until he does so, may stay all proceedings by him on behalf of the party for whom he assumes to appear. [L. '63, p. 405, § 8; Cd. '81, § 3282; 2 H. C., § 97.]

Cited in 23 Wash. 305; 27 Wash. 114, 255.

§ 133. Change of Attorneys.—The attorney in an action or special proceeding may be changed at any time before judgment or final determination as follows:—

1. Upon his own consent, filed with the clerk or entered upon the minutes; or

2. Upon the order of the court, or a judge thereof, on the application of the client, or for other sufficient cause; but no such change can be made until the charges of such attorney have been paid by the party asking such change to be made. [L. '63, p. 405, § 9; Cd. '81, § 3283; 2 H. C., § 98.]

Cited in 72 Wash. 519; 78 Wash. 473.

§ 134. Notice of Change and Substitution.—When an attorney is changed, as provided in the last section, written notice of the change, and of the substitution of a new attorney, or of the appearance of the party in person, must be given to the adverse party; until then, he shall be bound to recognize the former attorney. [L. '63, p. 405, § 10; Cd. '81, § 3284; 2 H. C., § 99.]

Cited in 3 Wash. 392; 27 Wash. 114.

§ 135. Proceedings on Death or Removal of Attorney.—When an attorney dies, or is removed or suspended, or ceases to act as such, a party to an action for whom he was acting as attorney must, at

least twenty days before any further proceedings against him, be required by the adverse party, by written notice, to appoint another attorney, or to appear in person. [L. '63, p. 405, § 11; Cd. '81, § 3285; 2 H. C., § 100.]

Cited in 35 Wash. 387.

§ 136. 'Lien of Attorneys.—An attorney has a lien for his compensation, whether specially agreed upon or implied, as hereinafter provided,—

1. Upon the papers of his client, which have come into his possession in the course of his professional employment;

2. Upon money in his hands belonging to his client;

3. Upon money in the hands of the adverse party in an action or proceeding, in which the attorney was employed, from the time of giving notice of the lien to that party;

4. Upon a judgment to the extent of the value of any services performed by him in the action, or if the services were rendered under a special agreement, for the sum due under such agreement, from the time of filing notice of such lien or claim with the clerk of the court in which such judgment is entered, which notice must be filed with the papers in the action in which such judgment was rendered, and an entry made in the execution docket, showing name of claimant, amount claimed, and date of filing notice. [L. '63, p. 406, § 12; Cd. '81, § 3286; 2 H. C., § 101.]

Cited in 3 Wash. 375; 11 Wash. 208; 23 Wash. 307; 25 Wash. 511; 41 Wash. 196; 57 Wash. 242; 60 Wash. 217; 65 Wash. 637; 82 Wash. 401.

See §§ 474, 475, infra, relating to compensation of attorneys.

§ 137. Proceedings to Compel Delivery of Papers.—When an attorney refuses to deliver over money or papers to a person from or for whom he has received them in the course of professional employment, whether in an action or not, he may be required by an order of the court in which an action, if any, was prosecuted, or if no action was prosecuted, then by order of any judge of a court of record, to do so within a specified time, or show cause why he should not be punished for a contempt. [L. '63, p. 406, § 13; Cd. '81, § 3287; 2 H. C., § 102.]

Cited in 3 Wash. 16, 376; 72 Wash. 656; 82 Wash. 399, 401.

§ 138. Proceedings Where Lien Exists.—If, however, the attorney claim a lien upon the money or papers, under the provisions of this chapter, the court or judge may,—

1. Impose as a condition of making the order that the client give security, in a form and amount to be directed, to satisfy the lien, when determined in an action;

2. Summarily to inquire into the facts on which the claim of a lien is founded, and determine the same; or

3. To refer it, and upon the report determine the same as in other cases. [L. '63, p. 406, § 14; Cd. '81, § 3288; 2 H. C., § 103.]

Cited in 72 Wash. 519; 82 Wash. 399, 401.

§ 139. Removal and Suspension of Attorneys.—An attorney and counselor may be removed or suspended by any court of record of the state, for either of the following causes, arising after his admission to practice: 1. His conviction of a felony or misdemeanor involving moral turpitude, in which case the record of conviction shall be conclusive evidence. 2. Willful and malicious disobedience or violation of an order of the court requiring him to do or forbear an act connected with, or in the course of, his profession, which he ought in good faith to do or forbear, and any violation of the oath taken by him, or of his duties as such attorney and counselor. 3. Corruptly or willfully, and without authority, appearing as attorney for a party to an action or proceeding. 4. Lending his name to be used as attorney and counselor by another person who is not an attorney and counselor. 5. For the commission of any act involving moral turpitude, dishonesty or corruption, whether the same be committed in the course of his relations as an attorney or counselor at law, or otherwise, and whether the same shall constitute a felony or misdemeanor or not; and in the event that such act shall constitute a felony or misdemeanor, conviction thereof in a criminal proceeding shall not be a condition precedent to disbarment or suspension from practice therefor. 6. In all cases where an attorney is removed or suspended by a superior court, the judgment or order of removal or suspension may be reviewed on appeal by the supreme court. [L. '09, p. 130, § 1. Cf. L. '63, p. 406, § 15; Cd. '81, § 3289; 2 H. C., § 104; L. '97, p. 9, § 1.]

Cited in 32 Wash. 58; 45 Wash. 88; 54 Wash. 571, 573; 78 Wash. 672, 674.

§ 140. Proceedings for Removal or Suspension.—The proceedings to remove or suspend an attorney and counselor, as provided in the last section, must be taken by the court of its own motion for matter within its knowledge, or may be taken upon the information of another, and in either case the party shall have the privilege of

making his defense. [L. '63, p. 406, § 16; Cd. '81, § 3290; 2 H. C., § 105.]

Cited in 45 Wash. 84; 53 Wash. 5.

§ 141. Mode of Proceeding.—Such proceedings shall be by motion and answer, and evidence may be examined on either side. [L. '63, p. 407, § 17; Cd. '81, § 3291; 2 H. C., § 106.]

Cited in 53 Wash. 5.

§ 142. Persons not Admitted cannot Practice.—No person shall practice in any court of record except a party or his regularly authorized attorney and counselor at law: Provided, that nothing herein contained shall be so construed as to prevent a party from employing any person to assist him in the preparation of his papers in the case before the time of trial, nor so as to prevent any person from trying any particular cause in court, leave of court being first had and obtained, and entered of record. [L. '63, p. 407, § 18; Cd. '81, § 3292; 2 H. C., § 107.]

This section is probably superseded by § 119, supra.

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CHAPTER I.

Rules of Decision and Construction.

§ 143. Common Law, How Far Prevails.—The common law, so far as it is not inconsistent with the constitution and laws of the United States, or of the state of Washington, nor incompatible with the institutions and condition of society in this state, shall be the rule of decision in all the courts of this state. [Cf. L. '63, p. 88, § 1; Cd. '81, § 1; L. '91, p. 31, § 1; 2 H. C., § 108.]

Cited in 3 Wash. 226; 14 Wash. 78; 17 Wash. 281; 19 Wash. 252; 23 Wash. 355; 29 Wash. 638; 30 Wash. 279; 33 Wash. 388; 58 Wash. 181; 78 Wash. 696; 80 Wash. 572; 81 Wash. 543, 544, 553; 82 Wash. 534.

§ 144. Laws to be Liberally Construed.—The provisions of this code shall be liberally construed, and shall not be limited by any rule of strict construction. [Cf. L. '54, p. 221, § 504; Cd. '81, §§ 758, 1686; L. '91, p. 40, § 1; 2 H. C., § 1707.]

Cited in 71 Wash. 439.

§ 145. Laws Continued.—The provisions of a statute, so far as they are substantially the same as those of a statute existing at the time of their enactment, must be construed as continuations thereof. [Cf. Cd. '81, §§ 761, 1681; L. '91, p. 40, § 1; 2 H C., § 1708.]

§ 146. Word "Person" Defined.—The term "person" may be construed to include the United States, this state, or any state or territory, or any public or private corporation, as well as an individual. [Cf. L. '54, p. 99, § 134; L. '57, p. 46; Cd. '81, §§ 756, 964; L. '91, p. 40, § 1; 2 H. C., § 1709.]

Cited in 6 Wash. 137.

§ 147. Term "Officer" Defined.—Whenever any term indicating an officer is used it shall be construed, when required, to mean any person authorized by law to discharge the duties of such officer. [L. '54, p. 221, § 501; Cd. '81, § 755; 2 H. C., § 1710.]

§ 148. Words Importing Number and Gender, How Construed.—Words importing the singular number may also be applied to the plural of persons and things; words importing the plural may be applied to the singular; and words importing the masculine gender may be extended to females also. [Cf. L. '54, p. 99, § 135; Id., p. 221, § 502; L. '57, p. 45, § 1; Cd. '81, §§ 756, 965; L. '91, p. 40, § 1; 2 H. C., 1711.]

Cited in 20 Wash. 523.

§ 149. Word "Month" Defined.—The word "month" or "months," whenever the same occurs in the statutes of this state now in force, or in statutes hereinafter enacted, or in any contract made in this state, shall be taken and construed to mean "calendar month." [L. '77, p. 333; Cd. '81, § 759; L. '91, p. 40, § 1; 2 H. C., § 1712.]

§ 150. Computation of Time.—The time within which an act is to be done, as herein provided, shall be computed by excluding the first day and including the last, unless the last day is a holiday or Sunday, and then it is also excluded. [Cf. L. '54, p. 219, § 486; Cd. '81, § 743; L. '88, p. 32, § 1; 2 H. C., § 794.]

Cited in 7 Wash. 537; 18 Wash. 263; 40 Wash. 40; 87 Wash. 273.

See infra, § 252, computation of time for service of notice.

§ 151. Adoption of Ballinger's Code.—The compilation arranged by R. A. Ballinger and known as Ballinger's Annotated Codes and Statutes of Washington, two volumes, is hereby adopted as an official compilation of existing statutes of the state, up to and including the year 1897, but of no greater authority than all other existing official compilations or session laws of the state. [L. '99, p. 109, § 1.]

§ 152. Amendments to Code.—It shall be proper for the legislature in amending or repealing existing statutes, and for the courts in referring to existing statutes, to refer to or cite Ballinger's Annotated Codes and Statutes of Washington, containing such law. [L. '99, p. 110, § 2.]

§ 152-5. Official Codes of State Laws.—The compilation of the Session Laws of the state of Washington, arranged and compiled by Richard A. Ballinger and Arthur Remington, and known as Remington & Ballinger's Annotated Codes and Statutes of Washington, and supplement thereto, and the compilation of the Session Laws of the state of Washington arranged and compiled by Frank Pierce, and known as Pierce's Washington Code, are hereby respectively adopted as the official compilations of the existing statutes of the state up to and including the year 1913. [L. 1915, p. 18, § 1. Cf. L. '11, p. 8, § 1; L. '13, p. 276, § 1.]

§ 152-6. Citations of Codes.—It shall be proper for the legislature in amending or repealing existing statutes, and for the courts in referring to existing or repealed statutes, to refer to or cite Remington & Ballinger's Annotated Codes and Statutes of Washington, containing such law, and in any such references and citations to abbreviate the same to Rem. & Bal. Code, or refer to and cite Pierce's Washington Code containing such law. [L. 1915, p. 19, § 2.]

CHAPTER II.

Forms of Actions.

§ 153. Only One Form of Action.—There shall be in this state hereafter but one form of action for the enforcement or protection of private rights and the redress of private wrongs, which shall be called a civil action. [L. '54, p. 131, § 1; L. '60, p. 5, § 1; L. '71, p. 3, § 1; L. '73, p. 4, § 2; Cd. '81, § 2; 2 H. C., § 109.]

Cited in 1 Wash. 193; 3 Wash. 587; 11 Wash. 664; 18 Wash. 100; 23 Wash. 576; 24 Wash. 329; 27 Wash. 396; 28 Wash. 183, 210; 30 Wash. 76; 40 Wash. 454; 46 Wash. 114, 115; 47 Wash. 479; 67 Wash. 535.

§ 154. Parties, How Designated.—The party commencing the action shall be known as the plaintiff, and the opposite party the defendant. [L. '54, p. 131, § 2; Cd. '81, § 3; 2 H. C., § 110.]

Cited in 35 Wash. 137; 67 Wash. 3.

CHAPTER III.

Limitation of Actions.

§ 155. Limitations Prescribed—Objections, How Taken.—Actions can only be commenced within the periods herein prescribed after the cause of action shall have accrued, except when in special cases a different limitation is prescribed by statute; but the objection that the action was not commenced within the time limited can only be taken by answer or demurrer. [Cf. L. '54, p. 362, § 1; L. '60, p. 289, § 1; L. '63, p. 85, § 16; L. '69, p. 8, § 25; L. '73, p. 8, § 25; Cd. '81, § 25; L. '85, p. 74, § 1; L. '91, p. 90, § 1; 2 H. C., § 111.]

Cited in 7 Wash. 86; 12 Wash. 669; 25 Wash. 388; 26 Wash. 423, 467, 487; 27 Wash. 151, 595; 28 Wash. 538; 34 Wash. 569; 41 Wash. 611; 42 Wash. 453.

§ 156. Actions to be Commenced in Ten Years.—The period prescribed in the preceding section for the commencement of actions shall be as follows:—

Within ten years,—

1. Actions for the recovery of real property, or for the recovery of the possession thereof; and no action shall be maintained for such recovery unless it appear that the plaintiff, his ancestor, predecessor, or grantor, was seised or possessed of the premises in question within ten years before the commencement of the action. [Cf. L. '54, p. 363, § 2; Cd. '81, § 26; 2 H. C., § 112; see ref. to § 155, supra.]

Cited in 6 Wash. 536–538; 7 Wash. 25, 636; 8 Wash. 291; 10 Wash. 104; 25 Wash. 388, 572; 27 Wash. 595; 28 Wash. 359; 36 Wash. 216; 41 Wash. 281, 611; 43 Wash. 672; 49 Wash. 334; 50 Wash. 117; 64 Wash. 663; 65 Wash. 494; 72 Wash. 228; 78 Wash. 341; 84 Wash. 44.

§ 157. Within Six Years.—Within six years,—

1. An action upon a judgment or decree of any court of the United States, or of any state or territory within the United States;

2. An action upon a contract in writing, or liability express or implied arising out of a written agreement;

3. An action for the rents and profits or for the use and occupation of real estate. [L. '54, p. 363, § 3; Cd. '81, § 27; 2 H. C., § 113; see ref. to § 155, supra.]

Cited in 1 Wash. 8; 7 Wash. 86; 19 Wash. 419; 25 Wash. 401; 26 Wash. 418, 419, 456, 467, 492, 500, 559; 27 Wash. 151, 595; 28 Wash. 480; 32 Wash. 468, 486; 34 Wash. 569; 41 Wash. 301, 302; 50 Wash. 490; 51 Wash. 415; 54 Wash. 606; 62 Wash. 192; 76 Wash. 93, 695; 86 Wash. 591; 87 Wash. 610.

§ 158. Within Five Years.—No action for the recovery of any real estate sold by an executor or administrator under the laws of this state, or the laws of the territory of Washington, shall be maintained by any heir or other person claiming under the deceased, unless it is commenced within five years next after the sale, and no action for any estate sold by a guardian shall be maintained by the ward, or by any person claiming under him, unless commenced within five years next after the termination of the guardianship, except that minors and other persons under legal disability to sue at the time when the right of action first accrued may commence such action at any time within three years after the removal of the disability. [Cf. L. '54, p. 290, §§ 137, 138; L. '90, p. 81, § 1; 2 H. C., § 114.]

Cited in 3 Wash. 517.

§ 159. Within Three Years.—Within three years,—

1. An action for waste or trespass upon real property;

2. An action for taking, detaining, or injuring personal property, including an action for the specific recovery thereof, or for any other injury to the person or rights of another not hereinafter enumerated;

3. An action upon a contract or liability, express or implied, which is not in writing, and does not arise out of any written instrument;

4. An action for relief upon the ground of fraud, the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud;

5. An action against a sheriff, coroner, or constable upon a liability incurred by the doing of an act in his official capacity and by virtue of his office, or by the omission of an official duty, including the nonpayment of money collected upon an execution; but this subdivision shall not apply to action for an escape;

6. An action upon a statute for penalty or forfeiture, where an action is given to the party aggrieved, or to such party and the state, except when the statute imposing it prescribed a different penalty [limitation];

7. An action for seduction and breach of promise of marriage. [Cf. L. '54, p. 363, § 4; L. '69, p. 8, § 28; Cd. '81, § 28; 2 H. C., § 115; see ref. to § 155, supra.]

Cited in 7 Wash. 314; 10 Wash. 101, 215; 18 Wash. 471; 19 Wash. 419; 26 Wash. 96, 487, 559, 594; 27 Wash. 263, 396; 28 Wash. 302; 35 Wash. 4; 36 Wash. 633; 41 Wash. 301; 44 Wash. 573; 46 Wash. 344, 345; 51 Wash. 515; 53 Wash. 659; 56 Wash. 98; 59 Wash. 3, 5; 72 Wash. 452; 76 Wash. 611, 695; 78 Wash. 663; 86 Wash. 342; 87 Wash. 199, 610.

See infra, § 4000, liability of sheriff.

See infra, § 573 et seq., and § 707 et seq., action to recover specific personalty.

See infra, § 937 et seq., action for waste, trespass, etc.

See infra, § 963 et seq., action for fines and forfeitures.

§ 160. Within Two Years.—Within two years,—

1. An action for libel, slander, assault, assault and battery, and false imprisonment;

2. An action upon a statute for a forfeiture or penalty to the state. [Cf. L. '54, p. 363, § 5; L. '69, p. 9, § 29; Cd. '81, § 29; 2 H. C., § 116; see ref. to § 155, supra.]

Cited in 41 Wash. 301; 86 Wash. 224.

§ 161. Within One Year.—Within one year,—

1. An action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process;

2. An action by an heir, legatee, creditor, or other party interested, against an executor or administrator, for alleged misfeasance, malfeasance or mismanagement of the estate within one year from the time of final settlement, or the time such alleged misconduct was discovered. [Cf. L. '54, p. 364, § 5; L. '69, p. 9, § 30; Cd. '81, § 30; 2 H. C., § 117; see ref. to § 155, supra.]

Cited in 4 Wash. 634.

§ 162. Action to Cancel Tax or Tax Deed.—Actions to set aside or cancel the deed of any county treasurer issued after and upon the sale of lands for general, state, county or municipal taxes, or for the recovery of lands sold for delinquent taxes, must be brought within three years from and after the date of the issuance of such treasurer's deed: Provided, that this section shall not apply to actions not otherwise barred on deeds heretofore issued if the same be commenced within one year after the passage of this act. [L. '07, p. 398, § 1.]

Cited in 55 Wash. 480; 57 Wash. 440, 655, 656, 657; 58 Wash. 460, 480; 60 Wash. 445; 64 Wash. 411, 414; 66 Wash. 656, 657; 68 Wash. 179; 71 Wash. 532; 73 Wash. 585; 74 Wash. 535; 79 Wash. 348; 86 Wash. 45.

§ 163. Special Provisions for Action on Penalty.—An action upon a statute for a penalty given in whole or in part to the person who may prosecute for the same shall be commenced within three [one] years [year] after the commission of the offense; and if the action be not commenced within one year by a private party, it may be commenced within two years after the commission of the offense in behalf of the state by the prosecuting attorney of the county

where said offense was committed. [Cf. L. '54, p. 364, § 6; Cd. '81, § 31; 2 H. C., § 118; see ref. to § 155, supra.]

§ 164. Within Three Months.—Within three months,—

(1) An appeal from any order of a board of county commissioners, or upon a claim rejected by said boards;

(2) Upon claims against an estate, rejected by an executor or administrator within three months after the rejection. [Cf. Cd. '81, § 32; 2 H. C., § 119.]

Cited in 5 Wash. 713; 66 Wash. 311.

The first subdivision of this section conflicts with § 3909, infra.

§ 165. Actions for Relief not Otherwise Provided for.—An action for relief not hereinbefore provided for shall be commenced within two years after the cause of action shall have accrued. [L. '54, p. 364, § 7; Cd. '81, § 33; 2 H. C., § 120; see ref. to § 155, supra.]

Cited in 3 Wash. 517; 10 Wash. 215; 18 Wash. 488; 22 Wash. 295; 25 Wash. 400; 26 Wash. 418-487; 28 Wash. 538; 30 Wash. 167, 631; 35 Wash. 4; 39 Wash. 439; 46 Wash. 83, 344; 53 Wash. 659; 56 Wash. 98; 76 Wash. 93; 87 Wash. 611.

§ 166. Actions on Mutual Open Accounts.—In an action brought to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action shall be deemed to have accrued from the time of the last item provided in the account on either side; but whenever a period of more than one year shall have elapsed between any of the series of items or demands they are not to be deemed such an account. [L. '54, p. 364, § 8; L. '69, p. 10, § 33; Cd. '81, § 34; 2 H. C., § 121; see ref. to § 155, supra.]

Cited in 71 Wash. 52.

§ 167. Actions in Name of State, etc.—The limitations prescribed in this act (chapter) shall apply to actions brought in the name or for the benefit of any county or other municipality or quasi municipality of the state, in the same manner as to actions brought by private parties: Provided, that there shall be no limitation to actions brought in the name or for the benefit of the state, and no claim of right predicated upon the lapse of time shall ever be asserted against the state: And further provided, that no previously existing statute of limitation shall be interposed as a defense to any action brought in the name of or for the benefit of the state, although such statute may have run and become fully operative as a defense prior to the adoption of this act, nor shall any cause of action against the state

be predicated upon such a statute. An action shall be deemed commenced when the complaint is filed. [L. '03, p. 26, § 1. Cf., L. '54, p. 364, § 9; L. '69, p. 10, §§ 34, 35; L. '73, p. 10, §§ 34, 35; Cd. '81, § 35; 2 H. C., § 122; see ref. to § 155.]

Cited in 12 Wash. 669; 28 Wash. 359, 538; 30 Wash. 621; 34 Wash. 63, 64; 42 Wash. 453; 49 Wash. 54, 56, 334; 51 Wash. 55, 56, 606–608; 57 Wash. 609, 612; 60 Wash. 246; 64 Wash. 637; 71 Wash. 121; 78 Wash. 339; 83 Wash. 304.

§ 168. Operation of Statute Suspended, When.—If the cause of action shall accrue against any person who shall be out of the state or concealed therein, such action may be commenced within the terms herein respectively limited after the return of such person into the state, or after the time of such concealment; and if after such cause of action shall have accrued, such person shall depart from and reside out of this state, or conceal himself, the time of his absence or concealment shall not be deemed or taken as any part of the time limited for the commencement of such action. [L. '54, p. 364, § 10; Cd. '81, § 36; 2 H. C., § 123; see ref. to § 155, supra.]

Cited in 5 Wash. 664; 10 Wash. 432; 26 Wash. 461, 492; 41 Wash. 533, 534; 51 Wash. 415; 69 Wash. 487; 86 Wash. 591.

§ 169. Suspension for Personal Disability.—If a person entitled to bring an action mentioned in this chapter, except for a penalty or forfeiture, or against a sheriff or other officer, for an escape, be, at the time the cause of action accrued, either under the age of twenty-one years, or insane, or imprisoned on a criminal charge, or in execution under the sentence of a court for a term less than his natural life, the time of such disability shall not be a part of the time limited for the commencement of action. [Cf. L. '54, p. 364, § 11; L. '61, p. 61, § 1; L. '69, p. 10, § 38; Cd. '81, § 37; 2 H. C., § 124; see ref. to § 155, supra.]

Cited in 10 Wash. 665; 41 Wash. 611; 50 Wash. 693; 72 Wash. 453.

§ 170. Suspension by Death.—If a person entitled to bring an action die before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced by his representatives after the expiration of the time and within one year from his death. If a person against whom an action may be brought die before the expiration of the time limited for the commencement thereof, and the cause of action survives, an action may be commenced against his representatives after the expiration of that time, and within one year after the issuing of

letters testamentary or of administration. [L. '54, p. 364, § 12; Cd. '81, § 38; 2 H. C., § 125; see ref. to § 155, supra.]

Cited in 32 Wash. 468, 487; 34 Wash. 564.

See infra, § 193, continuance of action by representative.
See infra, § 967, actions by and against executors and administrators.

§ 171. Suspension by War.—When a person shall be an alien subject or a citizen of a country at war with the United States, the time of the continuance of the war shall not be a part of the period limited for the commencement of the action. [L. '54, p. 365, § 13; Cd. '81, § 39; 2 H. C., § 126; see ref. to § 155, supra.]

§ 172. Suspension by Judicial Proceedings.—When the commencement of an action is stayed by injunction or a statutory prohibition, the time of the continuance of the injunction or prohibition shall not be a part of the time limited for the commencement of the action. [L. '54, p. 365, § 14; Cd. '81, § 40; 2 H. C., § 127; see ref. to § 155, supra.]

Cited in 30 Wash. 280; 32 Wash. 205.

§ 173. Suspension by Reversal of Judgment.—If an action shall be commenced within the time prescribed therefor, and a judgment therein for the plaintiff be reversed on error or appeal, the plaintiff, or if he die and the cause of action survive, his heirs or representatives, may commence a new action within one year after reversal. [L. '54, p. 365, § 15; Cd. '81, § 41; 2 H. C., § 128; see ref. to § 155, supra.]

Cited in 58 Wash. 458, 459.

§ 174. When Disability Available.—No person shall avail himself of a disability unless it existed when his right of action accrued. [L. '54, p. 365, § 16; Cd. '81, § 42; 2 H. C., § 129; see ref. to § 155, supra.]

§ 175. Cumulative Disabilities.—When two or more disabilities shall coexist at the time the right of action accrues, the limitation shall not attach until they all be removed. [L. '54, p. 365, § 17; Cd. '81, § 43; 2 H. C., § 130; see ref. to § 155, supra.]

§ 176. New Promise must be in Writing.—No acknowledgment or promise shall be sufficient evidence of a new or continuing contract whereby to take the case out of the operation of this chapter, unless the same is contained in some writing signed by the party to be

charged thereby; but this section shall not alter the effect of any payment of principal or interest. [L. '54, p. 365, § 18; Cd. '81, § 44; 2 H. C., § 131; see ref. to § 155, supra.]

Cited in 27 Wash. 421; 51 Wash. 369; 54 Wash. 607.

§ 177. Effect of Partial Payment.—When any payment of principal or interest has been or shall be made upon any existing contract, whether it be a bill of exchange, promissory note, bond, or other evidence of indebtedness, if such payment be made after the same shall have become due, the limitation shall commence from the time the last payment was made. [L. '54, p. 365, § 19; Cd. '81, § 45; 2 H. C., § 132; see ref. to § 155, supra.]

Cited in 13 Wash. 553; 20 Wash. 444; 27 Wash. 151.

§ 178. Foreign Statutes of Limitations, How Applied.—When the cause of action has arisen in another state, territory, or country between nonresidents of this state, and by the laws of the state, territory, or country where the action arose an action cannot be maintained thereon by reason of the lapse of time, no action shall be maintained thereon in this state. [L. '54, p. 365, § 20; Cd. '81, § 46; 2 H. C., § 133; see ref. to § 155, supra.]

Cited in 6 Wash. 537; 7 Wash. 315; 24 Wash. 9; 41 Wash. 533; 64 Wash. 250.

CHAPTER IV.

Parties to Actions.

§ 179. In Whose Name Actions to be Prosecuted.—Every action shall be prosecuted in the name of the real party in interest, except as is otherwise provided by law. [Cf. L. '54, p. 131, § 3; L. '69, p. 3, § 4; L. '75, p. 4, § 1; L. '77, p. 4, § 4; Cd. '81, § 4; 2 H. C., § 134.]

Cited in 4 Wash. 784; 5 Wash. 362; 16 Wash. 588; 21 Wash. 454; 22 Wash. 272; 23 Wash. 444; 27 Wash. 10, 335; 28 Wash. 183; 33 Wash. 165, 678; 63 Wash. 89; 71 Wash. 557; 75 Wash. 296; 85 Wash. 177; 86 Wash. 401.

§ 180. Executor, Trustee, etc., may Sue in Their Own Names.—An executor or administrator, or guardian of a minor or person of unsound mind, a trustee of an express trust, or a person authorized by statute, may sue without joining the person for whose benefit the suit is prosecuted. A trustee of an express trust, within the meaning of this section, shall be construed to include a person with whom or in whose name a contract is made for the benefit of another. [L. '54, p. 131, § 4; L. '69, p. 4, § 5; Cd. '81, § 5; 2 H. C., § 135.]

Cited in 23 Wash. 444; 26 Wash. 82; 27 Wash. 10; 43 Wash. 525; 44 Wash. 588; 57 Wash. 326; 86 Wash. 401; 87 Wash. 96, 388.

§ 181. Husband and Wife must Join—Exception.—When a married woman is a party, her husband must be joined with her, except,—

1. When the action concerns her separate property, or her right or claim to the homestead property, she may sue alone;

2. When the action is between herself and her husband, she may sue or be sued alone;

3. When she is living separate and apart from her husband, she may sue or be sued alone. [L. '54, p. 131, § 5; L. '69, p. 4, § 6; L. '75, p. 4, § 2; Cd. '81, § 6; 2 H. C., § 136.]

Cited in 21 Wash. 236; 25 Wash. 5; 53 Wash. 318; 75 Wash. 578; 76 Wash. 505; 79 Wash. 412.

See infra, §§ 5917, 5918, parties to actions involving community rights.

See infra, § 5920, wife's right to bring and defend actions for personal labor.

See infra, § 5921, earnings of wife separate property, when.

See infra, § 5926, civil disabilities of wife removed.

See infra, § 5928, may sue each other.

See infra, § 5931, liability for family expenses.

§ 182. When Husband and Wife may Join.—Husband and wife may join in all causes of action arising from injuries to the person or character of either or both of them, or from injuries to the property of either or both of them, or arising out of any contract in favor of either or both of them. If a husband and wife be sued together, the wife may defend for her own right, and if the husband neglect to defend, she may defend for his right also. And she may defend in all cases in which she is interested, whether she is sued with her husband or not. [Cf. L. '54, p. 219, § 492; L. '77, p. 4, § 7; L. '75, p. 4, § 3; Cd. '81, § 7; 2 H. C., § 137.]

Cited in 3 Wash. 596; 21 Wash. 490; 39 Wash. 298; 51 Wash. 569; 68 Wash. 362; 75 Wash. 578, 579.

See infra, § 5926, civil disabilities of wife abolished.

See infra, § 5920, right of wife to prosecute and defend, when.

§ 183. When Survivors' Heirs or Representatives may Sue.—The widow, or widow and her children, or child or children if no widow, of a man killed in a duel, shall have a right of action against the person killing him, and against the seconds and all aiders and abettors. When the death of a person is caused by the wrongful act or neglect of another, his heirs or personal representatives may main-

tain an action for damages against the person causing the death. If the deceased leave no widow or issue, then his parents, sisters or minor brothers who may be dependent upon him for support and who are resident within the United States at the time of his death, may maintain said action. When the death of a person is caused by an injury received in falling through any opening or defective place in any sidewalk, street, alley, square or wharf, his heirs or personal representatives, or if deceased leaves no widow or issue, then his parents, sisters or minor brothers who may be dependent upon him for support, and who are resident within the United States at the time of his death, may maintain an action for damages against the person whose duty it was, at the time of the injury, to have kept in repair such sidewalk or other place. In every such action the jury may give such damages, as under all circumstances of the case may to them seem just. [L. '09, p. 425, § 1. Cf. L. '54, p. 220, § 496; L. '75, p. 4, § 4; Cd. '81, § 8; 2 H. C., § 138.]

Cited in 3 Wash. 194–196, 199, 225–227; 4 Wash. 401–403, 433; 5 Wash. 262; 8 Wash. 151, 152, 364; 17 Wash. 593; 19 Wash. 134, 138; 26 Wash. 489; 33 Wash. 419; 34 Wash. 47, 407; 39 Wash. 212, 214; 46 Wash. 174, 176; 58 Wash. 491; 60 Wash. 93, 294; 65 Wash. 615, 618, 622, 623; 67 Wash. 546, 547; 69 Wash. 258; 70 Wash. 257; 71 Wash. 549, 620; 72 Wash. 465; 75 Wash. 442.

See infra, § 194, survival of action for personal injury.

See infra, § 967 et seq., actions by and against executors, etc.

§ 184. Action for Injury or Death of Child or Ward.—A father or in case of the death or desertion of his family the mother, may maintain an action as plaintiff for the injury or death of a child, and a guardian for the injury or death of his ward. [L. '69, p. 4, § 9; L. '73, p. 5, § 10; Cd. '81, § 9; 2 H. C., § 139.]

Cited in 4 Wash. 401–403; 8 Wash. 150–152; 19 Wash. 135; 29 Wash. 141; 52 Wash. 301; 65 Wash. 622, 624; 72 Wash. 239; 75 Wash. 442, 445.

§ 185. Action by Parent for Seduction of Daughter.—A father, or in case of his death or desertion of his family, the mother, may maintain an action as plaintiff for the seduction of a daughter, and the guardian for the seduction of a ward, though the daughter or the ward be not living with or in the service of the plaintiff at the time of the seduction or afterward, and there be no loss of service. [L. '69, p. 4, § 10; Cd. '81, § 10; 2 H. C., § 140.]

Cited in 1 Wash. 413.

§ 186. Action by Woman for Her Own Seduction.—An unmarried female over twenty-one years of age may maintain an action as

plaintiff for her own seduction, and recover therein such damages as may be assessed in her favor; but the prosecution of an action to judgment by the father, mother, or guardian, as prescribed in the preceding section, shall be a bar to an action by such unmarried female. [L. '54, p. 220, § 497; L. '69, p. 5, § 11; Cd. '81, § 11; 2 H. C., § 141.]

Cited in 51 Wash. 98; 72 Wash. 453.

§ 187. Appointment of Guardian Ad Litem for Infants.—When an infant is a party, he shall appear by guardian, or if he has no guardian, or in the opinion of the court the guardian is an improper person, the court shall appoint one to act. Said guardian shall be appointed as follows:—

1. When the infant is plaintiff, upon the application of the infant, if he be of the age of fourteen years, or if under that age, upon the application of a relative or friend of the infant;

2. When the infant is defendant, upon the application of the infant, if he be of the age of fourteen years, and apply within thirty days after the service of the summons; if he be under the age of fourteen, or neglect to apply, then upon the application of any other party to the action, or of a relative or friend of the infant. [Cf. L. '54, p. 132, §§ 6, 7; Cd. '81, § 12; L. '91, p. 69, § 1; 2 H. C., § 142.]

Cited in 24 Wash. 129; 71 Wash. 550, 551.

See infra, § 1644, appointment of in guardianship.

Authority of guardians to sue: See infra, §§ 1636, 1637, 1662, and 1771.

§ 188. Guardian Ad Litem of Insane Persons.—When an insane person is a party to an action in the superior courts he shall appear by guardian, or if he has no guardian, or in the opinion of the court the guardian is an improper person, the court shall appoint one to act as guardian ad litem. Said guardian shall be appointed as follows:

(1) When the insane person is plaintiff, upon the application of a relative or friend of the insane person.

(2) When the insane person is defendant, upon the application of a relative or friend of such insane person, such application shall be made within thirty days after the service of summons if served in the state of Washington, and if served out of the state or service is made by publication, then such application shall be made within sixty days after the first publication of summons or within sixty days after the service out of the state. If no such application be

made within the time above limited, application may be made by any party to the action. [L. '99, p. 144, § 1.]

§ 189. Who must be Made Parties.—All persons interested in the cause of action, or necessary to the complete determination of the question involved, shall, unless otherwise provided by law, be joined as plaintiffs when their interest is in common with the party making the complaint, and as defendants when their interest is adverse to the plaintiff: Provided, that where good cause exists, which shall be made to appear in the complaint, why a party who should be a plaintiff cannot, from a want of consent on his part or otherwise, be made such plaintiff, he shall be made a defendant. [L. '54, p. 132, § 8; Cd. '81, § 13; 2 H. C., § 143.]

Cited in 9 Wash. 159, 507; 12 Wash. 139, 167; 13 Wash. 658; 22 Wash. 378; 28 Wash. 183; 40 Wash. 584; 51 Wash. 283; 63 Wash. 89; 83 Wash. 176.

See supra, § 181, husband and wife as necessary parties.
See infra, §§ 259, 264, how defect of parties taken advantage of.
See infra, § 408, subd. 5, for failure to make necessary party.
See supra, § 179, real party in interest.
See infra, §§ 196, 197, bringing in new parties.
See infra, § 191, actions by assignees.
See infra, §§ 229, 232, 239, process against unknown parties.
See infra, § 306, defendant designated by fictitious name.

§ 190. Where Parties are Numerous One or More may Sue.—When the question is one of common or general interest to many persons, or where the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of the whole. [L. '54, p. 132, § 9; Cd. '81, § 14; 2 H. C., § 144.]

Cited in 1 Wash. 413, 414; 14 Wash. 549; 32 Wash. 167; 87 Wash. 390.

§ 191. Actions on Assigned Instruments and Choses in Action.—Any assignee or assignees of any judgment bond, specialty, book account, or other chose in action, for the payment of money, by assignment in writing, signed by the person authorized to make the same, may, by virtue of such assignment, sue and maintain an action or actions in his or her name, against the obligor or obligors, debtor or debtors, therein named, notwithstanding the assignor may have an interest in the thing assigned: Provided, that any debtor may plead in defense a counterclaim or an offset, if held by him against the original owner, against the debt assigned, save that no counterclaim or offset shall be pleaded against negotiable paper assigned before

due, and where the holder thereof has purchased the same in good faith and for value, and is the owner of all interest therein. [Cf. L. '54, p. 131, § 3; L. '79, p. 122, § 1; Cd. '81, § 15; L. '91, p. 69, § 2; 2 H. C., § 145.]

Cited in 14 Wash. 177; 17 Wash. 74; 25 Wash. 513; 26 Wash. 19; 28 Wash. 183; 32 Wash. 194, 688; 36 Wash. 321; 65 Wash. 44, 46; 67 Wash. 356; 72 Wash. 141; 84 Wash. 414.

§ 192. Actions Against Persons Severally Liable.—Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, may all, or any of them, be included in the same action, at the option of the plaintiff. [L. '54, p. 132, § 10; Cd. '81, § 16; 2 H. C., § 146.]

Cited in 7 Wash. 322; 20 Wash. 707; 57 Wash. 189.

§ 193. Action not to Abate by Disability.—No action shall abate by the death, marriage, or other disability of the party, or by the transfer of any interest therein, if the cause of action survive or continue; but the court may at any time within one year thereafter, on motion, allow the action to be continued by or against his representatives or successors in interest. [Cf. L. '54, p. 132, § 11; L. '69, p. 6, § 17; Cd. '81, § 17; 2 H. C., § 147.]

Cited in 5 Wash. 362, 363; 8 Wash. 600; 27 Wash. 345; 28 Wash. 207; 33 Wash. 678; 71 Wash. 439, 465.

See infra, §§ 1474, 1477, 1479, 1481.

See infra, § 967 et seq., actions by and against executors, etc.

See infra, § 1512, certain actions by and against executors, etc.

See infra, §§ 1610–1620, specific performance of decedent's contracts.

§ 194. Action for Personal Injury Survives to Wife, Child, or Heirs.—No action for a personal injury to any person occasioning his death shall abate, nor shall such right of action determine, by reason of such death, if he have a wife or child living, or leaving no wife or issue, if he have dependent upon him for support and resident within the United States at the time of his death, parents, sisters or minor brothers; but such action may be prosecuted, or commenced and prosecuted, in favor of such wife or in favor of the wife and children, or if no wife, in favor of such child or children, or if no wife or child or children, then in favor of his parents, sisters, or minor brothers who may be dependent upon him for support, and resident in the United States at the time of his death. [L. '09, p. 566, § 1. Cf. L. '54, p. 220, § 495; Cd. '81, § 18; 2 H. C., § 148.]

Cited in 19 Wash. 138; 26 Wash. 486; 33 Wash. 419; 60 Wash. 92, 93, 94, 553; 65 Wash. 618; 71 Wash. 438; 75 Wash. 442, 444.

See infra, § 967 et seq., actions by and against executors, etc.

§ 195. Parties and Judgment in Actions for Purchase Price of Land.—In an action brought for the recovery of the purchase money against any person holding a contract for the purchase of lands, the party bound to perform the contract, if not the plaintiff, may be made a party, and the court in a final judgment may order the interest of purchaser to be sold or transferred to the plaintiff upon such terms as may be just, and may also order a specific performance of the contract in favor of the complainant, or the purchaser in case a sale be ordered. [L. '54, p. 219, 490; Cd. '81, § 19; 2 H. C., § 149.]

Cited in 64 Wash. 215.

§ 196. Bringing in New Parties.—The court may determine any controversy between parties before it when it can be done without prejudice to the rights of others, or by saving their rights; but when a complete determination of the controversy cannot be had without the presence of other parties, the court shall cause them to be brought in. [L. '69, p. 6. § 20; Cd. '81, § 20; 2 H. C., § 150.]

Cited in 4 Wash. 811; 12 Wash. 139, 698; 16 Wash. 129; 29 Wash. 526; 67 Wash. 357.

§ 197. New Party Entitled to Service of Summons.—When a new party is introduced into an action as a representative or successor of a former party, such new party is entitled to the same summons, to be served in the same manner, as required for defendants in the commencement of an action. [L. '54, p. 219, § 485; L. '60, p. 99, § 477; L. '63, p. 194, § 524; L. '69, p. 172, § 684; L. '73, p. 176, § 682; L. '77, p. 151, § 747; Cd. '81, §§ 21, 742; 2 H. C., §§ 151, 793.]

§ 198. Substitution and Interpleader.—A defendant against whom an action is pending upon a contract, or for specific real or personal property, at any time before answer, upon affidavit that a person not a party to the action, and without collusion with him, makes against him a demand for the same debt or property, upon due notice to such person and the adverse party, may apply to the court for an order to substitute such person in his place, and discharge him from liability to either party on his depositing in court the amount of the debt, or delivering the property or its value to such person as the court may direct; and the court may in its discretion make the order. [L. '54, p. 132, § 12; L. '69, p. 7, § 22; Cd. '81, § 22; H. C., § 152.]

Cited in 9 Wash. 474; 15 Wash. 281; 16 Wash. 130; 42 Wash. 167; 71 Wash. 439.

§ 199. Actions to Determine Conflicting Claims to Property.—Anyone having in his possession, or under his control, any property or money, or being indebted, where more than one person claims to be the owner of, entitled to, interested in, or to have a lien on such property, money or indebtedness, or any part thereof, may commence an action in the superior court against all or any of such persons, and have their rights, claims, interest, or liens adjudged, determined, and adjusted in such action. [L. '90, p. 93, § 1; 2 H. C., § 153.]

Cited in 14 Wash. 182, 642; 15 Wash. 333; 29 Wash. 520, 521; 30 Wash. 565; 36 Wash. 88; 41 Wash. 215; 44 Wash. 359; 83 Wash. 62.

§ 200. Plaintiff may Disclaim and Deposit Property.—In all actions commenced under the preceding section, the plaintiff may disclaim any interest in the money, property, or indebtedness, and deposit with the clerk of the court the full amount of such money or indebtedness, or other property, and he shall not be liable for any costs accruing in said action. And the clerks of the various courts shall receive and file such complaint, and all other officers shall execute the necessary processes to carry out the purposes of this section, and also sections 199 and 201, of this code, free from all charge to said plaintiff, and the court, in its discretion, shall determine the liability for costs of the action. [L. '90, p. 93, § 2; 2 H. C., § 154.]

Cited in 14 Wash. 182, 642; 44 Wash. 359; 71 Wash. 439.

§ 201. Court may Protect Interest of Claimants.—Either of the defendants may set up or show any claim or lien he may have to such property, money, or indebtedness, or any part thereof, and the superior right, title, or lien, whether legal or equitable, shall prevail. The court, or judge thereof, may make all necessary orders, during the pendency of said action, for the preservation and protection of the rights, interests, or liens of the several parties. [L. '90, p. 94, § 3; 2 H. C., § 155.]

Cited in 71 Wash. 439.

§ 202. Intervention.—Any person may, before the trial, intervene in an action or proceeding, who has an interest in the matter in litigation, in the success of either party, or an interest against both. An intervention takes place when a third person is permitted to become a party to an action or proceeding between other persons, either by joining the plaintiff in claiming what is sought by the complaint, or by uniting with the defendant in resisting the claims of the plaintiff, or by demanding anything adversely to both the plaintiff and the defendant, and is made by a complaint setting forth the grounds upon which the intervention rests, filed by leave of the

court or judge on the ex parte motion of the party desiring to intervene. [L. '77, p. 7, § 23; Cd. '81, § 23; 2 H. C., § 156.]

Cited in 4 Wash. 605; 7 Wash. 79; 13 Wash. 4; 21 Wash. 168; 23 Wash. 31; 25 Wash. 51; 32 Wash. 166; 36 Wash. 418; 47 Wash. 384; 53 Wash. 418; 56 Wash. 230; 58 Wash. 84; 62 Wash. 555, 556; 65 Wash. 6; 78 Wash. 566.

§ 203. Practice in Intervention.—When leave is given to intervene, a copy of the intervener's complaint shall be served upon the parties to the action or proceedings who have not appeared, or publication of a notice of the intervention containing a brief statement of the nature of the intervener's demand shall be made in all cases where there are absent or nonresident defendants. The notice shall be published in the same manner and for the same length of time as prescribed by law for publication of summons. And the complaint shall also be served upon the attorneys of the parties who have appeared, who may answer or demur to it as if it were an original complaint. The court shall determine upon the rights of the intervener at the same time the action is decided, and if the claim of the party intervening is not sustained, he shall pay all costs incurred by the intervention: Provided, that no intervention shall be cause for delay in the trial of an action between the original parties thereto. [L. '77, p. 7, § 24; Cd. '81, § 24; 2 H. C., § 157.]

Cited in 4 Wash. 606; 13 Wash. 4; 62 Wash. 556; 65 Wash. 6; 71 Wash. 439; 78 Wash. 566.

CHAPTER V.

Venue of Actions.

§ 204. Actions to be Commenced Where Subject is Situated.—Actions for the following causes shall be commenced in the county in which the subject of the action, or some part thereof, is situated:—

1. For the recovery of, for the possession of, for the partition of, for the foreclosure of a mortgage on, or for the determination of all questions affecting the title or for any injuries to real property;

2. All questions involving the rights to the possession or title to any specific article of personal property; in which last mentioned class of cases damages may also be awarded for the detention and for injury to such personal property. [L. '54, p. 133, § 13; L. '60, p. 7, § 15; L. '69, p. 12, § 48; L. '77, p. 11, § 48; Cd. '81, § 47; 2 H. C., § 158.]

Cited in 2 Wash. 120, 121; 3 Wash. 517; 4 Wash. 656, 657; 5 Wash. 641; 6 Wash. 347; 13 Wash. 608; 16 Wash. 400; 18 Wash. 3; 23 Wash. 578; 55 Wash. 329; 62 Wash. 13, 20; 69 Wash. 132; 82 Wash. 359.

See supra, § 32, venue of actions in certain cases.

§ 205. Actions to be Tried Where Cause Arose.—Actions for the following causes shall be tried in the county where the cause, or some part thereof, arose:—

1. For the recovery of a penalty or forfeiture imposed by statute;

2. Against a public officer, or person specially appointed to execute his duties, for an act done by him in virtue of his office, or against a person who, by his command or in his aid, shall do anything touching the duties of such officer. [Cf. L. '54, p. 33, § 14; L. '60, p. 7, § 16; L. '69, p. 12, § 49; L. '77, p. 11, § 49; Cd. '81, § 48; 2 H. C., § 159.]

Cited in 2 Wash. 120; 18 Wash. 3.

§ 206. Venue of Actions Against Private Corporations.—An action against a corporation may be brought in any county where the corporation transacts business or transacted business at the time the cause of action arose; or in any county where the corporation has an office for the transaction of business or any person resides upon whom process may be served against such corporation, unless otherwise provided in this code. [L. '09, p. 69, § 1. Cf. L. '54, p. 220, § 494; L. '60, p. 101, § 488; L. '69, p. 13, § 50; L. '77, p. 11, § 50; Cd. '81, § 49; 2 H. C., § 160.]

Cited in 4 Wash. 658; 10 Wash. 149, 150; 14 Wash. 205; 23 Wash. 519; 24 Wash. 303; 40 Wash. 447; 42 Wash. 453; 43 Wash. 375; 48 Wash. 148; 54 Wash. 528; 62 Wash. 191; 73 Wash. 68; 74 Wash. 371; 79 Wash. 447; 86 Wash. 662.

§ 207. Venue in Cases not Before Specified.—In all other cases the action must be tried in the county in which the defendants, or some of them, reside at the time of the commencement of the action, or may be served with process, subject, however, to the power of the court to change the place of trial, as provided in the next two succeeding sections. [Cf. L. '54, p. 133, § 15; L. '60, p. 7, § 17; L. '69, p. 13, § 51; L. '75, p. 5, § 6; L. '77, p. 11, § 51; Cd. '81, § 50; L. '91, p. 71, § 1; 2 H. C., § 161.]

Cited in 5 Wash. 291; 10 Wash. 149, 150; 13 Wash. 608; 14 Wash. 116; 18 Wash. 3; 61 Wash. 682; 66 Wash. 323; 67 Wash. 324; 79 Wash. 447.

§ 208. Proceeding When Action Commenced in Wrong County.—If the county in which the action is commenced is not the proper county for the trial thereof, the action may, notwithstanding, be tried therein, unless the defendant, at the time he appears and demurs or answers, files an affidavit of merits, and demands that the trial be had in the proper county. [Cf. L. '75, p. 5, § 7; L. '77, p. 11, § 51; Cd. 81, § 50; L. '91, p. 78, § 1; 2 H. C., § 162.]

Cited in 5 Wash. 291, 519, 521; 10 Wash. 149, 150; 15 Wash. 367; 26 Wash. 404; 45 Wash. 29; 61 Wash. 682; 67 Wash. 323, 324; 74 Wash. 382, 439.

§ 209. Grounds Authorizing Change of Venue.—The court may, on motion, in the following cases, change the place of trial, when it appears by affidavit or other satisfactory proof,—

1. That the county designated in the complaint is not the proper county; or

2. That there is reason to believe that an impartial trial cannot be had therein; or

3. That the convenience of witnesses or the ends of justice would be forwarded by the change; or

4. That from any cause the judge is disqualified; which disqualification exists in either of the following cases: In an action or proceeding to which he is a party, or in which he is interested; when he is related to either party by consanguinity or affinity within the third degree; when he has been of counsel for either party in the action or proceeding. [Cf. L. '54, p. 134, § 16; L. '69, p. 13, § 52; L. '75, p. 6, § 8; L. '77, p. 12, § 52; Cd. '81, § 51; 2 H. C., § 163.]

Cited in 2 Wash. 120; 3 Wash. 695; 10 Wash. 149; 19 Wash. 13; 40 Wash. 446; 61 Wash. 682; 64 Wash. 512, 513; 65 Wash. 314, 315, 630, 631; 66 Wash. 323; 67 Wash. 324; 69 Wash. 262; 70 Wash. 362; 71 Wash. 61; 77 Wash. 10; 79 Wash. 447; 82 Wash. 358, 359, 616.

§ 209-1. Prejudice of Judge—Change of Venue.—No judge of a superior court of the state of Washington shall sit to hear or try any action or proceeding when it shall be established, as hereinafter provided, that such judge is prejudiced against any party or attorney, or the interest of any party or attorney appearing in such cause. In such case the presiding judge shall forthwith transfer the action to another department of the same court, or call in a judge from some other court, or apply to the governor to send a judge, to try the case; or, if the convenience of witnesses or the ends of justice will not be interfered with by such course, and the action is of such a character that a change of venue thereof may be ordered, he may send the case for trial to the most convenient court. [L. '11, p. 617, § 1.]

Cited in 76 Wash. 461; 77 Wash. 9, 632, 634; 78 Wash. 262, 293; 82 Wash. 421, 422; 83 Wash. 87, 89; 87 Wash. 605.

§ 209-2. Affidavit of Prejudice.—Any party to or any attorney appearing in any action or proceeding in a superior court, may establish such prejudice by motion supported by affidavit that the judge

before whom the action is pending is prejudiced against such party or attorney, so that such party or attorney cannot, or believes that he cannot, have a fair and impartial trial before such judge: Provided, further, that no party or attorney shall be permitted to make more than one application in any action or proceeding under this act. [L. '11, p. 617, § 2.]

Cited in 77 Wash. 632, 634; 83 Wash. 89; 85 Wash. 664; 87 Wash. 605.

§ 210. To What Venue Changed—Only One Allowed.—If a motion for a change of the place of trial be allowed, the change shall be made to the county where the action ought to have been commenced, if it be for the cause mentioned in subdivision 1 of the last preceding section, and in other cases to the most convenient county where the cause alleged does not exist. Neither party shall be entitled to more than one change of the place of trial, except for causes not in existence when the first change was allowed. [L. '69, p. 14, § 53; L. '77, p. 12, § 53; Cd. '81, § 52; 2 H. C., § 164.]

Cited in 64 Wash. 512, 513; 65 Wash. 314, 315, 630, 631; 69 Wash. 262; 70 Wash. 362; 71 Wash. 61; 82 Wash. 358.

"Last preceding section" refers to § 209.

§ 211. Change to Newly Created County.—Any party in a civil action pending in the superior court in a county out of whose limits a new county, in whole or in part, has been created, may file with the clerk of such superior court an affidavit setting forth that he is a resident of such newly created county, and that the venue of such action is transitory, or that the venue of such action is local, and that it ought properly to be tried in such newly created county; and thereupon the clerk shall make out a transcript of the proceedings already had in such action in such superior court, and certify it under the seal of the court, and transmit such transcript, together with the papers on file in his office connected with such action, to the clerk of the superior court of such newly created county, wherein it shall be proceeded with as in other cases. [Cf. L. '54, p. 377, § 2; L. '69, p. 14, § 54; L. '77, p. 12, § 54; Cd. '81, § 53; L. '91, p. 72, § 2; 2 H. C., § 165.]

Cited in 71 Wash. 439.

§ 215. Transmission of Record on Change—Costs.—When an order is made transferring an action or proceeding for trial, the clerk of the court must transmit the pleadings and papers therein to the court to which it is transferred. The costs and fees thereof, and of

filing the papers anew, must be paid by the party at whose instance the order was made, except in the cases mentioned in subdivision 1, section 209, in which case the plaintiff shall pay costs of transfer. The court to which an action or proceeding is transferred has and exercises over the same the like jurisdiction as if it had been originally commenced therein. [L. '69, p. 14, §§ 55, 56; L. '75, p. 7, § 10; L. '77, p. 12, § 55; Cd. '81, § 54; 2 H. C., § 166.]

Cited in 25 Wash. 348; 82 Wash. 358, 360.

§ 216. Change by Stipulation.—Notwithstanding the provisions of section 209, all the parties to the action by stipulation in writing or by consent in open court entered in the records may agree that the place of trial be changed to any county of the state, and thereupon the court must order the change agreed upon. [L. '77, p. 13, § 56; Cd. '81, § 55; 2 H. C., § 167.]

Cited in 61 Wash. 683.

§ 217. Effect of Neglect of Moving Party.—If such papers be not transmitted to the clerk of the proper court within the time prescribed in the order allowing the change, and the delay be caused by the act or omission of the party procuring the change, the adverse party, on motion to the court or judge thereof, may have the order vacated, and thereafter no other change of the place of trial shall be allowed to such party. [Cf. L. '54, p. 135, § 21; L. '69, p. 15, § 57; L. '77, p. 13, § 57; Cd. '81, § 56; 2 H. C., § 168.]

See notes to § 208, supra.

§ 218. When Change Deemed Complete.—Upon the filing of the papers with the clerk of the court to which the cause is transferred, the change of venue shall be deemed complete, and thereafter the action shall proceed as though it had been commenced in that court. [L. '54, p. 135, § 22; L. '69, p. 15, § 58; L. '77, p. 13, § 58; Cd. '81, § 57; 2 H. C., § 169.]

§ 219. Clerk must Certify Entries With Transcript.—The clerk of the court must also transmit with the original papers, where an order is made changing the place of trial, a certified transcript of all record entries up to and including the order for change. [L. '77, p. 13, § 59; Cd. '81, § 58; 2 H. C., § 170.]

CHAPTER VI.

Manner of Commencing Actions.

§ 220. Service of Summons.—Civil actions in the several superior courts of this state shall be commenced by the service of a summons, as hereinafter provided, or by filing a complaint with the county clerk as clerk of the court: Provided, that unless service has been had on the defendant prior to the filing of the complaint, the plaintiff shall cause one or more of the defendants to be served personally, or commence service by publication within ninety days from the date of filing the complaint. [L. '93, p. 407, § 1; L. '95, p. 170, § 1.]

Cited in 10 Wash. 449; 12 Wash. 686; 16 Wash. 629; 20 Wash. 397; 21 Wash. 106; 27 Wash. 249, 330, 346; 30 Wash. 621; 31 Wash. 319; 34 Wash. 544; 35 Wash. 111; 40 Wash. 522; 44 Wash. 284; 60 Wash. 620; 71 Wash. 121; 78 Wash. 473; 80 Wash. 377.

§ 221. Summons, How Issued.—The summons must be subscribed by the plaintiff or his attorney, and directed to the defendant requiring him to answer the complaint, and serve a copy of his answer on the person whose name is subscribed to the summons, at a place within the state therein specified in which there is a postoffice, within twenty days after the service of the summons, exclusive of the day of service. [L. '93, p. 407, § 2.]

Cited in 31 Wash. 345; 35 Wash. 280.

§ 222. Contents of Summons.—The summons shall also contain,—

1. The title of the cause, specifying the name of the court in which the action is brought, the name of the county designated by the plaintiff as the place of trial, and the names of the parties to the action, plaintiff and defendant;

2. A direction to the defendants summoning them to appear within twenty days after service of the summons, exclusive of the day of service, and defend the action;

3. A notice that, in case of failure so to do, judgment will be rendered against them, according to the demand of the complaint. It shall be subscribed by the plaintiff, or his attorney, with the addition of his postoffice address, at which the papers in the action may be served on him by mail. There may, at the option of the plaintiff, be added at the foot, when the complaint is not served with the summons, and the only relief sought is the recovery of the money, whether upon tort or contract, a brief notice specifying the sum to be demanded by the complaint. [L. '93, p. 407, § 3.]

Cited in 10 Wash. 148; 31 Wash. 348.

§ 223. Form of Summons.—Such summons shall be substantially in the following form:—

—— Court, —— County.

A B, Plaintiff,
vs.
C D, Defendant.

The state of Washington, ——, to the said ——, defendant: You are hereby summoned to appear within twenty days after service of this summons, exclusive of the day of service, and defend the above-entitled action in the court aforesaid; and in case of your failure so to do, judgment will be rendered against you, according to the demand of the complaint, which will be filed with the clerk of said court, or a copy of which is herewith served upon you.

E F, Plaintiff's Attorney.
P. O. Address, —— County, Wash.

[L. '93, p. 407, § 4.]

Cited in 31 Wash. 345; 35 Wash. 280.

§ 224. Summons to be Accompanied by Copy of Complaint, When. A copy of the complaint must be served upon the defendant with the summons unless the complaint itself be filed in the office of the clerk of the superior court of the county in which the action is commenced within five days after service of such summons, in which case the service of the copy may be omitted; but the summons in such case must notify the defendant that the complaint will be filed with the clerk of said court; and if the defendant appear within ten days after the service of the summons, the plaintiff must serve a copy of the complaint on the defendant or his attorney within ten days after the notice of such appearance, and the defendant shall have at least ten days thereafter to answer the same; and no judgment shall be entered against him for want of an answer in such case till the expiration of the time. [L. '93, p. 408, § 5.]

Cited in 27 Wash. 330; 29 Wash. 264, 701; 71 Wash. 439.

§ 225. Who Shall Serve Summons—Exception.—In all cases, except when service is made by publication, as hereinafter provided, the summons shall be served by the sheriff of the county wherein the service is made or by his deputy, or by any person over twenty-one years of age, who is competent to be a witness in the action, other than the plaintiff. [L. '93, p. 408, § 6.]

Cited in 27 Wash. 173; 44 Wash. 306; 87 Wash. 436.

§ 226. Manner of Service of Summons.—The summons shall be served by delivering a copy thereof, as follows:—

1. If the action be against any county in this state, to the county auditor;

2. If against any town or incorporated city in the state, to the mayor thereof;

3. If against a school district, to the clerk thereof;

4. If against a railroad corporation, to any station, freight, ticket or other agent thereof within this state;

5. If against a corporation owning or operating sleeping-cars, or hotel-cars, to any person having charge of any of its cars or any agent found within the state;

6. If against an insurance company, to any agent authorized by such company to solicit insurance within this state;

7. If against a company or corporation doing any express business, to any agent authorized by said company or corporation to receive and deliver express matters and collect pay therefor within this state;

8. If the suit be against a company or corporation other than those designated in the preceding subdivisions of this section, to the president or other head of the company or corporation, secretary, cashier or managing agent thereof;

9. If the suit be against a foreign corporation or nonresident joint stock company or association doing business within this state, to any agent, cashier or secretary thereof;

10. If against a minor under the age of fourteen years, to such minor personally, and also to his father, mother, guardian, or if there be none within this state, then to any person having the care or control of such minor, or with whom he resides, or in whose service he is employed, if such there be;

11. If against any person for whom a guardian has been appointed for any cause, then to such guardian;

12. In all other cases, to the defendant personally, or by leaving a copy of the summons at the house of his usual abode with some person of suitable age and discretion then resident therein. Service made in the modes provided in this section shall be taken and held to be personal service;

13. Whenever any domestic or foreign corporation, which has been doing business in this state, has been placed in the hands of a receiver and the receiver is in possession of any of the property or assets of such corporation, service of all process upon such corporation may be made upon the receiver thereof. [L. '93, p. 408, § 7; L. '97, p. 284, § 1.]

Cited in 9 Wash. 667; 14 Wash. 205; 24 Wash. 304; 27 Wash. 330; 29 Wash. 701; 34 Wash. 16; 41 Wash. 401, 504; 42 Wash. 450; 43 Wash. 374, 375; 51 Wash. 210; 53 Wash. 631; 54 Wash. 182; 60 Wash. 53; 61 Wash. 627; 73 Wash. 504; 79 Wash. 491; 83 Wash. 392; 84 Pac. 397, 623.

§ 227. Service of Summons on Corporation.—Whenever any corporation, created by the laws of this state, or late territory of Washington, does not have an officer in this state upon whom legal service of process can be made, an action or proceeding against such corporation may be commenced in any county where the cause of action may arise, or said corporation may have property, and service may be made upon such corporation by depositing a copy of the summons, writ, or other process, in the office of the secretary of state, which shall be taken, deemed and treated as personal service on such corporation: Provided, a copy of said summons, writ, or other process, shall be deposited in the postoffice, postage paid, directed to the secretary or other proper officer of such corporation, at the place where the main business of such corporation is transacted, when such place of business is known to the plaintiff, and be published at least once a week for six weeks in some newspaper printed and published at the seat of government of this state, before such service shall be deemed perfect. [L. '93, p. 409, § 8.]

Cited in 73 Wash. 584, 585.

§ 228. Service of Summons by Publication.—When the defendant cannot be found within the state (of which the return of the sheriff of the county in which the action is brought, that the defendant cannot be found in the county, is prima facie evidence), and upon the filing of an affidavit of the plaintiff, his agent or attorney, with the clerk of the court, stating that he believes that the defendant is not a resident of the state, or cannot be found therein, and that he has deposited a copy of the summons (substantially in the form prescribed in section 233 of said [these] codes and statutes) and complaint in the postoffice, directed to the defendant at his place of residence, unless it is stated in the affidavit that such residence is not known to the affiant, and stating the existence of one of the cases hereinafter specified, the service may be made by publication of the summons, by the plaintiff or his attorney in either of the following cases:

1. When the defendant is a foreign corporation, and has property within the state;

2. When the defendant, being a resident of this state, has departed therefrom with intent to defraud his creditors, or to avoid the service of a summons, or keeps himself concealed therein with like intent;

3. When the defendant is not a resident of the state, but has property therein and the court has jurisdiction of the subject of the action;

4. When the action is for divorce in the cases prescribed by law;

5. When the subject of the action is real or personal property in this state, and the defendant has or claims a lien or interest, actual or contingent, therein, or the relief demanded consists wholly, or partly, in excluding the defendant from any interest or lien therein;

6. When the action is to foreclose, satisfy, or redeem from a mortgage, or to enforce a lien of any kind on real estate in the county where the action is brought, or satisfy or redeem from the same;

7. When the action is against any corporation, whether private or municipal, organized under the laws of the state and the proper officers on whom to make service do not exist or cannot be found. [L. 1915, p. 146, § 1. Cf. L. '93, p. 410, § 9.]

Cited in 24 Wash. 142; 29 Wash. 701, 702, 728; 31 Wash. 514; 32 Wash. 151, 174; 34 Wash. 296; 36 Wash. 544, 545; 41 Wash. 102; 43 Wash. 470; 56 Wash. 455; 62 Wash. 185, 187; 63 Wash. 453; 77 Wash. 436.

§ 228–1. Saving Clause.—No action or proceeding commenced or right existing when this act shall take effect, shall be affected or impaired thereby, but such action or proceeding shall be prosecuted and continued and such right remain as if this act has [had] not been passed. [L. 1915, p. 147, § 2.]

§ 229. Process Against "Unknown Heirs."—When the heirs of any deceased person are proper parties defendant to any action relating to real property in this state, and when the names and residences of such heirs are unknown, such heirs may be proceeded against under the name and title of "The unknown heirs" of the deceased. [L. '03, p. 277, § 1.]

Cited in 73 Wash. 82.

§ 230. Affidavit as to Unknown Heirs—Publication of Summons. Upon presenting an affidavit to the court or judge, showing to his satisfaction that the heirs of such deceased person are proper parties to the action, and that their names and residences cannot with use of reasonable diligence be ascertained, such court or judge may grant an order that service of the summons in such action be made on such "Unknown heirs" by publication thereof in the same manner as in actions against nonresident defendants. [L. '03, p. 278, § 2.]

§ 231. Title of Cause—Unknown Claimants—Service of Summons. In any action brought to determine any adverse claim, estate, lien, or

interest in real property, or to quiet title to real property, the plaintiff may include as a defendant in such action, and insert in the title thereof, in addition to the names of such persons or parties as appear of record to have, and other persons or parties who are known to have, some title, claim, estate, lien, or interest in the lands in controversy, the following, viz.: "Also all other persons or parties unknown claiming any right, title, estate, lien, or interest in the real estate described in the complaint herein." And service of summons may be had upon all such unknown persons or parties defendant by publication as provided by law in case of nonresident defendants. [L. '03, p. 278, § 3.]

§ 232. Judgment—Rights of Unknown Heirs and Parties.—All such unknown heirs of deceased persons, and all such unknown persons or parties, so served by publication as in the preceding section of this act provided, shall have the same rights as are provided by law in case of all other defendants upon whom service is made by publication, and the action shall proceed against such unknown heirs, or unknown persons or parties, in the same manner as against defendants, who are named, upon whom service is made by publication, and with like effect; and any such unknown heirs or unknown persons or parties who have or claim any right, estate, lien, or interest in the said real property in controversy, at the time of the commencement of the action, duly served as aforesaid, shall be bound and concluded by the judgment in such action, if the same is in favor of the plaintiff therein as effectually as if the action was brought against such defendant by his or her name and constructive service of summons obtained: Provided, however, that such judgments shall not bind such unknown heirs, or unknown persons or parties, defendant, unless the plaintiff shall file a notice of lis pendens in the office of the auditor of each county in which said real estate is located, in the manner provided by law, before commencing the publication of said summons. [L. '03, p. 278, § 4.]

Cited in 73 Wash. 82, 86.

§ 233. Manner of Publication and Form of Summons.—The publication shall be made in a newspaper printed and published in the county where the action is brought (and if there be no newspaper in the county, then in a newspaper printed and published in an adjoining county, and if there is no such newspaper in an adjoining county, then in a newspaper printed and published at the capital of the state) once a week for six consecutive weeks: Provided, that publi-

cation of summons shall not be had until after the filing of the complaint, and the service of the summons shall be deemed complete at the expiration of the time prescribed for publication as aforesaid. The summons must be subscribed by the plaintiff or his attorney or attorneys. The summons shall contain the date of the first publication, and shall require the defendant or defendants upon whom service by publication is desired, to appear and answer the complaint within sixty days from the date of the first publication of such summons; and said summons for publication shall also contain a brief statement of the object of the action. Said summons for publication shall be substantially as follows:—

In the Superior Court of the State of Washington for the County of ——

——, Plaintiff,
vs.
——, Defendant. } No. ——

The state of Washington to the said (naming the defendant or defendants to be served by publication):

You are hereby summoned to appear within sixty days after the date of the first publication of this summons, to wit, within sixty days after the —— day of ——, 1—, and defend the above entitled action in the above entitled court, and answer the complaint of the plaintiff, and serve a copy of your answer upon the undersigned attorneys for plaintiff—, at his (or their) office below stated; and in case of your failure so to do, judgment will be rendered against you according to the demand of the complaint, which has been filed with the clerk of said court. (Insert here a brief statement of the object of the action.)

—— ——,
Plaintiff's Attorneys.
P. O. address ——
County ——
Washington.

[L. '93, p. 411, § 10; L. '95, p. 171, § 2.]

Cited in 32 Wash. 503, 507; 34 Wash. 457; 35 Wash. 279; 41 Wash. 101; 44 Wash. 107; 46 Wash. 480; 49 Wash. 433; 54 Wash. 81; 56 Wash. 149, 456; 77 Wash. 366, 374.

§ 234. Personal Service Out of State.—Personal service on the defendant out of the state shall be equivalent to service by publication, and the summons upon the defendant out of the state shall contain

the same as personal summons within the state, except it shall require the defendant to appear and answer within sixty days after such personal service out of the state. [L. '93, p. 411, § 11; L. '95, p. 172, § 3.]

Cited in 29 Wash. 728; 36 Wash. 545; 41 Wash. 414; 42 Wash. 427; 56 Wash. 149.

§ 235. If No Personal Service, Who may Appear—Opening Default.—If the summons is not served personally on the defendant in the cases provided in the last two sections, he or his representatives, on application and sufficient cause shown, at any time before judgment, shall be allowed to defend the action and, except in an action for divorce, the defendant or his representative may in like manner be allowed to defend after judgment, and within one year after the rendition of such judgment, on such terms as may be just; and if the defense is successful, and the judgment, or any part thereof, has been collected or otherwise enforced, such restitution may thereupon be compelled as the court directs. [L. '93, p. 411, § 12.]

Cited in 23 Wash. 248; 24 Wash. 534; 32 Wash. 152, 174, 496; 33 Wash. 321; 34 Wash. 294; 35 Wash. 281; 39 Wash. 375; 40 Wash. 275; 41 Wash. 106; 43 Wash. 469; 56 Wash. 149, 150; 58 Wash. 582; 67 Wash. 492; 68 Wash. 348, 350.

This section by inadvertence says "last two sections," when it should refer to the last three sections.

§ 236. Service on Joint Defendants.—When the action is against two or more defendants and the summons is served on one or more but not on all of them, the plaintiff may proceed as follows:—

1. If the action is against the defendants jointly indebted upon a contract, he may proceed against the defendants served unless the court otherwise directs; and if he recovers judgment it may be entered against all the defendants thus jointly indebted so far only as it may be enforced against the joint property of all and the separate property of the defendants served;

2. If the action is against defendants severally liable, he may proceed against the defendants served in the same manner as if they were the only defendants;

3. Though all the defendants may have been served with the summons, judgment may be taken against any of them severally, when the plaintiff would be entitled to judgment against such defendants if the action had been against them alone. [L. '93, p. 411, § 13.]

Cited in 27 Wash. 108; 63 Wash. 89; 82 Wash. 587, 588.

§ 237. Proof of Service.—Proof of service shall be as follows:—

1. If served by the sheriff or his deputy, the return of such sheriff or his deputy indorsed upon or attached to the summons;

2. If by any other person, his affidavit thereof indorsed upon or attached to the summons; or

3. In case of publication, the affidavit of the printer, publisher, foreman, principal clerk or business manager of the newspaper showing the same, together with a printed copy of the summons as published; or

4. The written admission of the defendant;

5. In case of personal service out of the state, the affidavit of the person making the service, sworn to before a notary public, with a seal attached, or a clerk of a court of record. In case of service otherwise than by publication, the return, admission or affidavit must state the time, place and manner of service. [L. '93, p. 412, § 14.]

Cited in 27 Wash. 330, 347; 29 Wash. 701, 702.

§ 238. Jurisdiction Acquired, When.—From the time of the commencement of the action by service of summons, or by the filing of a complaint, or as otherwise provided, the court is deemed to have acquired jurisdiction and to have control of all subsequent proceedings. A voluntary appearance of a defendant is equivalent to a personal service of the summons upon him. [L. '03, p. 412, § 15; L. '95, p. 172, § 4.]

Cited in 16 Wash. 631; 22 Wash. 443; 71 Wash. 439; 78 Wash. 473; 83 Wash. 437.

§ 239. Publication of Notice in Exercise of Eminent Domain.—If a party having or claiming a share or interest in or lien upon any property sought to be appropriated for public use be unknown, and such fact be made to appear by affidavit filed in the office of the clerk of the court, the notice required by law in such cases may be served by publication as in the case of nonresident owners, and such notice shall be directed by name to every owner of a share or interest in or lien upon the property sought to be so appropriated, and generally to all persons unknown having or claiming an interest or estate in the property or any portion thereof, and all such unknown parties shall in all papers and proceedings be designated as "unknown owners," and shall be bound by the provisions and be entitled to the benefits of the judgment the same as if they had been known and duly named. [L. '95, p. 352, § 1.]

§ 240. Selection of Newspaper—Evidence of Payment.—In any suit or proceeding, in any court of this state, requiring a legal publication, said publication shall be made in any newspaper, of general circulation in the county, designated by the party or his attorney, at whose instance the said publication is made. A tender of a receipt from the publisher of the said newspaper, as full payment for said publication shall be accepted by the sheriff, or court, as payment in lieu of the cash payment of fees for same. [L. '93, p. 62, § 1.]

§ 241. Appearance, What Constitutes.—A defendant appears in an action when he answers, demurs, makes any application for an order therein, or gives the plaintiff written notice of his appearance. After appearance a defendant is entitled to notice of all subsequent proceedings; but when a defendant has not appeared, service of notice or papers in the ordinary proceedings in an action need not be made upon him. Every such appearance made in an action shall be deemed a general appearance, unless the defendant in making the same states that the same is a special appearance. [Cf. 2 H. C., § 181; L. '93, p. 412, § 16.]

Cited in 15 Wash. 592; 16 Wash. 631; 21 Wash. 107; 22 Wash. 443; 27 Wash. 655; 29 Wash. 564; 31 Wash. 167; 32 Wash. 505; 33 Wash. 556; 37 Wash. 560; 43 Wash. 440; 52 Wash. 14; 60 Wash. 334; 71 Wash. 439.

§ 242. Notice—Service by Mail, etc.—When a party to an action has appeared in the same, he shall be entitled to at least three days' notice of any trial, hearing, motion, application, sale or proceeding therein; which notice shall be in writing specifying the time and place where the same will be had or made, and which shall be served on him or his attorney, but if neither such party nor his attorney reside in the county in which the action or proceeding is pending or where such application or motion is made, then service by mail may be had on such party or his attorney by mailing to either of them a copy of such notice, properly addressed with postage thereon fully prepaid, at least ten days before the time appointed for such hearing, application or sale. [Cd. '81, § 2140; 2 H. C., § 822; L. '97, p. 282, § 1.]

Cited in 14 Wash. 457; 18 Wash. 209; 25 Wash. 656; 31 Wash. 167; 32 Wash. 94; 51 Wash. 474; 69 Wash. 262.

§ 243. Actions Affecting Title to Real Estate—Lis Pendens. In an action affecting the title to real property the plaintiff, at the time

of filing the complaint, or at any time afterward, or whenever a writ of attachment of property shall be issued, or at any time afterward, the plaintiff or a defendant, when he sets up an affirmative cause of action in his answer, and demands substantive relief at the time of filing his answer, or at any time afterward, if the same be intended to affect real property, may file with the auditor of each county in which the property is situated a notice of the pendency of the action, containing the names of the parties, the object of the action, and a description of the real property in that county affected thereby. From the time of the filing only shall the pendency of the action be constructive notice to a purchaser or encumbrancer of the property affected thereby, and every person whose conveyance or encumbrance is subsequently executed or subsequently recorded shall be deemed a subsequent purchaser or encumbrancer, and shall be bound by all proceedings taken after the filing of such notice to the same extent as if he were a party to the action. For the purpose of this section an action shall be deemed to be pending from the time of filing such notice: Provided, however, that such notice shall be of no avail unless it shall be followed by the first publication of the summons, or by the personal service thereof on a defendant within sixty days after such filing. And the court in which the said action was commenced may, in its discretion, at any time after the action shall be settled, discontinued or abated, on application of any person aggrieved and on good cause shown and on such notice as shall be directed or approved by the court, order the notice authorized in this section to be canceled of record, in whole or in part, by the county auditor of any county in whose office the same may have been filed or recorded, and such cancellation shall be made by an indorsement to that effect on the margin of the record. [L. '93, p. 412, § 17.]

Cited in 10 Wash. 450; 16 Wash. 663; 18 Wash. 86; 24 Wash. 406; 29 Wash. 678; 38 Wash. 206, 207; 44 Wash. 622; 47 Wash. 92, 93; 60 Wash. 481; 63 Wash. 4; 85 Wash. 245; 86 Wash. 528.

§ 244. Notice, upon Whom Served.—Notices shall be in writing; and notices and other papers may be served on the party or attorney in the manner prescribed in the next three sections where not otherwise provided by statute. [L. '93, p. 413, § 18.]

Cited in 24 Wash. 668; 69 Wash. 262.

§ 245. Manner of Making Service of Notice.—The services may be personal or by delivery to the party or attorney on whom service is required to be made, or it may be as follows:—

1. If upon an attorney, it may be made during his absence from his office by leaving the papers with his clerk therein, or with a person having charge thereof; or, when there is no person in the office, by leaving it between the hours of six in the morning and nine in the evening in a conspicuous place in the office; or, if it is not open to admit of such service, then by leaving it at the attorney's residence with some person of suitable age and discretion;

2. If upon a party, it may be made by leaving the papers at his residence between the hours of six in the morning and nine in the evening, with some person of suitable age and discretion. [L. '93, p. 413, § 19.]

Cited in 25 Wash. 155; 27 Wash. 331; 54 Wash. 260, 262.

§ 246. Service by Mail, When may be Made.—Service by mail may be made when the person making the service and the person on whom it is to be made reside in different places between which there is a regular communication by mail. [L. '93, p. 414, § 20.]

Cited in 7 Wash. 470; 24 Wash. 612; 63 Wash. 443.

§ 247. Service by Mail, Manner of.—In case of service by mail, the papers shall be deposited in the postoffice, addressed to the person on whom it is served, at his place of residence, and the postage paid; and in such case the time of service shall be double that required in case of personal service. [L. '93, p. 414, § 21.]

Cited in 19 Wash. 319; 24 Wash. 612; 26 Wash. 366; 71 Wash. 439.

§ 248. Service When No Attorney Appears.—Where a plaintiff or defendant who has appeared resides out of the state and has no attorney in the action, the service may be made by mail if his residence is known; if not known, on the clerk for him. But where a party, whether resident or nonresident, has an attorney in the action, the service of papers shall be upon the attorney instead of the party. But if the attorney shall have removed from the state, such service may be made upon him personally either within or without the state, or by mail to him at his place of residence, if known, and if not known, then by mail upon the party, if his residence is known, whether within or without the state. And if the residence of neither the party nor attorney are known, the service may be made upon the clerk for the attorney. [L. '93, p. 414, § 22.]

§ 249. Not Applicable to Service of Summons, etc.—The provisions of the four preceding sections do not apply to the service of a

summons or other process, or of any paper to bring a party into contempt. [L. '93, p. 414, § 23.]

See infra, §§ 1049–1062, contempts and punishment thereof.

§ 250. Effect of Imperfect Paper—Amendments.—A notice or other paper is valid and effectual though the title of the action in which it is made is omitted, or it is defective either in respect to the court or parties, if it intelligently refers to such action or proceedings; and in furtherance of justice upon proper terms, any other defect or error in any notice or other paper or proceeding may be amended by the court, and any mischance, omission or defect relieved within one year thereafter; and the court may enlarge or extend the time, for good cause shown, within which by statute any act is to be done, proceeding had or taken, notice of paper filed or served, or may, on such terms as are just, permit the same to be done or supplied after the time therefor has expired, except that the time for bringing a writ of error or appeal shall in no case be enlarged, or a party permitted to bring such writ of error or appeal after the time therefor has expired. [L. '93, p. 414, § 24.]

Cited in 12 Wash. 100; 15 Wash. 127; 26 Wash. 2; 51 Wash. 474; 68 Wash. 484.

§ 251. Assessment of Damages.—A defendant who has appeared may, without answering, demand in writing an assessment of damages, of the amount which the plaintiff is entitled to recover, and thereupon such assessment shall be had or any such amount ascertained in such manner as the court on application may direct, and judgment entered by the clerk for the amount so assessed or ascertained. [L. '93, p. 415, § 25.]

§ 252. Computation of Time.—The time within which an act is to be done shall be computed by excluding the first day and including the last. If the last day falls on a Sunday it shall be excluded. [L. '93, p. 415, § 26.]

Cited in 10 Wash. 310; 25 Wash. 657; 27 Wash. 151; 32 Wash. 212; 61 Wash. 257.

§ 253. Weekly Publication, How Made.—The publication of legal notices required by law, or by an order of a judge or court, to be published in a newspaper once in each week for a specified number of weeks, shall be made on the day of each week in which such newspaper is published. [L. '93, p. 415, § 27.]

§ 254. Service of Writ by Telegraph.—Any writ or order in any civil suit or proceeding, and all the papers requiring service, may be

transmitted by telegraph for service in any place, and the telegraphic copy of such writ or order or paper so transmitted may be served or executed by the officer or person to whom it is sent for that purpose, and returned by him, if any return be requisite, in the same manner, and with the same force and effect in all respects, as the original thereof might be, if delivered to him, and the officer or person serving or executing the same shall have the same authority, and be subject to the same liabilities, as if the said copy were the original. The original, when a writ or order, shall also be filed in the court from which it was issued, and a certified copy thereof shall be preserved in the telegraph office from which it was sent; in sending it, either the original or certified copy may be used by the operator for that purpose. [L. '66, p. 69, § 17; Cd. '81, § 2358; 1 H. C., § 1558.]

See infra, § 9308, notice by telegraph, effect of.

CHAPTER VII.

Pleadings.

§ 255. Rules to Determine Sufficiency.—All the forms of pleadings heretofore existing in civil actions inconsistent with the provisions of this code are abolished, and hereafter the forms of pleading and the rule by which the sufficiency of the pleadings is to be determined shall be as herein prescribed. [Cf. L. '54, p. 138, § 36; L. '69, p. 17, § 71; Cd. '81, § 73; 2 H. C., § 185.]

Cited in 3 Wash. 203, 587, 588; 5 Wash. 662; 17 Wash. 5; 24 Wash. 329; 27 Wash. 396; 43 Wash. 221; 81 Wash. 36.

§ 256. What Pleadings There Shall be.—The only pleadings on the part of the plaintiff shall be,—

1. The complaint;
2. The demurrer;
3. The reply.

And on the part of the defendant,—

1. The demurrer;
2. The answer. [L. '54, p. 139, § 37; L. '69, p. 20, § 72; Cd. '81, § 74; 2 H. C., § 186.]

Cited in 3 Wash. 587, 588; 27 Wash. 397; 29 Wash. 532.

§ 257. First Pleading—Complaint.—The first pleading on the part of the plaintiff shall be the complaint. [L. '54, p. 139, § 38; Cd. '81, § 75; 2 H. C. § 187.]

Cited in 29 Wash. 532.

§ 258. What Complaint Shall Contain.—The complaint shall contain,—

1. The title of cause, specifying the name of the court, the name of the county in which the action is brought, and the name of the parties to the action, plaintiff and defendant;

2. A plain and concise statement of facts, constituting the cause of action, without unnecessary repetition;

3. A demand for the relief which plaintiff claims; if the recovery of money or damages be demanded, the amount thereof shall be stated. [Cf. L. '54, p. 139, § 39; L. '77, p. 17, § 76; Cd. '81, § 76; L. '91, p. 106, § 1; 2 H. C., § 188.]

Cited in 3 Wash. 271; 9 Wash. 549; 23 Wash. 606; 27 Wash. 407, 409; 57 Wash. 21; 72 Wash. 170, 220; 76 Wash. 205; 79 Wash. 544.

§ 259. Grounds of Demurrer of Defendant.—The defendant may demur to the complaint when it shall appear upon the face thereof either,—

1. That the court has no jurisdiction of the person of the defendant or of the subject matter of the action;

2. That the plaintiff has no legal capacity to sue; or

3. That there is another action pending between the same parties for the same cause; or

4. That there is a defect of parties, plaintiff or defendant; or

5. That several causes of action have been improperly united;

6. That the complaint does not state facts sufficient to constitute a cause of action;

7. That the action has not been commenced within the time limited by law. [Cf. L. '54, p. 139, § 40; Cd. '81, § 77; L. '86, p. 75, § 1; L. '91, p. 106, § 2; 2 H. C., § 189.]

Cited in 4 Wash. 810; 12 Wash. 598; 17 Wash. 576; 19 Wash. 665; 27 Wash. 86; 28 Wash. 479; 29 Wash. 532; 31 Wash. 36; 34 Wash. 433; 42 Wash. 88; 51 Wash. 634, 635; 56 Wash. 238; 58 Wash. 491; 69 Wash. 557; 75 Wash. 296; 78 Wash. 472; 84 Wash. 122.

§ 260. Grounds of Demurrer, How Specified.—The demurrer may specify the grounds of objection in the statutory language of the last preceding section, or the grounds may be distinctly specified; it may be taken to the whole complaint, or to any one of the alleged causes of action stated therein. [Cf. L. '54, p. 139, § 41; L. '77, p. 18, § 78; Cd. '81, § 78; 2 H. C., § 190.]

Cited in 27 Wash. 86.

§ 261. Objections, When to be Taken by Answer.—When any of the matters enumerated in section 259 do not appear upon the face

of the complaint, the objection may be taken by answer. [L. '54, p. 139, § 42; Cd. '81, § 79; 2 H. C., § 191.]

Cited in 4 Wash. 810; 12 Wash. 598; 31 Wash. 36; 34 Wash. 433; 51 Wash. 635; 56 Wash. 238; 58 Wash. 491; 74 Wash. 213; 78 Wash. 472.

§ 262. Proceedings When Complaint is Amended.—If the complaint be amended, a copy thereof shall be served on the defendant or his attorney, and the defendant shall answer the same within such time as may be prescribed by the court; and if he omit to do so, the plaintiff may proceed to obtain judgment as in other cases of failure to answer. [L. '69, p. 20, § 78; Cd. '81, § 80; 2 H. C., § 192.]

Cited in 74 Wash. 213, 371.

§ 263. Objections not Taken Deemed Waived.—If no objection be taken either by demurrer or answer, the defendant shall be deemed to have waived the same, excepting always the objection that the court has no jurisdiction, or that the complaint does not state facts sufficient to constitute a cause of action, which objection can be made at any stage of the proceedings, either in the superior or supreme court. [L. '54, p. 139, § 43; Cd. '81, § 81; 2 H. C., § 193.]

Cited in 1 Wash. 500; 3 Wash. 411; 4 Wash. 810; 12 Wash. 697; 15 Wash. 335; 16 Wash. 76; 19 Wash. 616; 27 Wash. 86; 28 Wash. 492; 31 Wash. 36; 34 Wash. 433; 35 Wash. 24; 39 Wash. 54; 43 Wash. 519–521; 47 Wash. 421, 687; 51 Wash. 635; 56 Wash. 238; 74 Wash. 213; 75 Wash. 296; 83 Wash. 60; 87 Wash. 129.

§ 264. What Answer Shall Contain.—The answer of the defendant must contain,—

1. A general or specific denial of each material allegation of the complaint controverted by the defendant, or of any knowledge or information thereof sufficient to form a belief;

2. A statement of any new matter constituting a defense or counterclaim, in ordinary and concise language without repetition. [Cf. L. '54, p. 139, § 44; L. '69, p. 21, § 80; L. '77, p. 18, § 82; Cd. '81, § 82; 2 H. C., § 194.]

Cited in 3 Wash. 720; 5 Wash. 662; 6 Wash. 246; 7 Wash. 230; 9 Wash. 463; 11 Wash. 574; 12 Wash. 693; 18 Wash. 99; 32 Wash. 653; 48 Wash. 446; 58 Wash. 304; 62 Wash. 498; 70 Wash. 584; 83 Wash. 244; 86 Wash. 439.

§ 265. Counterclaim Defined.—The counterclaim mentioned in the preceding section must be one existing in favor of a defendant and against a plaintiff, between whom a several judgment might be had in the action, and arising out of one of the following causes of action:—

1. A cause of action arising out of the contract or transaction set forth in the complaint as the foundation of the plaintiff's claim, or connected with the subject of the action;

2. In an action arising on contract, any other cause of action arising also on contract, and existing at the commencement of the action. [Cf. L. '54, p. 140, § 45; L. '69, p. 21, § 81; L. '77, p. 19, § 83; Cd. '81, § 83; 2 H. C., § 195.]

Cited in 3 Wash. 368; 7 Wash. 560; 8 Wash. 646; 9 Wash. 463; 10 Wash. 194; 11 Wash. 574; 12 Wash. 598; 16 Wash. 373, 566; 26 Wash. 182; 28 Wash. 236; 32 Wash. 653; 33 Wash. 469, 621; 48 Wash. 446; 51 Wash. 665; 58 Wash. 305; 67 Wash. 356; 72 Wash. 141; 82 Wash. 221.

§ 266. Setoff, When Allowed.—The defendant in a civil action upon a contract expressed or implied, may set off any demand of a like nature against the plaintiff in interest, which existed and belonged to him at the time of the commencement of the suit. And in all such actions, other than upon a negotiable promissory note or bill of exchange, negotiated in good faith and without notice before due, which has been assigned to the plaintiff, he may also set off a demand of a like nature existing against the person to whom he was originally liable, or any assignee prior to the plaintiff, of such contract, provided such demand existed at the time of the assignment thereof, and belonging to the defendant in good faith, before notice of such assignment, and was such a demand as might have been set off against such person to whom he was originally liable, or such assignee while the contract belonged to him. [Cd. '81, § 497; 2 H. C., § 806.]

Cited in 64 Wash. 379; 72 Wash. 141, 142.

§ 267. Demand Against Beneficiary Set Off in Action by Trustee.—If the plaintiff be a trustee to any other, or if the action be in a name of the plaintiff who has no real interest in the contract upon which the action is founded, so much of a demand existing against those whom the plaintiff represents or for whose benefit the action is brought, may be set off as will satisfy the plaintiff's debt, if the same might have been set off in an action brought by those beneficially interested. [Cd. '81, § 498; 2 H. C., § 807.]

§ 268. Demand Against Decedent in Action by Executor.—In actions brought by executors and administrators, demands against their testators and intestates, and belonging to defendant at the time of their death, may be set off by the defendant in the same manner as if the action had been brought by and in the name of the deceased. [Cd. '81, § 499; 2 H. C., § 808.]

§ 269. Effect of Judgment Against Executor.—When a setoff shall be established in an action brought by executors or administrators, and a balance found due to the defendant, the judgment rendered thereon against the plaintiff shall have the same effect as if the action had been originally commenced by the defendant. [Cd. '81, § 500; 2 H. C., § 809.]

§ 270. Setoff in Action Against Executor.—In actions against executors and administrators and against trustees and others, sued in their representative character, the defendants may set off demands belonging to their testators or intestates or those whom they represent, in the same manner as the person so represented would have been entitled to set off the same, in an action against them. [Cd. '81, § 501; 2 H. C., § 810.]

§ 271. Setoff must be Pleaded.—To entitle a defendant to a setoff he must set the same forth in his answer. [Cd. '81, § 502; 2 H. C., § 811.]

§ 271½. Judgment for Balance Only.—If the amount of the setoff, duly established, be equal to the plaintiff's debt or demand, judgment shall be rendered that the plaintiff take nothing by his action; if it be less than the plaintiff's debt or demand, the plaintiff shall have judgment for the residue only. [Cd. '81, § 503; 2 H. C., § 812.]

§ 272. No Judgment for Balance if Contract Shall have Been Assigned.—If there be found a balance due from the plaintiff in the action to the defendant, judgment shall be rendered in favor of the defendant for the amount thereof, but no such judgment shall be rendered against the plaintiff when the contract, which is the subject of the action, shall have been assigned before the commencement of such action nor for any balance due from any other person than the plaintiff in the action. [Cd. '81, § 504; 2 H. C., § 813.]

§ 273. What may be Set Forth in Answer.—The defendant may set forth by answer as many defenses and counterclaims as he may have, whether they be such as have heretofore been denominated legal or equitable, or both. They shall each be separately stated, and refer to the causes of action which they are intended to answer, in such a manner that they may be intelligibly distinguished. [L. '54, p. 140, § 45; Cd. '81, pt. of § 83; 2 H. C., pt. of § 195.]

Cited in 22 Wash. 10; 24 Wash. 329; 30 Wash. 482; 33 Wash. 621; 67 Wash. 357.

§ 274. Defendant may Demur to One or More Causes and Answer the Residue.—The defendant may demur to one or more of several causes of action stated in the complaint, and answer the residue. [L. '54, p. 140, § 46; Cd. '81, § 84; 2 H. C., § 196.]

§ 275. Answer may be Stricken, When.—Sham, frivolous, and irrelevant answers and defenses may be stricken out on motion, and upon such terms as the court may in its discretion impose. [Cf. L. '54, p. 140, § 47; L. '69, p. 21, § 83; Cd. '81, § 85; 2 H. C., § 197.]

Cited in 4 Wash. 59.

§ 276. Plaintiff may Demur to Answer, When—Reply.—The plaintiff may demur to an answer containing new matter, when it appears upon the face thereof that such new matter does not constitute a defense or counterclaim, or he may for like cause demur to one or more of such defenses or counterclaims, and reply to the residue. [L. '54, p. 140, § 48; L. '69, p. 22, § 85; Cd. '81, § 87; 2 H. C., § 198.]

§ 277. When Plaintiff may Reply—Contents of.—When the answer contains new matter constituting a defense or counterclaim, the plaintiff may reply to such new matter, denying generally or specifically each allegation controverted by him, or any knowledge or information thereof sufficient to form a belief; and he may allege in ordinary and concise language, without repetition, any new matter, not inconsistent with the complaint, constituting a defense to such new matter in the answer. [Cf. L. '54, p. 140, § 48; L. '69, p. 22, § 84; L. '77, p. 19, § 86; Cd. '81, § 86; 2 H. C., § 199.]

Cited in 3 Wash. 204; 15 Wash. 115; 17 Wash. 674; 51 Wash. 445.

§ 278. Judgment for Failure to Plead to New Matter.—If the answer contain a statement of new matter constituting a defense or counterclaim, and the plaintiff fail to reply or demur thereto within the time prescribed by law, the defendant may move the court for such judgment as he is entitled to on the pleadings, and if the case require it, he may have a jury called to assess the damages. [Cf. L. '54, p. 140, § 49; L. '69, p. 22, § 86; Cd. '81, § 88; 2 H. C., § 200.]

Cited in 4 Wash. 373; 5 Wash. 662.

§ 279. Demurrer or Motion to Reply.—The defendant may demur to any new matter contained in the reply, when it appears upon the face thereof that such new matter is not a sufficient reply to the facts stated in the answer. Sham, frivolous, and irrelevant replies may be stricken out in like manner and on the same terms as like

answers and defenses. [Cf. L. '54, p. 140, § 50; L. '69, p. 22, § 87; Cd. '81, § 89; 2 H. C., § 201.]

§ 280. Court Rules Fixing Times for Pleading.—The court shall establish the rules prescribing the time in which pleadings subsequent to the complaint shall be filed. [L. '57, p. 10, § 10; Cd. '81, § 90; 2 H. C., § 202; see Const., Art. IV, § 24.]

Cited in 4 Wash. 325.

CHAPTER VIII.

Verification of Pleadings.

§ 281. Subscription and Verification of Pleadings.—Every pleading shall be subscribed by the party or his attorney, and except a demurrer, shall also be verified by the party, his agent or attorney, to the effect that he believes it to be true. The verification must be made by the affidavit of the party, or if there be several parties united in interest and pleading together, by one at least of such parties, if such party be within the county and capable of making the affidavit; otherwise the affidavit may be made by the agent or attorney of the party. The affidavit may also be made by the agent or attorney if the action or defense be founded on a written instrument for the payment of money only, and such instrument be in the possession of the agent or attorney, or if all the material allegations of the pleading be within the personal knowledge of the agent or attorney. When the affidavit is made by the agent or attorney, it must set forth the reason of his making it. When a corporation is a party, the verification may be made by any officer thereof, upon whom service of a notice [summons] might be made; and when the state, or any officer thereof in its behalf, is a party, the verification may be made by any person to whom all the material allegations of the pleading are known. When the party is absent from or a non-resident of the county in which suit is brought, the verification may be made by the agent or attorney of said party. [Cf. L. '54, p. 141, §§ 53, 54; L. '67, p. 92, § 1; L. '69, p. 23, § 89; Cd. '81, § 91; L. '88, p. 29, § 1; 2 H. C., § 203.]

Cited in 11 Wash. 126; 40 Wash. 212.

§ 282. When Verification may be Omitted.—When, in the judgment of the court, an answer to an allegation in any pleading might subject the party answering to a criminal prosecution, the verification of the answer to such allegation may be omitted. No pleading

shall be used in a criminal prosecution against the party as evidence of a fact alleged in such pleading. [Cf. L. '54, p. 141, § 54; L. '69, p. 23, § 90; Cd. '81, § 92; 2 H. C., § 204.]

Cited in 13 Wash. 8.

§ 283. Pleadings are not Proof on Trial.—Pleadings sworn to by either party in any case shall not, on the trial, be deemed proof of the facts alleged therein, nor require other or greater proof on the part of the adverse party. [L. '54, p. 219, § 484; Cd. '81, § 741; 2 H. C., § 792.]

Cited in 3 Wash. 237; 54 Wash. 132; 55 Wash. 309.

CHAPTER IX.

General Rules of Pleading.

§ 284. Pleading Written Instruments and Accounts—Bill of Particulars.—It shall not be necessary for a party to set forth in a pleading a copy of the instrument of writing, or the items of an account therein alleged; but unless he file a verified copy thereof with such pleadings, and serve the same on the adverse party, he shall, within ten days after a demand thereof in writing, deliver to the adverse party a copy of such instrument of writing, or the items of an account, verified by his own oath, or that of his agent or attorney, to the effect that he believes it to be true, or be precluded from giving evidence thereof. The court, or judge thereof, may order a further account, when the one delivered is defective; and the court may, in all cases, order a bill of particulars of the claim of either party to be furnished. [L. '54, p. 142, § 55; Cd. '81, § 93; 2 H. C., § 205.]

Cited in 2 Wash. 342; 3 Wash. 769; 15 Wash. 217; 25 Wash. 665; 35 Wash. 195; 43 Wash. 221; 72 Wash. 207.

§ 285. Pleadings Liberally Construed.—In the construction of a pleading, for the purpose of determining its effect, its allegation [s] shall be liberally construed, with a view to substantial justice between the parties. [L. '54, p. 142, § 56; Cd. '81, § 94; 2 H. C., § 206.]

Cited in 4 Wash. 59; 11 Wash. 363; 27 Wash. 104; 35 Wash. 684; 65 Wash. 67; 79 Wash. 494; 81 Wash. 36.

§ 286. Irrelevant, Redundant and Indefinite Matter, How Objected to.—If irrelevant or redundant matter be inserted in a pleading, it may be stricken out on motion of any person aggrieved thereby; and when the allegations of a pleading are so indefinite or uncertain that

the precise nature of the charge or defense is not apparent, the court may require the pleading to be made definite and certain by amendment, or may dismiss the same. [L. '54, p. 142, § 57; Cd. '81, § 95; 2 H. C., § 207.]

Cited in 10 Wash. 540; 43 Wash. 221.

§ 287. Judgments of Inferior Courts, How Pleaded.—In pleading a judgment or other determination of a court or office[r] of special jurisdiction, it shall not be necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation be controverted, the party pleading shall be bound to establish on the trial the facts conferring jurisdiction. [L. '54, p. 142, § 58; Cd. '81, § 96; 2 H. C., § 208.]

Cited in 18 Wash. 99; 45 Wash. 422.

§ 288. Conditions Precedent, How Pleaded.—In pleading the performance of conditions precedent in a contract, it shall not be necessary to state the facts showing such performance, but it may be stated generally that the party duly performed all the conditions on his part; and if such allegation be controverted, the party pleading shall be bound to establish, on the trial, the facts showing such performance. [L. '54, p. 142, § 59; Cd. '81, § 97; 2 H. C., § 209.]

Cited in 42 Wash. 307; 50 Wash. 662, 663.

§ 289. Private Statutes, How Pleaded.—In pleading a private statute, or a right derived therefrom, it shall be sufficient to refer to such statute by its title, and the day of its passage, and the court shall thereupon take judicial notice thereof. [L. '54, p. 142, § 60; Cd. '81, § 98; 2 H. C., § 210.]

Cited in 21 Wash. 350.

§ 290. Existence of City or Town, How Pleaded.—In pleading the existence of any city or town in this state, it shall be sufficient to state in such pleading that the same is an existing city or town, incorporated or organized under the laws of the state of Washington. [Cd. '81, § 2063; 1 H. C., § 767.]

§ 291. Ordinances, How Pleaded.—In pleading any ordinance of a city or town in this state, it shall be sufficient to state the title of such ordinance and the date of its passage, whereupon the court shall take judicial knowledge of the existence of such ordinance, and the tenor and effect thereof. [Cd. '81, § 2064; 1 H. C., § 768.]

Cited in 9 Wash. 241.

§ 292. Libel or Slander, How Pleaded.—In an action for libel or slander, it shall not be necessary to state in the complaint any extrinsic facts for the purpose of showing the application to the plaintiff of the defamatory matter out of which the cause arose, but it shall be sufficient to state generally that the same was published or spoken concerning the plaintiff; and if such allegation be controverted, the plaintiff shall be bound to establish on trial that it was so published or spoken. [L. '54, p. 142, § 61; Cd. '81, § 99; 2 H. C., § 211.]

Cited in 55 Wash. 612, 613; 64 Wash. 694.

§ 293. Answers in Justification and Mitigation.—In an action mentioned in the last section, the defendant may, in his answer, allege both the truth of the matter charged as defamatory, and any mitigating circumstances to reduce the amount of damages; and whether he prove the justification or not; he may give in evidence the mitigating circumstances. [L. '54, p. 143, § 62; Cd. '81, § 100; 2 H. C., § 212.]

Cited in 11 Wash. 509; 40 Wash. 312, 313; 85 Wash. 512.

§ 294. Falsely Charging Certain Crime, Actionable.—Every charge of incest, fornication, adultery, or whoredom falsely made by any person against a female, also words falsely spoken of any person charging such person with incest or the infamous crime against nature, either with mankind or the brute creation, shall be [actionable] in the same manner as in the case of slanderous words charging a crime the commission of which would subject the offender to death or other degrading penalties. [L. '54, p. 219, § 487; Cd. '81, § 747; 2 H. C., § 798.]

Cited in 17 Wash. 239; 71 Wash. 140.

§ 295. Answers in Actions to Recover Property Distrained.—In an action to recover the possession of property distrained doing damage, an answer that the defendant or person by whose command he acted was lawfully possessed of the real property upon which the distress was made, and that the property distrained was at the time doing damage thereon, shall be good without setting forth the title to such real property. [L. '54, p. 143, § 63; Cd. 81, § 101; 2 H. C., § 213.]

§ 296. Joinder of Causes of Action.—The plaintiff may unite several causes of action in the same complaint, when they all arise out of,—

1. Contract, express or implied; or
2. Injuries, with or without force, to the person; or
3. Injuries, with or without force, to property; or
4. Injuries, to character; or
5. Claims to recover real property, with or without damages for the withholding thereof; or
6. Claims to recover personal property, with or without damages for the withholding thereof; or
7. Claims against a trustee, by virtue of a contract or by operation of law.
8. The same transaction.

But the causes of action so united must affect all the parties to the action, and not require different places of trial, and must be separately stated. [L. '07, p. 172, § 1; Cf. L. '54, p. 143, § 64; L. '61, p. 51, § 5; L. '69, p. 25, § 100; Cd. '81, § 102; 2 H. C., § 214.]

Cited in 14 Wash. 479; 29 Wash. 533; 30 Wash. 634; 31 Wash. 662; 34 Wash. 76; 42 Wash. 88, 254; 46 Wash. 401; 47 Wash. 41; 49 Wash. 343; 51 Wash. 258; 64 Wash. 231; 71 Wash. 13, 246.

§ 297. Material Allegations not Controverted Admitted, Except in Reply.—Every material allegation of the complaint not controverted by the answer, and every material allegation of new matter in the answer not controverted by the reply, shall, for the purpose of action, be taken as true; but the allegation of new matter in a reply is to be deemed controverted by the adverse party, as upon a direct denial or avoidance, as the case may require. [L. '69, p. 26, § 101; L. '77, p. 22, § 103; Cd. '81, § 103; 2 H. C., § 215.]

Cited in 2 Wash. 482; 5 Wash. 662; 11 Wash. 617; 42 Wash. 307; 85 Wash. 102.

§ 298. Material Allegations Defined.—A material allegation in a pleading is one essential to the claim or defense, and which could not be stricken from the pleading without leaving it insufficient. [L. '54, p. 143, § 65; Cd. '81, § 104; 2 H. C., § 216.]

CHAPTER X.

Mistakes and Amendments.

§ 299. Variance, When Material.—No variance between the allegation in a pleading and the proof shall be deemed material, unless it shall have actually misled the adverse party to his prejudice in maintaining his action or defense upon the merits. Whenever it

shall be alleged that a party has been so misled, that fact shall be proved to the satisfaction of the court, and in what respect he has been misled, and thereupon the court may order the pleading to be amended upon such terms as shall be just. [L. '54, p. 143, § 66; Cd. '81, § 105; 2 H. C., § 217.]

Cited in 1 Wash. 545; 2 Wash. 520; 3 Wash. 487, 534; 5 Wash. 57; 16 Wash. 48; 21 Wash. 640; 22 Wash. 142; 24 Wash. 155; 26 Wash. 527, 553; 29 Wash. 534; 30 Wash. 169; 38 Wash. 543; 39 Wash. 54; 43 Wash. 222; 50 Wash. 688; 54 Wash. 15, 621; 57 Wash. 21; 59 Wash. 296; 60 Wash. 524; 61 Wash. 184; 70 Wash. 618; 73 Wash. 52; 74 Wash. 307; 81 Wash. 36; 84 Wash. 464; 86 Wash. 331; 87 Wash. 297, 400.

§ 300. Immaterial Variance, Effect of.—When the variance is not material, as provided in the last section, the court may direct the fact to be found according to the evidence, or may order an immediate amendment without costs. [L. '54, p. 144, § 67; Cd. '81, § 106; 2 H. C., § 218.]

Cited in 22 Wash. 142; 26 Wash. 528; 38 Wash. 544; 40 Wash. 621; 57 Wash. 22; 87 Wash. 400.

§ 301. Failure of Proof.—When, however, the allegation of the cause of action or defense to which the proof is directed is not proved, not in some particular or particulars only, but in its entire scope and meaning, it shall not be deemed a case of variance within the last two sections, but a failure of proof. [L. '54, p. 144, § 68; Cd. '81, § 107; 2 H. C., § 219.]

Cited in 1 Wash. 543, 545; 22 Wash. 143; 26 Wash. 553; 28 Wash. 190; 29 Wash. 543; 38 Wash. 661; 57 Wash. 22; 59 Wash. 296; 81 Wash. 688; 86 Wash. 285.

§ 302. Variance in Action to Recover Personal Property.—Where the plaintiff in an action to recover the possession of personal property, on a claim of being the owner thereof, shall fail to establish on trial such ownership, but shall prove that he is entitled to the possession thereof by virtue of a special property therein, he shall not thereby be defeated of his action, but shall be permitted to amend, on reasonable terms, his complaint, and be entitled to judgment according to the proof in the case. [L. '57, p. 10, § 11; L. '69, p. 27, § 106; Cd. '81, § 108; 2 H. C., § 220.]

Cited in 1 Wash. 119; 16 Wash. 48.

§ 303. Amendments, Allowance of.—The court may, in furtherance of justice, and on such terms as may be proper, amend any pleadings or proceedings, by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mis-

take in any other respect, and may, upon like terms, enlarge the time for answer or demurrer. The court may likewise, upon affidavit showing good cause therefor, after notice to the adverse party, allow, upon such terms as may be just, an amendment to any pleading or proceeding in other particulars, and may, upon like terms, allow an answer to be made after the time limited by this code, and may, upon such terms as may be just, and upon payment of costs, relieve a party, or his legal representatives, from a judgment, order, or other proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect. [L. '54, p. 144, § 69; L. '75, p. 11, § 20; Cd. '81, § 109; L. '91, p. 106, § 3; 2 H. C., § 221.]

Cited in 3 Wash. 709; 4 Wash. 505, 763; 8 Wash. 594; 10 Wash. 310; 11 Wash. 73; 12 Wash. 664; 17 Wash. 357, 566, 601; 18 Wash. 211, 390, 842; 21 Wash. 640; 23 Wash. 251; 25 Wash. 656, 669; 28 Wash. 165; 31 Wash. 185, 254; 32 Wash. 174, 376, 497; 35 Wash. 358, 361, 687; 37 Wash. 226; 48 Wash. 430; 50 Wash. 374; 51 Wash. 465, 677; 58 Wash. 582; 59 Wash. 200; 62 Wash. 152; 79 Wash. 490; 84 Wash. 400; 86 Wash. 284; 87 Wash. 550.

§ 304. Amendments, How Made.—When any pleading or proceeding is amended before trial, mere clerical errors excepted, it shall be done by filing a new pleading, to be called the amended complaint, or otherwise, as the case may be. Such amended pleading shall be complete in itself, without reference to the original, or any preceding amended one. [L. '69, p. 27, § 108; Cd. '81, § 110; 2 H. C., § 222.]

Cited in 15 Wash. 612; 16 Wash. 357.

§ 305. Informal Pleadings, Stricken Out—Amendment of.—Any pleading not duly verified and subscribed may, on motion of the adverse party, be stricken out of the case. When any pleading contains more than one cause of action or defense, if the same be not pleaded separately, such pleading may, on motion of the adverse party, be stricken out of the case. When a motion to strike out is allowed, the court may, upon such terms as may be proper, allow the party to file an amended pleading; or if the motion be disallowed, and it appear to have been made in good faith, the court may, upon like terms, allow the party to plead over. [L. '69, p. 27, § 109; Cd. '81, § 111; 2 H. C., § 223.]

Cited in 40 Wash. 212.

§ 306. Defendant Designated by Fictitious Name, When.—When the plaintiff shall be ignorant of the name of the defendant, it shall be so stated in his pleading, and such defendant may be designated in any pleading or proceeding by any name, and when his true name

shall be discovered, the pleading or proceeding may be amended accordingly. [L. '54, p. 144, § 70; L. '69, p. 28, § 110; Cd. '81, § 112; 2 H. C., § 224.]

§ 307. Harmless Errors Disregarded.—The court shall, in every stage of an action, disregard any error or defect in pleadings or proceedings which shall not affect the substantial rights of the adverse party, and no judgment shall be reversed or affected by reason of such error or defect. [L. '54, p. 144, § 71; Cd. '81, § 113; 2 H. C., § 225.]

Cited in 24 Wash. 221; 26 Wash. 342; 50 Wash. 363; 53 Wash. 634; 68 Wash. 62; 70 Wash. 77, 288; 71 Wash. 11; 83 Wash. 32, 58, 381, 475; 87 Wash. 303.

§ 308. Supplemental Pleadings, When Allowed.—The court may, on motion, allow supplemental pleadings showing facts which occurred after the former pleadings were filed. [L. '54, p. 144, § 72; Cd. '81, § 114; 2 H. C., § 226.]

Cited in 1 Wash. 375; 3 Wash. 657; 27 Wash. 335; 72 Wash. 259.

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CHAPTER I.

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§ 309. Issues Defined, Kinds of.—Issues arise upon the pleadings when a fact or conclusion of law is maintained by one party and controverted by the other. They are of two kinds—First, of law; and second, of fact. [Cf. L. '54, p. 163, § 179; Cd. '81, § 200; 2 H. C., § 333; L. '93, p. 415, § 28.]

Cited in 24 Wash. 96.

§ 310. Issue of Law Arises, When.—An issue of law arises upon a demurrer to the complaint, answer or reply. [Cf. L. '54, p. 163, § 180; Cd. '81, § 201; 2 H. C., § 334; L. '93, p. 415, § 29.]

Cited in 17 Wash. 602.

§ 311. Issue of Fact, How Raised.—An issue of fact arises,—

First: Upon a material allegation in the complaint controverted by the answer; or

Second: Upon new matter in the answer, controverted by the reply; or

Third: Upon new matter in the reply, except when an issue of law is joined thereon.

Issues both of law and of fact may arise upon different and distinct parts of the pleadings in the same action. [Cf. L. '54, p. 163, § 181; Cd. '81, § 202; 2 H. C., § 335; L. '93, p. 415, § 30.]

§ 312. Trial Defined.—A trial is the judicial examination of the issues between the parties, whether they are issues of law or fact. [L. '93, p. 416, § 31.]

Cited in 17 Wash. 602.

§ 313. Issue of Law, How Tried.—An issue of law shall be tried by the court, unless it is referred as provided by the statutes relating to referees. [Cf. L. '54, p. 164, § 183; Cd. '81, § 204; 2 H. C., § 337; L. '93, p. 416, § 32.]

Cited in 16 Wash. 384; 56 Wash. 75.

§ 314. Issue of Fact, How Tried.—An issue of fact, in an action for the recovery of money only, or of specific real or personal property shall be tried by a jury, unless a jury is waived, as provided by law, or a reference ordered, as provided by statute relating to referees. [Cf. L. '54, p. 164, § 183; L. '69, p. 50, § 208; L. '73, p. 52, § 206; Cd. '81, § 204; 2 H. C., § 337; L. '93, p. 416, § 33.]

Cited in 28 Wash. 71; 30 Wash. 6; 56 Wash. 75; 79 Wash. 585; 86 Wash. 681.

§ 315. Trial of Other Issues.—Every other issue of fact shall be tried by the court, subject, however, to the right of the parties to consent, or of the court to order, that the whole issue, or any specific question of fact involved therein, be tried by a jury, or referred. [L. '93, p. 416, § 34.]

Cited in 16 Wash. 384; 79 Wash. 586, 588.

§ 316. Jury Fee—Advance Deposit—Waiver of Jury.—In all civil actions triable by a jury in the superior court any party to the action may, at or prior to the time the case is called to be set for trial, serve upon the opposite party or his attorney, and file with the clerk of the court a statement of himself, or attorney, that he elects to have such case tried by jury. At the time of filing such statement such party shall also deposit with the clerk of the court twelve dollars, which deposit, in the event that the case is settled out of court prior to the time that such case is called to be heard upon trial, shall be returned to such party by such clerk. Unless such statement is filed and such deposit made, the parties shall be deemed to have waived trial by jury, and consented to a trial by the court: Provided, that, in the superior courts of counties of the first class such parties shall serve and file such statement, in manner herein provided, at any time not later than two days before the time the case is called to be set for trial. [L. '03, p. 50, § 1; L. '09, p. 715, § 1.]

Cited in 33 Wash. 536, 537, 539; 36 Wash. 603; 38 Wash. 687; 39 Wash. 106; 40 Wash. 355; 59 Wash. 264; 79 Wash. 688.

§ 317. Fee Deposited to be Part of Costs.—The amount deposited by the party demanding a trial by jury shall be a part of the taxable

costs in such action. The amounts received by the clerk on account of jury fees shall be accounted for as such other fees received. [L. '03, p. 50, § 2.]

Cited in 56 Wash. 305.

§ 318. Agreement to Refer.—The [waiver of a jury or] agreement to refer, shall be by stipulation of the parties filed, or the oral consent of parties given in open court and entered in the records: Provided, that nothing herein contained shall be so construed as to restrict the chancery powers of the judges, or to authorize the trial of any issue by a jury, when the complaint alleges an equitable claim, and seeks relief solely upon the ground of the equities of the demand made by the pleadings in the action. [Cf. L. '54, p. 164, § 183; L. '69, p. 50, § 208; L. '73, p. 52, § 206; Cd. '81, § 204; 2 H. C., § 337.]

Cited in 3 Wash. 591; 33 Wash. 469, 539; 79 Wash. 689.

Superseded as to waiver of jury by, § 316, supra.

§ 319. Notice of Trial.—At any time after the issues of fact are completed in any case by the service of complaint and answer or reply when necessary, as provided in title three, either party may cause the issues of fact to be brought on for trial, by serving upon the opposite party a notice of trial at least three days before any day provided by rules of court for setting causes for trial, which notice shall give the title of the cause as in the pleadings, and notify the opposite party that the issues in such action will be brought on for trial at the time set by the court; and the party giving such notice of trial shall, at least three days before the day of setting such causes for trial file with the clerk of the court a note of issue containing the title of the action, the names of the attorneys and the date when the last pleading was served; and the clerk shall thereupon enter the cause upon the trial docket according to the date of the issue. In case an issue of law raised upon the pleading is desired to be brought on for argument, either party shall, at least three days before the day set apart by the court under its rules for hearing issues of law, serve upon the opposite party a like notice of trial and furnish the clerk of the court with a note of issue as above provided, which note of issue shall specify that the issue to be tried is an issue of law; and the clerk of the court shall thereupon enter such action upon the motion docket of the court. When a cause has once been placed upon either docket of the court, if not tried or argued at the time for which notice was given, it need not be noticed

for a subsequent session or day, but shall remain upon the docket from session to session or from law day to law day until final disposition or stricken off by the court. The party upon whom notice of trial is served may file the note of issue and cause the action to be placed upon the calendar without further notice on his part. [L. '93, p. 416, § 35.]

Cited in 17 Wash. 408; 18 Wash. 209; 30 Wash. 629; 57 Wash. 291; 64 Wash. 338.

§ 320. After Notice Either Party may Bring Issue to Trial.—Either party, after the notice of trial, whether given by himself or the adverse party, may bring the issue to trial, and, in the absence of the adverse party, unless the court for good cause otherwise directs, may proceed with his case, and take a dismissal of the action, or a verdict or judgment, as the case may require. [L. '93, p. 417, § 36.]

§ 321. Pleadings, When to be Filed.—All pleadings in any civil action shall be filed with the clerk of the court, on or before the day when the case is called for trial, or the day when any application is made to the court for an order therein, and in case the moving party shall fail, or neglect to cause the pleadings to be filed with the clerk of the court as above required, the adverse party may apply to the court, without notice, for an order on such moving party to file such pleadings forthwith, and for a failure to comply with such order the court may order the cause dismissed unless good cause is shown for granting an extension of time within which to file such pleadings. [L.'93, p. 417, § 37.]

Cited in 15 Wash. 641; 22 Wash. 442; 38 Wash. 171.

CHAPTER II.

Trial of Civil Actions.

§ 322. Motion for Continuance, When Allowed.—A motion to continue a trial on the ground of the absence of evidence shall only be made upon affidavit showing the materiality of the evidence expected to be obtained, and that due diligence has been used to procure it, and also the name and residence of the witness or witnesses. The court may also require the moving party to state, upon affidavit, the evidence which he expects to obtain; and if the adverse party admit that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the

trial shall not be continued. The court, upon its allowance of the motion, may impose terms or conditions upon the moving party. [Cf. L. '54, p. 164, § 184; L. '69, p. 50, § 209; Cd. '81, § 205; 2 H. C., § 338.]

Cited in 8 Wash. 726; 14 Wash. 581; 29 Wash. 380; 34 Wash. 204; 49 Wash. 13; 81 Wash. 29.

§ 323. Impaneling Jury.—When the action is called for trial, the clerk shall prepare separate ballots containing the names of the jurors summoned who have appeared and not been excused, and deposit them in a box. He shall then draw from the box twelve names, and the persons whose names are drawn shall constitute the jury. If the ballots become exhausted before the jury is complete, or if from any cause a juror or jurors be excused or discharged, the sheriff, under the direction of the court, shall summon from the bystanders, citizens of the county, as many qualified persons as may be necessary to complete the jury. Whenever it shall be requisite for the sheriff to summon more than one person at a time from the bystanders or body of the county, the names of the talesmen shall be returned to the clerk, who shall thereupon write the names upon separate ballots and deposit the same in the trial jury box, and draw such ballots separately thereform, as in the case of the regular panel. The jury shall consist of twelve persons, unless the parties consent to a less number. The parties may consent to any number not less than three, and such consent shall be entered by the clerk on the minutes of the trial. [Cf. L. '54, p. 164, § 185; L. '69, p. 51, § 210; Cd. '81, § 206; 2 H. C., § 339.]

Cited in 6 Wash. 187; 12 Wash. 180; 17 Wash. 550; 19 Wash. 59; 22 Wash. 133; 40 Wash. 584; 82 Wash. 289.

§ 324. Challenges—Kind and Number.—Either party may challenge the jurors, but when there are several parties on either side, they shall join in a challenge before it can be made. The challenge shall be to individual jurors, and be peremptory or for cause. Each party shall be entitled to three peremptory challenges. [L. '54, p. 165, § 186; Cd. '81, § 207; 2 H. C., § 340.]

Cited in 50 Wash. 93; 52 Wash. 231; 77 Wash. 39.

§ 325. Peremptory Challenges, Defined.—A peremptory challenge is an objection to a juror for which no reason need be given, but upon which the court shall exclude him. [L. '69, p. 51, § 212; Cd. '81, § 208; 2 H. C., § 341.]

326. Challenge for Cause, Defined.—A challenge for cause is an objection to a juror, and may be either,—

1. General; that the juror is disqualified from serving in any action; or

2. Particular; that he is disqualified from serving in the action on trial. [L. '69, p. 51, § 213; Cd. '81 § 209; 2 H. C., § 342.]

Cited in 14 Wash. 411.

§ 327. General Causes of Challenge.—General causes of challenge are:—

1. A conviction for a felony;

2. A want of any of the qualifications prescribed by law for a juror;

3. Unsoundness of mind, or such defect in the faculties of the mind or organs of the body as renders him incapable of performing the duties of a juror. [L. '69, p. 52, § 214; Cd. '81, § 210; 2 H. C., § 343.]

§ 328. Previous Service Within One Year.—It shall be sufficient cause of challenge to any juror called to be sworn in any case that he has been summoned upon an open venire and attended said court as a juror at any session of said court held within one year prior to the time of challenge; or that he has been summoned from the bystanders or body of the county, and has served as a juror in any cause upon such summons, within one year prior to the time of such challenge. [L. '91, p. 88, § 11; 2 H. C., § 66.]

For first part of this section, see supra, § 111.

§ 329. Particular Causes of Challenge.—Particular causes of challenge are of two kinds:—

1. For such a bias as, when the existence of the facts is ascertained, in judgment of law disqualifies the juror, and which is known in this code as implied bias;

2. For the existence of a state of mind on the part of the juror in reference to the action, or to either party, which satisfies the trier, in the exercise of a sound discretion, that he cannot try the issue impartially and without prejudice to the substantial rights of the party challenging, and which is known in this code as actual bias. [L. '69, p. 52, § 215; Cd. '81, § 211; 2 H. C., § 344.]

Cited in 3 Wash. 104; 30 Wash. 141; 46 Wash. 411.

§ 330. Implied Bias, Defined.—A challenge for implied bias may be taken for any or all of the following causes, and not otherwise:—

1. Consanguinity or affinity within the fourth degree to either party;

2. Standing in the relation of guardian and ward, attorney and client, master and servant, or landlord and tenant, to the adverse party; or being a member of the family of, or a partner in business with, or in the employment for wages of the adverse party; or being surety or bail in the action called for trial, or otherwise, for the adverse party;

3. Having served as a juror on a previous trial in the same action, or in another action between the same parties for the same cause of action, or in a criminal action by the state against either party upon substantially the same facts or transaction;

4. Interest on the part of the juror in the event of the action, or the principal question involved therein, excepting always the interest of the juror as a member or citizen of the county or municipal corporation. [Cf. L. '54, p. 165, 187; L. '69, p. 52, § 216; Cd. '81, § 212; 2 H. C., § 345.]

Cited in 3 Wash. 103; 24 Wash. 524; 30 Wash. 637.

§ 331. Challenge for Actual Bias.—A challenge for actual bias may be taken for the cause mentioned in the second subdivision of section three hundred and twenty-nine. But on the trial of such challenge, although it should appear that the juror challenged has formed or expressed an opinion upon what he may have heard or read, such opinion shall not of itself be sufficient to sustain the challenge, but the court must be satisfied, from all the circumstances, that the juror cannot disregard such opinion and try the issue impartially. [L. '69, p. 53, § 217; Cd. '81, § 213; 2 H. C., § 346.]

Cited in 3 Wash. 104; 8 Wash. 15; 14 Wash. 411.

§ 322. Exemption not Cause of Challenge.—An exemption from service on a jury shall not be cause of challenge, but the privilege of the person exempted. [L. '69, p. 53, § 218; Cd. '81, § 214; 2 H. C., § 347.]

§ 333. Peremptory Challenges, How Taken.—The jurors having been examined as to their qualifications, first by the plaintiff and then by the defendant, and passed for cause, the peremptory challenges shall be conducted as follows, to wit:—

The plaintiff may challenge one, and then the defendant may challenge one, and so alternately until the peremptory challenges shall be exhausted. The panel being filled and passed for cause, after

said challenge shall have been made by either party, a refusal to challenge by either party in the said order of alternation shall not defeat the adverse party of his full number of challenges, but such refusal on the part of the plaintiff to exercise his challenge in proper turn shall conclude him as to the jurors once accepted by him, and if his right be not exhausted, his further challenges shall be confined, in his proper turn, to talesmen only. [L. '69, p. 53, § 219; Cd. '81, § 215; 2 H. C., § 348.]

Cited in 8 Wash. 305, 307; 15 Wash. 203; 29 Wash. 462.

§ 334. Order of Taking Challenges.—The challenges of either party shall be taken separately, in the following order, including in each challenge all the causes of challenge belonging to the same class:—

1. For general disqualification;
2. For implied bias;
3. For actual bias;
4. Peremptory. [L. '69, p. 53, § 220; Cd. '81, §.216; 2 H. C., § 349.]

Cited in 30 Wash. 141.

§ 335. Trial and Exceptions to Challenges.—The challenge may be excepted to by the adverse party for insufficiency, and if so, the court shall determine the sufficiency thereof, assuming the facts alleged therein to be true. The challenge may be denied by the adverse party, and if so, the court shall try the issue, and determine the law and the facts. [L. '69, p. 53, § 221; Cd. '81, § 217; 2 H. C., § 350.]

§ 336. Trial of Challenge—Rules Governing.—Upon the trial of a challenge, the rules of evidence applicable to testimony offered upon the trial of an ordinary issue of fact shall govern. The juror challenged, or any other person otherwise competent, may be examined as a witness by either party. If a challenge be determined to be sufficient, or found to be true, as the case may be, it shall be allowed, and the juror to whom it was taken excluded; but if determined or found otherwise, it shall be disallowed. [L. '69, p. 54, § 222; Cd. '81, § 218; 2 H. C., § 351.]

§ 337. Challenge, Exception and Denial may be Oral.—The challenge, the exception, and the denial may be made orally. The judge of the court shall note the same upon his minutes, and the substance of the testimony on either side. [L. '69, p. 54, § 233; Cd. '81, § 219; 2 H. C., § 352.]

§ 338. Oath of Jurors.—As soon as the number of the jury has been completed, an oath or affirmation shall be administered to the jurors, in substance, that they and each of them will well and truly try the matter in issue between the plaintiff and defendant, and a true verdict give, according to the law and evidence as given them on the trial. [L. '69, p. 54, § 224; Cd. '81, § 220; 2 H. C., § 353.]

See infra, § 2143, oath to jury in criminal cases.

§ 339. Manner of Conducting Trials—Charging Jury.—When a jury has been sworn, the trial shall proceed in the following manner:

(1) The plaintiff shall briefly state the cause of action and the evidence by which he expects to sustain it. The defendant may in like manner state the defense, and the evidence he expects to offer in support thereof, but nothing in the nature of comments or argument shall be allowed in opening a case. It shall be optional with the defendant whether he states his case before or after the close of the plaintiff's evidence.

(2) The plaintiff, or the party upon whom rests the burden of proof in the whole action, must first produce his evidence; the adverse party will then produce his evidence.

(3) The parties then will be confined to rebutting evidence, unless the court shall consider that justice requires that evidence in the original case may then be offered.

(4) The court must reduce the charge to be given the jury to writing, and at the conclusion of the evidence he shall read his written charge to the jury. Either party may request such instructions as he deems material to the case, and the court may hear them upon the propriety of the requested instructions before finally settling the charge that he will give. If a stenographer shall be in attendance upon the trial of the cause, the court shall have the right to dictate the charge he desires to give to such stenographer, and to have the stenographer reduce the same to writing for him and a copy for each of the parties plaintiff and defendant. And the cost thereof shall be taxed as other costs in the action. When the charge shall have been given by the court, the plaintiff, or party having the burden of proof, may, by himself, or one counsel, address the court and jury upon the law and facts in the case, after which the adverse party may address the court and jury in like manner, by himself and one counsel or by two counsel, and be followed by the party or counsel of the party first addressing the court. No more than two speeches on behalf of the plaintiff or defendant shall be allowed. After the argument shall have been concluded, the jury shall retire to consider

their verdict, and shall take with them to the jury-room, among other matters proper to be taken to their jury-room for further consideration by them, the written charge given them by the court. Either party, at any time before the hearing of a motion for a new trial may except to the instructions given by the court, or any part thereof. [L. '09, p. 184, § 1. Cf. L. '69, p. 54, § 225; Cd. '81, § 221; 2 H. C., § 354; L. '03, p. 119, § 1.]

Cited in 1 Wash. 148; 2 Wash. 366; 3 Wash. 114; 4 Wash. 214; 9 Wash. 544; 15 Wash. 535; 28 Wash. 176; 30 Wash. 253; 31 Wash. 19; 32 Wash. 571; 37 Wash. 115; 50 Wash. 313; 51 Wash. 125; 59 Wash. 687; 61 Wash. 638; 62 Wash. 638; 63 Wash. 400; 68 Wash. 600, 679; 70 Wash. 135, 137; 71 Wash. 203, 459; 74 Wash. 282; 75 Wash. 439; 82 Wash. 80, 622; 83 Wash. 646; 87 Wash. 307.

§ 340. Court may Direct Judgment and Discharge Jury, When.—In all cases tried in the superior court with a jury in which the legal sufficiency of the evidence shall be challenged, and the court shall decide as a matter of law what verdict should be found, the court shall thereupon discharge the jury from further consideration of the case, and direct judgment to be entered in accordance with its decision. [L. '95, p. 64, § 1.]

Cited in 20 Wash. 255, 543; 21 Wash. 331, 513; 22 Wash. 474; 23 Wash. 507, 531; 28 Wash. 176; 31 Wash. 631; 35 Wash. 81; 60 Wash. 272, 273, 275.

§ 341. Special Findings.—Any party may, when the evidence is closed, submit in distinct and concise propositions the conclusions of fact which he claims to be established, or the conclusions of law which he desires to be adjudged, or both. They may be written, and handed to the court, or, at the option of the court, oral, and entered in the judge's minutes. [L. '69, p. 56, § 226; Cd. '81, § 22; 2 H. C., § 355.]

§ 342. Court to Decide What During Trial.—All questions of law, including the admissibility of testimony, the facts preliminary to such admission, and the construction of statutes and other writings, and other rules of evidence, are to be decided by the court, and all discussions of law addressed to it. [L. '69, p. 56, § 227; Cd. '81, § 223; 2 H. C., § 356.]

Cited in 81 Wash. 681; 82 Wash. 622.

§ 343. Jury to Decide All Questions of Fact.—All questions of fact, other than those mentioned in the section preceding, shall be decided by the jury, and all evidence thereon addressed to them. [L. '69, p. 56, § 228; Cd. '81, § 224; 2 H. C., § 357.]

Cited in 30 Wash. 325; 81 Wash. 681; 82 Wash. 622.

§ 344. View by Jury of Premises.—Whenever in the opinion of the court it is proper that the jury should have a view of real property which is the subject of litigation, or of the place in which any material fact occurred, it may order the jury to be conducted in a body, in the custody of a proper officer, to the place, which shall be shown to them by the judge, or by a person appointed by the court for that purpose. While the jury are thus absent, no person other than the judge, or person so appointed, shall speak to them on any subject connected with the trial. [L. '69, p. 56, § 229; Cd. '81, § 225; 2 H. C., § 358.]

Cited in 47 Wash. 245; 66 Wash. 26; 71 Wash. 648.

§ 345. Admonitions to Jury.—The jurors [may be kept together in charge of a proper officer, or may, in the discretion of the court, at any time before the submission of the cause to them, be permitted to separate; in either case they] may be admonished by the court that it is their duty not to converse with any other person, or among themselves, on any subject connected with the trial, or to express any opinion thereon, until the case is finally submitted to them. [L. '69, p. 56, § 230; Cd. '81, § 226; 2 H. C., § 359.]

Cited in 18 Wash. 45; 19 Wash. 275.
Superseded as to the bracketed words.
See infra, § 2159, prohibition against separation in criminal cases.

§ 347. Proceedings in Case Juror Becomes Ill.—If after the formation of the jury, and before verdict, a juror become sick so as to be unable to perform his duty, the court may order him to be discharged. In that case, unless the parties agree to proceed with the other jurors, a new juror may be sworn and the trial begin anew; or the jury may be discharged and a new jury then or afterward formed. [L. '69, p. 56, § 231; Cd. '81, § 227; 2 H. C., § 360.]

§ 348. Juror as Witness.—A juror may be examined by either party as a witness, if he be otherwise competent. If he be not so examined, he shall not communicate any private knowledge or information that he may have of the matter in controversy to his fellow jurors, nor be governed by the same in giving his verdict. [L. '69, p. 57, § 232; '81, § 228; 2 H. C., § 361.]

Cited in 30 Wash. 141.

§ 349. Care of Jury While Deliberating.—After hearing the charge, the jury may either decide in the jury-box or retire for deliberation.

If they retire, they must be kept together in a room provided for them, or some other convenient place, under the charge of one or more officers, until they agree upon their verdict, or are discharged by the court. The officer shall, to the best of his ability, keep the jury thus separate from other persons, without drink, except water, and without food, except ordered by the court. He must not suffer any communication to be made to them, nor make any himself, unless by order of the court, except to ask them if they have agreed upon their verdict, and he shall not, before the verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed upon. [L. '54, p. 166, § 194; L. '69, p. 57, § 233; Cd. '81, § 229; 2 H. C., § 362.]

§ 350. Expenses of Keeping Jury.—If, while the jury are kept together, either during the progress of the trial or after their retirement for deliberation, the court order them to be provided with suitable and sufficient food and lodging, they shall be so provided by the sheriff, at the expense of the county. [L. '69, p. 57, § 234; Cd. '81, § 230; 2 H. C., § 363.]

§ 351. Jury may Take Certain Papers.—Upon retiring for deliberation, the jury may take with them the pleadings in the cause, and all papers which have been received as evidence on the trial (except depositions), or copies of such parts of public records or private documents given in evidence as ought not, in the opinion of the court, to be taken from the person having them in possession. [L. '54, p. 166, § 195; L. '69, p. 57, § 235; Cd. '81, § 231; 2 H. C., § 364.]

Cited in 21 Wash. 72; 33 Wash. 359; 52 Wash. 136; 53 Wash. 540.

§ 352. Jury may have Further Instructions, When. — After the jury have retired for deliberation, if they desire to be informed of any point of law arising in the case, they may require the officer having them in charge to conduct them into court. Upon their being brought into court the information required shall be given in the presence of or after notice to the parties or their attorneys. [Cf. L. '54, p. 166, § 196; L. '69, p. 57, § 236; Cd. '81, § 232; L. '91, p. 103, § 1; 2 H. C., § 365.]

§ 353. Discharge of Jury Without Verdict.—The jury may be discharged by the court on account of the sickness of a juror, or other accident or calamity requiring their discharge, or by consent of both parties, or after they have been kept together until it satisfactorily

appears that there is no probability of their agreeing. [L. '69, p. 58, § 237; Cd. '81, § 233; 2 H. C., § 366.]

Cited in 28 Wash. 622; 29 Wash. 368; 54 Wash. 497.

§ 354. If Jury Discharged, Cause Continued for Trial.—In all cases where a jury are discharged or prevented from giving a verdict, by reason of accident or other cause, during the progress of the trial, or after the cause is submitted to them, the action shall thereafter be for trial anew. [Cf. L. '69, p. 58, § 238; Cd. '81, § 234; L. '91, p. 104, § 2; 2 H. C., § 367.]

Cited in 28 Wash. 622.

§ 355. Recess of Court While Jury are Deliberating.—While the jury are absent the court may adjourn from time to time, in respect to other business, but it is nevertheless to be deemed open for every purpose connected with the cause submitted to the jury until a verdict is rendered or the jury discharged. [Cf. L. '54, p. 166, § 197; L. '69, p. 58, § 239; Cd. '81, § 235; 2 H. C., § 368.]

§ 356. Proceedings When Jury have Agreed.—When the jury have agreed upon their verdict they shall be conducted into court by the officer having them in charge. Their names shall then be called, and if all do not appear, the rest shall be discharged without giving a verdict. [L. '69, p. 58, § 240; Cd. '81, § 236; 2 H. C., § 369.]

§ 357. Manner of Giving Verdict.—If the jury appear, they shall be asked by the court or the clerk whether they have agreed upon their verdict, and if the foreman answer in the affirmative, he shall, on being required, declare the same. [L. '69, p. 58, § 241; Cd. '81, § 237; 2 H. C., § 370.]

§ 358. Ten Jurors may Render Verdict in Civil Cases.—In all trials by juries of twelve in the superior court, except criminal trials, when ten of the jurors agree upon a verdict, the verdict so agreed upon shall be signed by the foreman, and the verdict shall stand as the verdict of the whole jury, and have all the force and effect of a verdict agreed to by twelve jurors. [L. '95, p. 59, § 1; Const., Art. I, § 21.]

Cited in 15 Wash. 441.

§ 359. Jury may be Polled.—When the verdict is returned into court either party may poll the jury, and if ten of the jurors answer that it is the verdict said verdict shall stand. In case ten of the

jurors do not answer in the affirmative the jury shall be returned to the jury-room for further deliberation. [L. '95, p. 59, § 2.]

Cited in 35 Wash. 542; 75 Wash. 572.

§ 360. Correction of Informal Verdict.—If the verdict be informal or insufficient, it may be corrected by the jury under the advice of the court, or the jury may again be sent out. [Cf. L. '69, p. 58, § 242; Cd. '81, § 238; 2 H. C., § 371; the first clause of this section is repealed by L. '95, p. 59, § 2.]

Cited in 3 Wash. 346; 17 Wash. 563.

§ 361. Receiving Verdict and Discharging Jury.—When the verdict is given, and is such as the court may receive, and if no juror disagree or the jury be not again sent out, the clerk shall file the verdict. The verdict is then complete, and the jury shall be discharged from the case. The verdict shall be in writing, and under the direction of the court shall be substantially entered in the journal as of the day's proceedings on which it was given. [L. '69, p. 59, § 243; Cd. '81, § 239; 2 H. C., § 372.]

Cited in 85 Wash. 334.

CHAPTER III.

The Verdict.

§ 362. General and Special Verdict, Defined.—The verdict of a jury is either general or special. A general verdict is that by which the jury pronounces generally upon all or any of the issues either in favor of the plaintiff or defendant. A special verdict is that by which the jury find the facts only, leaving the judgment to the court. [L. '54, p. 167, § 198; Cd. '81, § 240; 2 H. C., § 373.]

Cited in 84 Wash. 413.

§ 363. Verdict in Actions for Specific Personal Property.—In an action for the recovery of specific personal property, if the property has not been delivered to the plaintiff, or the defendant by his answer claim a return thereof, the jury shall assess the value of the property if their verdict be in favor of the plaintiff; or if they find in favor of the defendant, and that he is entitled to a return thereof, they may at the same time assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the detention or taking and withholding such property. [L. '54, p. 167, § 199; Cd. '81, § 241; 2 H. C., § 374.]

Cited in 3 Wash. 251; 5 Wash. 279; 22 Wash. 308; 35 Wash. 401; 38 Wash. 403.

§ 364. Rendition of General or Special Verdict, When.—In every action for the recovery of money only, or specific real property, the jury, in their discretion, may render a general or special verdict. In all other cases, the court may direct the jury to find a special verdict in writing upon all or any of the issues, and in all cases may instruct them, if they render a general verdict, to find upon particular questions of fact to be stated in writing, and may direct a written finding thereon. The special verdict or finding shall be filed with the clerk and entered in the minutes. [L. '54, p. 167, § 200; Cd. '81, § 242; 2 H. C., § 375.]

Cited in 3 Wash. 495; 15 Wash. 82; 17 Wash. 592; 46 Wash. 615; 83 Wash. 178; 84 Wash. 413.

§ 365. Special Verdict Controls.—When a special finding of facts shall be inconsistent with the general verdict, the former shall control the latter, and the court shall give judgment accordingly. [L. '54, p. 167, § 201; Cd. '81, § 243; 2 H. C., § 376.]

Cited in 1 Wash. 522; 15 Wash. 366; 25 Wash. 77; 34 Wash. 41; 68 Wash. 543; 73 Wash. 691.

§ 366. Jury to Assess Amount of Recovery.—When a verdict is found for the plaintiff in an action for the recovery of money, or for the defendant when a setoff for the recovery of money is established beyond the amount of the plaintiff's claim as established, the jury shall also assess the amount of the recovery; they may also, under the direction of the court, assess the amount of the recovery when the court gives judgment for the plaintiff on the pleadings. [Cf. L. '54, p. 167, § 202; Cd. '81, § 244; L. '91, p. 104, § 3; 2 H. C., § 377.]

Cited in 25 Wash. 480.

CHAPTER IV.

Trial by the Court.

§ 367. Findings and Conclusions, How Made.—Upon the trial of an issue of fact by the court, its decisions shall be given in writing and filed with the clerk. In giving the decision, the facts found and the conclusions of law shall be separately stated. Judgment upon the decision shall be entered accordingly. [L. '54, p. 168, § 205; Cd. '81, § 246; 2 H. C., § 379.]

Cited in 1 Wash. 371, 375, 376, 406; 5 Wash. 185; 8 Wash. 590; 9 Wash. 465; 11 Wash. 459; 12 Wash. 562; 21 Wash. 142; 25 Wash. 620; 26 Wash. 455; 27 Wash. 215; 35 Wash. 66; 40 Wash. 3, 4; 47 Wash. 47; 49 Wash. 364; 54 Wash. 593; 79 Wash. 493, 494; 83 Wash. 380; 86 Wash. 478.

§ 368. Order of Proceedings—Findings Deemed Verdict.—The order of proceedings on a trial by the court shall be the same as provided in trials by jury. The finding of the court upon the facts shall be deemed a verdict, and may be set aside in the same manner and for the same reason, as far as applicable, and a new trial granted. [L. '69, p. 60, § 251; Cd. '81, § 247; 2 H. C., § 380.]

Cited in 2 Wash. 190; 20 Wash. 495; 35 Wash. 66; 49 Wash. 364; 67 Wash. 477; 83 Wash. 380.

CHAPTER V.

Trial by Referees.

§ 369. Reference by Consent.—All or any of the issues in the action, whether of fact or law, or both, may be referred upon the written consent of the parties; but either party shall have the right in an action at law, upon an issue of fact, to demand a trial by jury. [Cf. L. '54, p. 168, § 206; Cd. '81, § 248; 2 H. C., § 381.]

Cited in 1 Wash. 405; 16 Wash. 385.

§ 370. Reference Without Consent, When.—When the parties do not consent, the court or judge may, upon the application of either [or of its own motion], direct a reference in all cases formerly cognizable in chancery in which reference might be made:—

1. When the trial of an issue of fact shall require the examination of a long account on either side, in which case the referees may be directed to hear and decide the whole issue, or to report upon any specific question of fact involved therein; or

2. When the taking of an account shall be necessary for the information of the court, before judgment upon an issue of law, or for carrying a judgment or order into effect; or

3. When a question of fact, other than upon the pleadings, shall arise, upon motion or otherwise, in any stage of the action; or

4. When it is necessary for the information of the court in a special proceeding. [L. '54, p. 168, § 207; Cd. '81, § 249; 2 H. C., 382.]

Cited in 57 Wash. 585.

§ 371. To Whom Reference may be Ordered.—A reference may be ordered to any person or persons, not exceeding three, agreed upon by the parties. If the parties do not agree, the court or judge may appoint one or more, not exceeding three. [L. '54, p. 168, § 208; L. '69, p. 61, § 254; Cd. '81, § 250; 2 H. C., § 383.]

§ 372. Qualifications of Referees.—When the appointment of referees is made by the court or judge, each referee shall be,—

1. Qualified as a juror as provided by statute;

2. Competent as juror between the parties;

3. A duly admitted and practicing attorney. [L. '54, p. 169, § 209; Cd. '81, § 251; 2 H. C., § 384.]

§ 373. Challenges to Referees.—When the referees are chosen by the court, each party shall have the same right of challenge as to such referees, which shall be made and determined in the same manner and with like effect as in the formation of juries, except that neither party shall be entitled to a peremptory challenge. [L. '69, § 256; Cd. '81, § 252; 2 H. C., § 385.]

§ 374. Trial by Referees.—Subject to the limitations and directions prescribed in the order of reference, the trial by referees shall be conducted in the same manner as a trial by the court. They shall have the same power to grant adjournments, administer oaths, preserve order, punish all violations thereof upon such trial, compel the attendance of witnesses, and to punish them for nonattendance or refusal to be sworn or testify, as is possessed by the court. [Cf. L. '54, p. 169, § 210; L. '69, p. 62, § 257; Cd. '81, § 253; 2 H. C., § 386.]

§ 375. Referee's Report Shall Contain What.—The report of the referees shall state the facts found, and when the order of reference includes an issue of law, it shall state the conclusions of law separately from the facts. The referees shall file with their report the evidence received upon the trial. If evidence offered by either party shall not be admitted on the trial, and the party offering the same except to the decision rejecting such evidence at the time, the exceptions shall be noted by the referees, and they shall take and receive such testimony and file it with the report. Whatever judgment the court may give upon the report, it shall, when it appears that such evidence was frivolous and inadmissible, require the party at whose instance it was taken and reported to pay all costs and disbursements thereby incurred. [Cf. L. '54, p. 169, 210; L. '69, p. 62, § 258; Cd. '81, § 254; 2 H. C., § 387.]

Cited in 3 Wash. 471; 7 Wash. 123.

§ 376. Filing Report and Proceedings Thereon.—The report shall be filed with the clerk. Either party may, within such time as may be prescribed by the rules of the court, or by special order, move to set the same aside, or for judgment thereon, or such order or

proceeding as the nature of the case may require. [Cf. L. '69, p. 62, § 259; Cd. '81, § 255; 2 H. C., § 388.]

§ 377. Judgment on Referee's Report.—The court may affirm or set aside the report, either in whole or in part. If it affirms the report, it shall give judgment accordingly. If the report be set aside, either in whole or in part, the court may make another order of reference, as to all or so much of the report as is set aside, to the original referees or others, or it may find the facts and determine the law itself and give judgment accordingly. Upon a motion to set aside a report, the conclusions thereof shall be deemed and considered as the verdict of the jury. [L. '69, p. 62, § 260; Cd. '81, § 256; 2 H. C., § 389.]

Cited in 1 Wash. 405, 407; 2 Wash. 341; 5 Wash. 731.

CHAPTER VI.

Agreed Cases.

§ 378. Submission of Controversies Without Action.—Parties to a question in difference which might be the subject of a civil action may, without action, agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any court which would have jurisdiction if an action had been brought. But it must appear by affidavit that the controversy is real, and the proceedings in good faith to determine the rights of the parties. The court shall thereupon hear and determine the case and render judgment thereon as if an action were pending. [L. '69, p. 73, § 300; Cd. '81, § 298; 2 H. C., § 421.]

Cited in 33 Wash. 540; 77 Wash. 496, 499.

§ 379. Judgment as in Other Cases.—Judgment shall be entered in the judgment-book as in other cases, but without costs for any proceedings prior to the trial. The case, the submission, and a copy of the judgment shall constitute the judgment-roll. [L. '69, p. 74, § 301; Cd. '81, § 299; 2 H. C., § 422.]

§ 380. Judgments Enforced as in Other Cases.—The judgment may be enforced in the same manner as if it had been rendered in an action, and shall be in the same manner subject to appeal. [L. '69, p. 74, § 302; Cd. '81, § 300; 2 H. C., § 423.]

CHAPTER VII.

Exceptions.

§ 381. Definition.—An exception is a claim of error in a ruling or decision of a court, judge or other tribunal, or officer exercising judicial functions, made in the course of an action or proceeding or after judgment therein. [L. '93, p. 111, § 1.]

Cited in 3 Wash. 122; 7 Wash. 362, 363; 9 Wash. 299, 465, 573; 10 Wash. 154, 165; 11 Wash. 336, 410; 12 Wash. 26, 68, 336; 28 Wash. 615; 74 Wash. 476; 83 Wash. 523.

For former laws on the subject of this chapter, see L. '54, p. 169, §§ 211–214; L. '77, §§ 261–267; Cd. '81, §§ 257–263; L. '85, pp. 70–73, §§ 1–8; L. '90, p. 333; L. '91, p. 348, §§ 25–27; 2 H. C., §§ 390–398.

§ 382. When to be Taken.—It shall not be necessary or proper to take or enter an exception to any ruling or decision mentioned in the last section which is embodied in a written judgment, order or journal entry in the cause. But this section shall not apply to the report of a referee or commissioner, or to findings of fact or conclusions of law in a report or decision of a referee or commissioner, or in a decision of a court or judge upon a cause or part of a cause, either legal or equitable, tried without a jury. [L. '93, p. 112, § 2.]

Cited in 13 Wash. 202; 29 Wash. 43; 32 Wash. 452; 34 Wash. 584; 39 Wash. 49; 50 Wash. 697; 59 Wash. 182; 64 Wash. 352; 74 Wash. 476; 82 Wash. 559.

§ 383. Manner of Taking in Cases Tried by Court.—Exceptions to the report of a referee or commissioner, or to findings of fact or conclusions of law in a report or decision of a referee or commissioner, or in a decision of a court or judge upon a cause or part of a cause, either legal or equitable, tried without a jury, may be taken by any party, either by stating to the judge, referee or commissioner when the report or decision is signed, that such party excepts to the same, specifying the part or parts excepted to (whereupon the judge, referee or commissioner, shall note the exceptions in the margin or at the foot of the report or decision); or by filing like written exceptions within five days after the filing of the report or decision, or, where the report or decision is signed subsequently to the hearing and in the absence of the party excepting, within five days after the service on such party of a copy of such report or decision or of written notice of the filing thereof. [L. '93, p. 112, § 3.]

Cited in 9 Wash. 466; 12 Wash. 26, 68, 113; 15 Wash. 137; 16 Wash. 337; 17 Wash. 291; 23 Wash. 260; 26 Wash. 8; 27 Wash. 698; 29 Wash. 20; 31 Wash. 174; 33 Wash. 60; 34 Wash. 584; 40 Wash. 123; 56 Wash. 207; 68 Wash. 484; 75 Wash. 113; 83 Wash. 629.

§ 384. Manner of Taking in Jury Cases.—Exceptions to a charge to a jury, or to a refusal to give as a part of such charge instructions requested in writing, may be taken by any party by stating to the court, after the jury shall have retired to consider of their verdict, and, if practicable, before the verdict has been returned, that such party excepts to the same, specifying by numbers of paragraphs or otherwise the parts of the charge excepted to, and the requested instructions the refusal to give which is excepted to; whereupon the judge shall note the exceptions in the minutes of the trial, or cause the stenographer (if one is in attendance) so to note the same. [L. '93, p. 112, § 4.]

Cited in 9 Wash. 7; 15 Wash. 244, 260; 29 Wash. 473; 37 Wash. 580; 53 Wash. 189; 56 Wash. 468; 59 Wash. 687; 71 Wash. 459; 72 Wash. 319.

§ 385. How Entered in Minutes.—Exceptions to any ruling upon an objection to the admission of evidence, offered in the course of a trial or hearing, need not be formally taken, but the question put or other offer of evidence, together with the objection thereto and the ruling thereon, shall be entered by the court, judge, referee or commissioner (or by the stenographer, if one is in attendance) in the minutes of the trial or hearing, and such entry shall import an exception by the party against whom the ruling was made. [L. '93, p. 112, § 5.]

Cited in 16 Wash. 354; 52 Wash. 183.

§ 386. Manner of Taking and Entry.—Exceptions to any ruling or decision made in the course of a trial or hearing, or in the progress of a cause, except those to which it is provided in this chapter that no exception need be taken and those to which some other mode of exception is in this chapter prescribed, may be taken by any party by stating to the court, judge, referee or commissioner making the ruling or decision, when the same is made, that such party excepts to the same; whereupon such court, judge, referee or commissioner shall note the exception in the minutes of the trial, hearing or cause, or shall cause the stenographer (if one is in attendance) so to note the same. [L. '93, p. 113, § 6.]

Cited in 42 Wash. 328.

§ 387. Review on Appeal.—Alleged error in any order, ruling or decision to which it is provided in this chapter that no exception need be taken, or in any report, finding of fact, conclusion of law, charge, refusal to charge, or other ruling or decision which shall have been

excepted to by any party as prescribed in this chapter, shall be reviewed by the supreme court, upon an appeal taken by the party against whom any such ruling or decision was made, or in which he has joined, from any other appealable order or from the final judgment in the cause, where such error, if found to exist, would materially affect the correctness of the judgment or order appealed from: Provided, the ruling or decision, the alleged error in which is sought to be so reviewed, together with the exception thereto, if any, was a matter of record in the cause in the first instance, or before the hearing of the appeal has been brought into the record in the manner prescribed in this chapter. And any such alleged error shall also be considered in the court wherein or by a judge whereof the same was committed, upon the hearing and decision of a motion for a new trial, a motion for judgment notwithstanding a verdict, or a motion to set aside a referee's report or decision, made by a party against whom the ruling or decision to be reviewed was made, whether the alleged erroneous ruling or decision is a part of the record or not, where the alleged error, if found to exist, would materially affect the decision of the motion. But no exception to any appealable order or to any final judgment shall be necessary or proper in order to secure a review of such order or judgment upon direct appeal therefrom. [L. '93, p. 113, § 7.]

Cited in 8 Wash. 185; 12 Wash. 26, 68; 31 Wash. 560; 81 Wash. 140.

§ 388. Bill of Exceptions, What Constitutes.—Any party to any action or proceeding may, at any stage thereof, have any rulings or decisions of the court, or a judge, referee or commissioner thereof, in the cause, together with the necessary evidence, papers or proceedings connected therewith or on which the same were based, and the exceptions thereto, if any, not already a part of the record in the cause, or so much of all or any thereof as is not already a part of the record, made a part of the record in the cause, by the certifying of a bill of exceptions as in this chapter provided. And any such party may, after the making of an appealable order or the final judgment in the cause, have all rulings, decisions, evidence, papers, proceedings and exceptions in the cause, or so much thereof as may be material to an appeal from such appealable order or from the final judgment, as the case may be, not already a part of the record, made a part of the record in the cause by the certifying of a statement of facts, as in this chapter provided. The certifying of a bill of exceptions or statement of facts shall not prevent the subsequent certifying of other bills of exceptions or statements of facts, or both, con-

prising other matters in the cause, at the instance of the same or another party; but only one bill of exceptions or statement of facts can be settled or certified after the rendition of the final judgment in the cause. [L. '93, p. 114, § 8.]

Cited in 15 Wash. 94; 21 Wash. 368; 47 Wash. 596; 58 Wash. 500; 78 Wash. 529; 80 Wash. 1, 2, 700; 81 Wash. 133; 82 Wash. 147.

§ 389. Bill of Exceptions—Amendments—Notice to Settle.—A party desiring to have a bill of exceptions or statement of facts certified must prepare the same as proposed by him, file it in the cause and serve a copy thereof on the adverse party, and shall also serve written notice of the filing thereof on any other party who has appeared in the cause. Within ten days after such service any other party may file and serve on the proposing party, any amendments which he may propose to the bill or statement. Either party may then serve upon the other a written notice that he will apply to the judge of the court before whom the cause is pending or was tried, at a time and place specified, the time to be not less than three nor more than ten days after service of the notice, to settle and certify the bill or statement; and at such time and place, or at any other time or place specified in an adjournment made by order or stipulation, the judge shall settle and certify the bill or statement. If the judge is absent at the time named in a notice or fixed by adjournment, a new notice may be served. If no amendment shall be served within the time aforesaid, the proposed bill or statement shall be deemed agreed to and shall be certified by the judge at the instance of either party, at any time, without notice to any other party on proof being filed of its service, and that no amendments have been proposed; and if amendments be proposed and excepted [accepted], the bill or statement as so amended shall likewise be certified on proof being filed of its service and the service and acceptance of the amendments. [L. '93, p. 114, § 9.]

Cited in 7 Wash. 362, 363; 9 Wash. 540, 543; 10 Wash. 153; 11 Wash. 70, 410; 15 Wash. 425; 19 Wash. 375; 25 Wash. 154; 27 Wash. 328; 30 Wash. 62; 31 Wash. 189; 32 Wash. 72, 534; 35 Wash. 118, 407; 40 Wash. 432, 465, 547; 44 Wash. 345; 47 Wash. 596; 49 Wash. 407; 51 Wash. 240; 56 Wash. 346; 62 Wash. 346; 63 Wash. 443, 445; 67 Wash. 369; 78 Wash. 529; 80 Wash. 1, 2, 700; 81 Wash. 133; 82 Wash. 147; 85 Wash. 69.

§ 390. How Written Evidence Certified.—Depositions and other written evidence on file shall be appropriately referred to in the proposed bill or statement, and when it is certified the same or copies thereof, if the judge so direct, shall be attached to the bill or state-

ment and shall thereupon become a part thereof. [L. '93, p. 115, § 10.]

Cited in 11 Wash. 78, 602; 32 Wash. 532; 40 Wash. 582; 80 Wash. 284, 286; 86 Wash. 250.

§ 391. Certificate, What to Contain—How Signed.—The judge shall certify that the matters and proceedings embodied in the bill or statement, as the case may be, are matters and proceedings occurring in the cause and that the same are thereby made a part of the record therein; and, when such is the fact, he shall further certify that the same contains all the material facts, matters and proceedings heretofore occurring in the cause and not already a part of the record therein, or (as the case may be) such thereof as the parties have agreed, to be all that are material therein. The certificate shall be signed by the judge, but need not be sealed; and thereupon all the matters and proceedings embodied in the bill of exceptions or statement of facts, as the case may be, shall become and thenceforth remain a part of the record in the cause, for all the purposes thereof and of any appeal therein. The judge may correct or supplement his certificate according to the fact, at any time before an appeal is heard. And if the judge refuse to settle or certify a bill of exceptions or statement of facts, or to correct or supplement his certificate thereto, in a proper case, he may be compelled so to do by a mandate issued out of the supreme court, either pending an appeal or prior thereto. [L. '93, p. 115, § 11.]

Cited in 7 Wash. 363, 654; 9 Wash. 542, 543; 26 Wash. 162; 32 Wash. 532; 34 Wash. 529; 35 Wash. 524; 36 Wash. 45; 38 Wash. 201; 45 Wash. 693; 83 Wash. 685; 85 Wash. 69, 454; 86 Wash. 503.

§ 392. How Certified upon Change or Death of Judge.—If the judge before whom the cause was pending or tried shall from any cause have ceased to be such judge he shall, notwithstanding, settle and certify, as the late judge, any bill of exceptions or statement of facts that it would be proper for him to settle and certify if he were still such judge, and such acts on his part shall have the same effect as if he were still in office; and he may be compelled by mandate so to do, as if still in office. If such judge shall die or remove from the state while in office or afterward, within the time which a bill of exceptions or statement of facts, in a cause that was pending or tried before him, might be settled and certified under the provisions of this chapter, and before having certified such bill or statement, such bill or statement may be settled by stipulation of the parties with the same effect as if duly settled and certified by such judge

while still in office. But if the parties cannot agree, and if such judge, when removed from the state, does not attend within the state and settle and certify a bill of exceptions or statement of facts in case one has been duly proposed, his successor in office shall settle and certify such bill or statement in the manner in this chapter provided, and in so doing he shall be guided, so far as practicable, by the minutes taken by his predecessor in office, or by the stenographer, if one was in attendance on the court or judge, and may, in order to determine any disputed matter not sufficiently appearing upon such minutes, examine under oath the attorneys in the cause who were present at the trial or hearing, or any of them. [L. '93, p. 116, § 12.]

Cited in 7 Wash. 364; 19 Wash. 21; 26 Wash. 164; 54 Wash. 85.

§ 393. When to be Filed—Effect of Irregularity.—A proposed bill of exceptions or statement of facts must be filed and served either before or within thirty days after the time begins to run within which an appeal may be taken from the final judgment in the cause, or (as the case may be) from an order with a view to an appeal from which the bill or statement is proposed: Provided, that the time herein prescribed may be enlarged either before or after its expiration, once or more, but not for more than sixty days additional in all, by stipulation of the parties, or for good cause shown and on such terms as may be just, by an order of the court or judge wherein or before whom the cause is pending or was tried, made on notice to the adverse party. And the certifying of a bill of exceptions or statement of facts provided for by this chapter, and the filing and service of the proposed bill or statement, the notice of application for the settlement thereof, and all other steps and proceedings leading up to the making of the certificate, shall be deemed steps and proceedings in the cause itself, resting upon the jurisdiction originally acquired by the court in the cause, and no irregularity or failure to pursue the steps prescribed by this chapter on the part of any party, or the judge, shall affect the jurisdiction of the judge to settle or certify a proper bill of exceptions or statement of facts. [L. '93, p. 116, § 13.]

Cited in 8 Wash. 587; 9 Wash. 574; 21 Wash. 369; 25 Wash. 146; 26 Wash. 306; 27 Wash. 34; 30 Wash. 62; 31 Wash. 217; 32 Wash. 318, 533; 33 Wash. 198; 35 Wash. 65, 406; 38 Wash. 674; 51 Wash. 474; 61 Wash. 179; 67 Wash. 369; 74 Wash. 331, 602; 77 Wash. 111; 80 Wash. 3.

§ 394. Return of Bill—Extension of Time for Brief.—The copy of a proposed bill or statement which is served as in this chapter pre-

scribed, shall be returned to the party serving the same upon the bill or statement being certified, if he has appealed to the supreme court, or upon his thereafter appealing, for his use in preparing his brief on the appeal, and the time limited by any law or rule of court for the service and filing of his brief shall be enlarged by any delay in returning such copy as herein required to the extent of such delay; and when he served his brief he shall return such copy to the party on whom it was originally served, and his brief shall not be deemed served till such copy is so returned by him. [L. '93, p. 117, § 14.]

Cited in 31 Wash. 218; 78 Wash. 529; 80 Wash. 1, 2, 700; 81 Wash. 133; 82 Wash. 147; 85 Wash. 450.

§ 395. What Shall be Part of Record.—All reports of referees or commissioners, with the testimony and other evidence returned into court therewith, all findings of fact and conclusions of law made in writing by a judge, referee or commissioner and signed by him, all charges to a jury made wholly in writing, all instructions requested in writing to be given as part of a charge, all verdicts, general or special, and all rulings and decisions embodied in a written judgment, order or journal entry in the cause, together with all exceptions, if any, taken to any thereof, as well as all papers and matters hitherto deemed a part of the record, shall be deemed and are hereby declared to become, upon being filed in the cause, or, as the case may be, embodied in a journal entry, a part of the record in the cause, for all the purposes thereof and of any appeal therein; and it shall not be necessary or proper, for any purpose, to embody the same in any bill of exceptions or statement of facts. [L. '93, p. 117, § 15.]

Cited in 12 Wash. 324; 14 Wash. 545; 33 Wash. 212; 48 Wash. 299; 54 Wash. 451; 59 Wash. 254; 70 Wash. 135, 136; 72 Wash. 319; 75 Wash. 439; 78 Wash. 529; 80 Wash. 1, 2, 285, 700; 81 Wash. 133; 82 Wash. 147; 86 Wash. 250.

§ 396. How Certified When Cases Consolidated.—When two or more causes shall have been consolidated it shall not be necessary, for any purposes of an appeal which concerns only one or more, and not all of the original causes, to embody in a bill of exceptions or statement of facts any fact, matter or proceeding that relates solely to an original cause with which the appeal is not concerned; and the bill or statement shall be certified as in this act prescribed, notwithstanding the omission therefrom of such facts, matters and proceedings. [L. '93, p. 118, § 16.]

§ 397. Construction of Chapter.—This chapter shall apply to and govern all civil actions and proceedings, both legal and equitable,

and all criminal causes, in the superior courts, but shall not apply to courts of justices of the peace or other inferior courts or tribunals from which an appeal does not lie directly to the supreme court. This chapter shall govern proceedings had after it shall take effect, in actions then pending as well as those in actions thereafter begun; but it shall not affect any right acquired or proceeding had prior to the time when it shall take effect, nor restore any right or enlarge any time then already lost or expired. And except as above provided all acts and parts of acts inconsistent with the provisions of this act are hereby repealed. [L. '93, p. 118, §§ 17, 18.]

Cited in 8 Wash. 586; 9 Wash. 575.

CHAPTER VIII.

New Trials.

§ 398. New Trial, Defined.—A new trial is a re-examination of an issue [of fact] in the same court after a trial and decision by a jury, court, or referees. [L. '54, p. 170, § 215; Cd. '81, § 275; 2 H. C., § 399.]

Cited in 12 Wash. 2; 17 Wash. 602; 26 Wash. 329; 28 Wash. 624; 35 Wash. 66; 67 Wash. 477; 68 Wash. 200; 75 Wash. 620; 86 Wash. 111.

§ 399. When New Trial may be Granted.—The former verdict or other decision may be vacated and a new trial granted, on the motion of the party aggrieved, for any of the following causes materiaHy affecting the substantial rights of such party:

1. Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion, by which such party was prevented from having a fair trial;

2. Misconduct of prevailing party or jury; and whenever any one or more of the jurors shall have been induced to assent to any general or special verdict to a finding on any question or questions submitted to the jury by the court, other and different from his own conclusions, and arrived at by a resort to the determination of chance or lot, such misconduct may be proved by the affidavits of one or more of the jurors;

3. Accident or surprise which ordinary prudence could not have guarded against;

4. Newly discovered evidence, material for the party making the application, which he could not with reasonable diligence have discovered and produced at the trial;

5. Excessive or inadequate damages appearing to have been given under the influence of passion or prejudice;

6. Error in the assessment of the amount of recovery, whether too large or too small, when the action is upon a contract, or for the injury or detention of property;

7. Insufficiency of the evidence to justify the verdict or the decision, or that it is against law;

8. Error in law occurring at the trial and excepted to at the time by the party making the application. [L. '09, p. 53, § 1. Cf. L. '54, p. 170, § 216; L. '69, p. 67, § 278; Cd. '81, § 276; 2 H. C., § 400.]

Cited in 3 Wash. 21; 8 Wash. 185; 9 Wash. 53; 11 Wash. 34; 12 Wash. 2, 617; 15 Wash. 440; 18 Wash. 347; 19 Wash. 280; 22 Wash. 682; 26 Wash. 329; 28 Wash. 624; 34 Wash. 335; 35 Wash. 67; 42 Wash. 8, 481; 53 Wash. 360; 54 Wash. 257; 59 Wash. 312; 62 Wash. 66; 66 Wash. 460; 69 Wash. 21; 75 Wash. 39, 433, 435; 79 Wash. 183; 80 Wash. 473; 81 Wash. 29; 82 Wash. 328, 486; 86 Wash. 111; 87 Wash. 549, 550, 551.

§ 400. Specification of Grounds for New Trial.—In no case of motion for a new trial hereafter made in the courts of this state shall it be necessary to specify the grounds thereof, otherwise than in the language of the last preceding section, specifying the grounds upon which a motion for a new trial may be made. [L. '88, p. 30, § 1; 2 H. C., § 401.]

Cited in 3 Wash. 21.

§ 401. When Affidavits may be Used.—The motion for a new trial shall state the grounds or causes for which a new trial is asked, and if made for any of the causes mentioned in the first, second, third, or fourth subdivision of section 399, the facts upon which it is based may be shown by affidavit. [Cd. '81, § 278; 2 H. C., § 403.]

Cited in 2 Wash. 562; 75 Wash. 433, 435; 82 Wash. 486.

§ 402. Notice and Motion, Practice.—The party moving for a new trial must, within two days after the verdict of a jury, if the action was tried by a jury, or two days after notice in writing of the decision of the court or referee, if the action was tried without a jury, file with the clerk, and serve upon the adverse party, his motion for a new trial, designating the grounds upon which it will be made. If the motion is made upon affidavits, the moving party must, within two days after serving the motion, or such further time as the court in which the action is pending, or the judge thereof may allow, file such affidavits with the clerk, and serve a copy thereof upon the adverse party, who shall have two days to file counter affidavits, or

such further time as the court may allow, a copy of which must be served upon the moving party. [Cf. L. '69, p. 68, § 282; Cd. '81, §§ 279, 280; L. '91, p. 102, § 1; 2 H. C., § 404; L. '97, p. 13, § 1.]

Cited in 11 Wash. 413; 17 Wash. 126; 26 Wash. 3; 35 Wash. 67; 40 Wash. 39; 57 Wash. 599; 67 Wash. 477; 87 Wash. 549.

§ 403. What Affidavits for Motion must Show.—If the motion be supported by affidavits, and the cause be newly discovered evidence, the affidavits of any witness or witnesses, showing what their testimony will be, shall be produced, or good reasons shown for their nonproduction. [L. '54, p. 170, § 219; L. '69, p. 68, § 284; Cd. '81, § 282; L. '91, p. 103, § 2; 2 H. C., § 405.]

Cited in 39 Wash. 268.

CHAPTER IX.

Judgments in General.

§ 404. Judgment, Defined.—A judgment is the final determination of the rights of the parties in the action. [L. '54, p. 171, § 220; Cd. '81, § 283; 2 H. C., § 406.]

Cited in 25 Wash. 656; 31 Wash. 186; 53 Wash. 427; 74 Wash. 480.
See supra, § 278, judgment on pleadings for want of reply.

§ 405. Order and Motion, Defined.—Every direction of a court or judge, made or entered in writing, not included in a judgment, is denominated an order. An application for an order is a motion. [L. '97, p. 10, § 1.]

Cited in 23 Wash. 249; 25 Wash. 656; 31 Wash. 186.

§ 406. Judgment may be Given for or Against Any of the Parties. Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants; and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side, as between themselves. [L. '54, p. 171, § 221; Cd. '81, § 284; 2 H. C., § 407.]

Cited in 11 Wash. 563, 564; 49 Wash. 407; 63 Wash. 89, 92; 70 Wash. 255; 83 Wash. 176.

§ 407. Judgments Against Several Defendants.—In an action against several defendants, the court may, in its discretion, render judgment against one or more of them, whenever a several judgment is proper, leaving the action to proceed against the others. [L. 54, p. 171, § 222; Cd. '81, § 285; 2 H. C., § 408.]

Cited in 49 Wash. 407; 59 Wash. 464; 63 Wash. 89, 92.

CHAPTER X.

Judgment of Nonsuit.

§ 408. Judgment of Dismissal or Nonsuit, When Granted.—An action may be dismissed, or a judgment of nonsuit entered, in the following cases:—

1. By the plaintiff himself, at any time before the jury retire to consider their verdict, unless setoff be interposed as a defense, or unless the defendant sets up a counterclaim to the specific property or thing which is the subject matter of the action;

2. By either party, upon the written consent of the other;

3. By the court, when the plaintiff fails to appear on trial, and the defendant appears and asks for a dismissal;

4. By the court, when, upon the trial and before the final submission of [the] case, the plaintiff abandons it;

5. By the court, on the refusal or neglect of the plaintiff to make the necessary parties, after having been ordered by the court;

6. By the court, on the application of some of the defendants, where there are others whom the plaintiff fails to prosecute with diligence;

7. By the court, for disobedience of the plaintiff to an order concerning the proceedings in the action;

8. By the court, upon motion of the defendant, when, upon the trial, the plaintiff fails to prove a sufficient cause for the jury. [L. '54, p. 171, § 223; Cd. '81, § 286; 2 H. C., § 409.]

Cited in 2 Wash. 542; 3 Wash. 141, 638; 4 Wash. 119, 326, 373, 652, 810; 7 Wash. 408; 8 Wash. 636; 15 Wash. 430; 17 Wash. 602; 20 Wash. 126; 23 Wash. 445; 24 Wash. 325; 25 Wash. 263, 666; 33 Wash. 540; 43 Wash. 521; 44 Wash. 405; 46 Wash. 82; 49 Wash. 515; 53 Wash. 359, 428; 58 Wash. 305; 60 Wash. 271, 274, 534; 64 Wash. 486.

§ 409. All Other Judgments are on the Merits.—In every case other than those mentioned in the last section, the judgment shall be rendered on the merits. [L. '54, p. 171, § 224; Cd. '81, § 287; 2 H. C., § 410.]

Cited in 60 Wash. 534.

§ 410. Effect of Judgment of Nonsuit.—When a judgment of nonsuit is given, the action is dismissed; but such judgment shall not have the effect to bar another action for the same cause. [L. '69, p. 70, § 290; Cd. '81, § 288; 2 H. C., § 411.]

Cited in 46 Wash. 82; 60 Wash. 275, 535.

CHAPTER XI.

Judgment by Default.

§ 411. Judgment for Failure to Answer.—Judgment may be had if the defendant fail to answer to the complaint, as follows:—

1. In any action arising on contract for the recovery of money only, the plaintiff may file with the clerk proof of personal service of the summons and complaint on one or more of the defendants. The court shall thereupon enter judgment for the amount claimed against the defendant or defendants, or against one or more of the several defendants, in the cases provided for in section 236. Where the defendant, by his answer, in any such action, shall not deny the plaintiff's claim, but shall set up a counterclaim amounting to less than the plaintiff's claim, judgment may be had by the plaintiff for the excess of said claim over the said counterclaim;

2. In other actions the plaintiff may, upon the like proof, apply to the court after the expiration of the time for answering, for the relief demanded in the complaint. If the taking of an account or of the proof of any fact be necessary to enable the court to give judgment, or to carry the judgment into effect, the court may take the account or hear the proof, or may, in its discretion, order a reference for that purpose. Where the action is for the recovery of damages, in whole or in part, the court may order the damages to be assessed by a jury; or if to determine the amount of damages the examination of a long account be necessary, by a reference as above provided. If the defendant give notice of appearance in the action before the expiration of the time for answering, he shall be entitled to five days' notice of the time and place of application to the court for the relief demanded in the complaint;

3. In [an] action where the service of the summons was by publication, the plaintiff, upon the expiration of the time for answering, may, upon proof of service by publication, apply for judgment; and the court must thereupon require proof of the demand mentioned in the complaint, and must require the plaintiff or his agent to be examined on oath respecting any payments that have been made to the plaintiff, or to anyone for his use on account of such demand, and may render judgment for the amount which he is entitled to recover, or for such other relief as he may be entitled to. [Cf. L. '54, p. 171, § 225; L. '69, p. 70, § 291; L. '77, p. 59, § 293; Cd. '81, § 289; 2 H. C., § 412.]

Cited in 55 Wash. 403.

See supra, § 278, judgment for failure to plead to new matter.
See infra, § 1230, judgment for failure to answer interrogatories.

§ 412. Court may Set Aside Default.—The court may, in its discretion, before final judgment, set aside any default, upon affidavit showing good and sufficient cause, and upon such terms as may be deemed reasonable. [L. '54, p. 171, § 225, subd. 4; L. '69, p. 72, § 292; Cd. '81, § 290; 2 H. C., § 413.]

Cited in 2 Wash. 543; 6 Wash. 35; 39 Wash. 375.

CHAPTER XII.

Judgment by Confession.

§ 413. When Judgment may be Given on Confession.—On the confession of the defendant, with the assent of the plaintiff or his attorney, judgment may be given against the defendant in any action, before or after answer, for any amount or relief not exceeding or different from that demanded in the complaint. [Cf. L. '54, pp. 172, 173, §§ 226–228; L. '69, p. 72, § 293; Cd. '81, § 291; 2 H. C., § 414.]

Cited in 10 Wash. 501.

§ 414. How Corporations and Minors may Confess Judgment.—When the action is against the state, a county or other public corporation therein, or a private corporation or a minor, the confession shall be made by the person who, at the time, sustains the relation to such state, corporation, county, or minor as would authorize the service of a notice [summons] upon him; or in the case of a minor, if a guardian for the action has been appointed, then by such guardian; in all other cases, the confession shall be made by the defendant in person. [L. '69, p. 72, § 294; Cd. '81, § 292; 2 H. C., § 415.]

§ 415. Judgment by Confession Against Persons Jointly Liable.—When the action is upon a contract, and against one or more defendants jointly liable, judgment may be given, on the confession of one or more defendants, against all the defendants thus jointly liable, whether such defendants have been served or not, to be enforced only against their joint property and against the joint and separate property of the defendant making the confession. [L. '69, p. 72, § 295; Cd. '81, § 293; 2 H. C., § 416.]

Cited in 7 Wash. 539; 12 Wash. 197; 54 Wash. 183.

§ 416. Confession, How Made.—The confession and assent thereto shall be in writing and subscribed by the parties making the same,

and acknowledged by each before some officer authorized to take acknowledgments of deeds. [L. '69, p. 72, § 296; L. '77, p. 60, § 298; Cd. '81, § 294; 2 H. C., § 417.]

Cited in 10 Wash. 501.

§ 417. Judgment by Confession Without Action.—A judgment by confession may be entered without action, either for money due or to become due, or to secure any person against contingent liability on behalf of the defendant, or both, in the manner prescribed by this chapter. [L. '69, p. 73, § 297; Cd. '81, § 295; 2 H. C., § 418.]

Cited in 10 Wash. 501; 13 Wash. 77.

§ 418. Requisites of Statement.—A statement in writing shall be made, signed by the defendant and verified by his oath, to the following effect:—

1. It shall authorize the entry of judgment for a specified sum;

2. If it be for money due or to become due, it shall state concisely the facts out of which the indebtedness arose, and shall show that the sum confessed to be due is justly due or to become due;

3. If it be for the purpose of securing the plaintiff against a contingent liability, it shall state concisely the facts constituting the liability, and show that the sum confessed thereto does not exceed the same. [L. '69, p. 73, § 298; Cd. '81, § 296; 2 H. C., § 419.]

Cited in 10 Wash. 500, 504; 13 Wash. 77.

§ 419. Proceeding in Court on Presentation of Statement.—The statement must be presented to the superior court, or a judge thereof, and if the same be found sufficient, the court or judge shall indorse thereon an order that judgment be entered by the clerk, whereupon it may be filed in the office of the clerk, who shall enter a judgment for the amount confessed, with costs. Execution may be issued and enforced thereon in the same manner as upon judgments in other cases. [Cf. L. '69, p. 73, § 299; L. '77, p. 61, § 301; Cd. '81, § 297; 2 H. C., § 420.]

Cited in 10 Wash. 501.

CHAPTER XIII.

Arbitration and Judgment Thereon.

§ 420. Disputes may be Submitted to Arbitration.—All persons desirous to end, by arbitration, any controversy, suit, or quarrel, except such as respect the title to real estate, may submit their difference to the award or umpirage of any person or persons mutually

selected. [L. '60, p. 324, § 1; L. '63, p. 81, § 231; Cd. '81, § 264; 2 H. C., § 424.]

Cited in 27 Wash. 39; 70 Wash. 348; 85 Wash. 367, 368; 203 Pac. 947

§ 421. Agreement to be in Writing.—Said agreement to arbitrate shall be in writing, signed by the parties, and may be by bond in any sum, conditioned that the parties entering into said submission shall abide the award. [L. '60, p. 324, § 2; Cd. '81, § 265; 2 H. C., § 425.]

§ 422. How Arbitration Conducted.—The said arbitrators shall be duly sworn to try and determine the cause referred to them, and a just award make out, under the hands and seals of a majority of them, agreeably to the terms of the submission. Said award, together with the written agreement to submit, shall be sealed up by the arbitrators and delivered to the party in whose favor it shall be made, who shall deliver the same, without breaking the seal, to the clerk of the superior court of the county wherein said arbitration is held, who shall enter the same on record in his office. A copy of the award, signed by said arbitrators, or a majority of them, shall also be delivered to the party in whose favor it is rendered, who shall, if the matter be not settled, serve a copy of the same on the adverse party, and if no exceptions be filed against the same within twenty days after such service, judgment shall be entered as upon the verdict of a jury, and execution may issue thereon, and the same proceedings [may be had] upon said award, with like effect as though said award were a verdict in a civil action. [Cf. L. '63, p. 324, § 3; Cd. '81, § 266; L. '91, p. 104, § 1; 2 H. C., § 426.]

Cited in 5 Wash. 207, 208, 210, 211; 34 Wash. 48; 85 Wash. 367, 368.

§ 423. Compensation of Arbitrators—Penalty.—The arbitrators chosen under the provisions of this chapter shall each be allowed three dollars per day, to be taxed with other costs of suit, but if either party fail to appear on the day agreed upon for the arbitrators to meet, said party shall be liable for all costs accruing that day, unless his absence was unavoidable, and shall be so established to the satisfaction of said arbitrators. And any arbitrator failing to attend on the day appointed, unless delayed by sickness or unavoidable accident, shall forfeit and pay the sum of five dollars to the school fund of the county, to be recovered by action before a justice of the peace, in the name of the county commissioners of the county. [Cf. L. '60, p. 324, § 4; L. '69, p. 65, § 269; Cd. '81, § 267; 2 H. C., § 427.]

§ 424. Exceptions to Award.—The party against whom an award may be made may except in writing thereto for either of the following causes:—

1. That the arbitrators or umpire misbehaved themselves in the case;

2. That they committed an error in fact or law;

3. That the award was procured by corruption or other undue means. [L. '60, p. 324, § 5; Cd. '81, § 268; 2 H. C., § 428.]

Cited in 5 Wash. 207–211; 13 Wash. 355, 356; 70 Wash. 349.

§ 425. Proceedings of Court on Such Exceptions.—If upon exceptions filed it shall appear to the said superior court that the arbitrators have committed error in fact or law, the court may refer the cause back to said arbitrators, directing the amendment of said award forthwith, returnable to said court, and on the failure so to correct said proceedings, the court shall be possessed of the case and proceed to its determination. [Cf. L. '60, p. 325, § 6; Cd. '81, § 269; L. '91, p. 105, § 2; 2 H. C., § 429.]

Cited in 5 Wash. 207–211; 13 Wash. 355, 356.

§ 426. Powers of Arbitrators.—Arbitrators, or a majority of them, shall have power,—

1. To compel the attendance of witnesses duly notified by either party, and to enforce from either party the production of all such books, papers, and documents as they may deem material to the cause;

2. To administer oaths or affirmations to witnesses;

3. To adjourn their meetings from day to day, or for a longer time, and also from place to place, if they think proper;

4. To decide both the law and the fact that may be involved in the cause submitted to them. [L. '60, p. 325, § 7; Cd. '81, § 270; 2 H. C., § 430.]

Cited in 13 Wash. 355, 356.

§ 427. Rules of Evidence.—The laws in force in this state relating to evidence and the manner of procuring the attendance of witnesses shall govern in arbitrations. [L. '60, p. 325, § 8; Cd. '81, § 271; 2 H. C., § 431.]

§ 428. Arbitrators may Punish Contempts.—The law governing proceedings for contempt, in the trial of cases before justices of the peace, so far as the same may be applicable, shall apply to the

proceedings before arbitrators. [L. '60, p. 325, § 9; Cd. '81, § 272; 2 H. C., § 432.]

§ 429. Costs Taxed Against Losing Party.—The costs of witnesses, and other fees in the case, shall be taxed against the losing party; said fees shall be indorsed upon the award, and when said award is affirmed as the judgment of the superior court, execution shall issue therefor as for costs in civil actions. [L. '60, p. 325, § 10; Cd. '81, § 273; 2 H. C., § 436.]

§ 430. Award, When Affirmed, has Force of a Judgment.—Such award, when so affirmed, shall be in all respects like any other judgment of the superior court, and a transcript of such judgment, or execution issued thereon, recorded in the county auditor's [clerk's] office in the same manner as other judgments, shall be a lien upon real estate in said county. [L. '60, p. 325, § 11; Cd. '81, § 274; 2 H. C., § 434.]

Cited in 70 Wash. 349; 85 Wash. 367, 368.

CHAPTER XIV.

Manner of Taking and Entering Judgments.

§ 431. Time of Entering Judgment.—When a trial by jury has been had, judgment shall be entered by the clerk immediately in conformity to the verdict, and a transcript of said judgment may be immediately filed in the office of the clerk of the superior court of any other county in the state in the manner provided by law: Provided, however, that if a motion for a new trial shall be filed, execution shall not be issued upon said judgment until said motion shall be determined: And provided, further, that the granting of a motion for a new trial shall immediately operate as the vacation and setting aside of said judgment. [L. '03, p. 285, § 1. Cf. L. '54, p. 173, § 229; Cd. '81, § 301; L. '91, p. 76, § 1; 2 H. C., § 435.]

Cited in 11 Wash. 413; 26 Wash. 228; 35 Wash. 66, 537; 36 Wash. 324; 37 Wash. 485; 49 Wash. 303, 304; 55 Wash. 597; 65 Wash. 432; 70 Wash. 214, 215, 419; 81 Wash. 139, 140; 86 Wash. 384, 474.

See supra, § 18, nonjudicial days.
See supra, § 363, verdict in actions for specific personal property.
See supra, § 365, and note, special findings.
See supra, § 402, motion for new trial.
See supra, §§ 404–407, judgments in general.
See supra, § 408, judgment of nonsuit.
See supra, § 412, judgment by default.
See supra, § 413 et seq., judgment by confession.

§ 433. Judgment in Case of Setoff.—If a setoff established at the trial exceed the plaintiff's demand so established, judgment for the defendant shall be given for the excess; or if it appear that the defendant is entitled to any [other] affirmative relief, judgment shall be given accordingly. [L. '54, p. 173, § 231; Cd. '81, § 303; 2 H. C., § 437.]

See supra, §§ 269–272, judgment in case of setoff.

§ 434. Judgment in Actions to Recover Personal Property.—In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession or value thereof, in case a delivery cannot be had, and damages for the detention. If the property has been delivered to the plaintiff, and the defendant claim a return thereof, judgment for the defendant may be for a return of the property, or the value thereof in case a return cannot be had, and damages for taking and withholding the same. [L. '54, p. 173, § 232; Cd. '81, § 304; 2 H. C., § 438.]

Cited in 8 Wash. 636; 10 Wash. 227; 22 Wash. 309; 73 Wash. 410.

§ 435. Where and What must be Entered.—All judgments shall be entered by the clerk, subject to the direction of the court, in the journal, and shall specify clearly the amount to be recovered, the relief granted, or other determination of the action. [L. '69, p. 75, § 307; Cd. '81, § 305; 2 H. C., § 439.]

Cited in 26 Wash. 228; 31 Wash. 402; 65 Wash. 540.

§ 436. Summons, After Judgment, to Joint Debtor not Originally Served.—When a judgment is recorded [entered] against one or more of several persons jointly indebted upon an obligation by proceeding as provided in section 236, such defendants who were not originally served with the summons, and did not appear to the action, may be summoned to show cause why they should not be bound by the judgment in the same manner as though they had been originally served with the summons. [L. '77, p. 64, § 318; Cd. '81, § 314; 2 H. C., § 440.]

Cited in 82 Wash. 587, 588.

§ 437. What Such Summons must Contain.—The summons as provided in the last section must describe the judgment, and require the person summoned to show cause why he should not be bound by it, and must be served in the same manner and returnable within the same time as the original summons. It is not necessary to file a new complaint. [L. '77, p. 64, § 319; Cd. '81, § 315; 2 H. C., § 441.]

§ 438. Must be Supported by Affidavit.—The summons must be accompanied by an affidavit of the plaintiff, his agent, representative, or attorney, that the judgment, or some part thereof, remains unsatisfied, and must specify the amount due thereon. [L. '77, p. 65, § 320; Cd. '81, § 316; 2 H. C., § 442.]

§ 439. Defenses in Such Case.—Upon the service of such summons and affidavit, the defendant may answer within the time specified therein, denying the judgment, or setting up any defense which may have arisen subsequently to the taking of the judgment, or he may deny his liability on the obligation upon which the judgment was rendered, except a discharge from such liability by the statute of limitations. [L. '77, p. 65, § 321; Cd. '81, § 317; 2 H. C., § 443.]

Cited in 82 Wash. 588.

§ 440. What Constitute Pleadings in Such Case.—If the defendant in his answer deny the judgment, or set up any defense which may have arisen subsequently, the summons, with the affidavit annexed, and the answer, constitute the written allegations in the case; if he deny his liability on the obligation upon which the judgment was rendered, a copy of the original complaint and judgment, the summons with the affidavit annexed, and the answer constitute such written allegations. [L. '77, p. 65, § 322; Cd. '81, § 318; 2 H. C., § 444.]

§ 441. Trial and Entry in Such Cases.—The issues formed may be tried as in other cases, but when the defendant denies in his answer any liability on the obligation upon which the judgment was rendered, if a verdict be found against him, it must not exceed the amount remaining unsatisfied on such original judgment, with interest thereon. [L. '77, p. 65, § 323; Cd. '81, § 319; 2 H. C., § 445.]

§ 442. Judgment-roll — What Constitutes. — Immediately after entering the judgment, the clerk shall attach the following papers in the case, which shall constitute the judgment-roll:—

1. If the complaint has not been answered by any defendant, and no pleading has been filed by an intervener, he shall attach together, in the order of their filing, issuing, and entry, the complaint, summons, and proof of service, and a copy of the entry of judgment;

2. In all other cases he shall attach together in like manner the summons and proof of service, the pleadings, bill of exceptions, all orders relating to change of parties, together with a copy of the entry of judgment, and all other journal entries or orders in any

way involving the merits and necessarily affecting the judgment. [Cf. L. '54, p. 173, § 233; Cd. '81, § 306; L. '91, p. 77, § 3; 2 H. C., § 446.]

Cited in 77 Wash. 630.

§ 443. How Judgment-roll Indorsed and Preserved.—In all cases, the clerk shall attach upon the outside of the judgment-roll a blank sheet of paper, upon which he shall indorse the name of the court, the title of the action, for whom judgment was given, and the amount or nature thereof and the date of its entry. [L. '91, p. 77, § 4; 2 H. C., § 447.]

CHAPTER XV.

Judgment Liens.

§ 444. Execution Docket.—Every clerk shall keep in his office a well-bound book, to be called the execution docket, which shall be a public record, and open during the usual business hours to all persons desirous of inspecting it. [L. '54, p. 173, § 234; Cd. '81, § 307; 2 H. C., § 448.]

See supra, § 75, books to be kept by clerk.

§ 445. Judgment Lien.—The real estate of any judgment debtor and such as he may acquire, shall be held and bound to satisfy any judgment of the district or circuit court of the United States, if rendered in this state, or of the superior or supreme court, or any judgment of a justice of the peace for the period of five years from the day on which said judgment was rendered, and such judgments shall be a lien thereupon to commence as follows: Judgments of the superior court of the county in which real estate of the judgment debtor is situated, from the date of the entry thereof; judgments of the district or circuit courts of the United States, if rendered in this state; judgments of the supreme court; judgments of the superior court of any county other than the county in which said judgment was rendered, and judgments of a justice of the peace, from the time of the filing and indexing of a duly certified transcript or abstract of such judgments, as provided by this chapter, with the county clerk of the county in which said real estate is situated. [Cf. L. '54, p. 175, § 240; L. '57, p. 11, § 15; L. '60, p. 51, § 234; L. '69, p. 78, § 317; Cd. '81, § 321; 2 H. C., § 460; L. '93, p. 65, § 1; see, also, 2 H. C., §§ 449, 450, 455, 456, 457, 460, and L. '93, p. 67, § 9.]

Cited in 20 Wash. 52; 21 Wash. 319; 22 Wash. 240; 23 Wash. 546; 26 Wash. 75; 28 Wash. 196; 29 Wash. 255, 665; 32 Wash. 88; 33 Wash. 570; 45 Wash. 4, 8; 50 Wash. 506; 59 Wash. 99; 64 Wash. 59; 78 Wash. 192.

§ 446. Clerk's Record Index.—It shall be the duty of the county clerk to keep a proper record index, both direct and inverse, of any and all judgments, abstracts or transcripts of judgments in his office, and all renewals thereof, and such index shall refer to each party against whom the judgment is rendered or whose property is affected thereby, [which index] together with the records of said judgments, shall be open to public inspection during regular office hours. [Cf. 2 H. C., § 452; L. '93, p. 66, § 6.]

§ 447. Assignment or Satisfaction, Filing—Notice.—Any assignment or satisfaction of judgment, or any certified transcript of such assignment or satisfaction, may be recorded in any county auditor's office, or county clerk's office, in which the judgment is of record, and from the time of filing for record shall be notice of such assignment or satisfaction. [L. 97, p. 10, § 1.]

Cited in 34 Wash. 514.

§ 448. Entries in Execution Docket.—He shall leave space on the same page, if practicable, with each case, in which he shall enter, in the order in which they occur, all the proceedings subsequent to the judgment in said case until its final satisfaction, including the time when and to what county the execution is issued, and when returned, and the return or the substance thereof. When the execution is levied on personal property which is returned unsold, the entry shall be: "Levied (noting the date) on property not sold." When any sheriff shall furnish the clerk with a copy of any levy upon real estate on any judgment the minutes of which are entered in his execution docket, the entry shall be: "Levied upon real estate," noting the date, and shall refer to the page upon the book of levies where the same is entered, as is hereinafter provided. When any execution issued to any other county is returned levied upon real estate in such county, the entry in the docket shall be: "Levied on real estate of ——, in —— county," noting the date, county, and defendant whose estate is levied upon, and when the money is made, or any part thereof, the amount and time when made shall be entered; also, when a writ of error has been taken, or the judgment is appealed, modified, discharged, or in any manner satisfied, the facts in respect thereto shall be entered. The parties interested may also

assign or discharge such judgment on such execution docket. When the judgment is fully satisfied in any way, the clerk shall write the word "satisfied," in large letters across the face of the entry of such judgment. [L. '54, p. 174, § 237; Cd. '81, § 310; 2 H. C., § 451.]

§ 449. Book of Levies.—The clerk shall also keep in his office a well-bound book, to be called a book of levies, which shall be a public record, and open during the usual business hours to all persons desirous of inspecting the same, in which he shall enter all levies upon real estate in his county, when delivered to him by the sheriff, as provided by law. An alphabetical index shall be prefixed to the book of levies, containing the names of all persons upon whose real estate such levies have been made, and when such levies are discharged in any manner, an entry thereof shall be made in the margin of the book of levies where the levy is recorded. [L. '54, p. 174, § 239; Cd. '81, § 313; 2 H. C., § 454.]

§ 450. Transcripts from Justices' Courts.—Any judgment of any justice of the peace of any county in this state, shall become a lien upon any real estate of the judgment debtor, and such as he may acquire in that county wherein said judgment was rendered by the filing of a duly certified transcript from the docket of said justice in the county clerk's office of said county wherein said judgment was rendered, and upon such filing said judgment shall become to all intents and purposes a judgment of said superior court of said county, said judgment of said justice of the peace shall become a lien upon the real estate of the judgment debtor and such as he may acquire in any county other than that in which the same was rendered by the filing in the office of the county clerk of that county a duly certified abstract of the record of said judgment, from the office of the county clerk of that county in which the certified transcript of the said judgment of said justice of the peace was originally filed. [L. '93, p. 65, § 2.]

Cited in 23 Wash. 545; 31 Wash. 363; 69 Wash. 110.

§ 451. Abstract of Judgment, Contents of.—An abstract of a judgment as provided for in this chapter shall contain:—

1. The name of the party or parties in whose favor the judgment was rendered;

2. The name of the party or parties against whom the judgment was rendered;

3. The date of the rendition of the judgment;

4. The amount for which the judgment was rendered, and in the following manner, viz.: Principal, $——; interest, $——; costs, $——; total, $——. [L. '93, p. 66, § 3.]

Cited in 23 Wash. 545.

§ 452. Transcript of Justice's Docket.—A transcript of a judgment of a justice of the peace provided for by this chapter shall contain an exact copy of the judgment from the justice's docket. [L. '93, p. 66, § 4.]

§ 453. Entry of Abstract or Transcript of Judgment.—It shall be the duty of the county clerk to enter in his execution docket any duly certified abstract or transcript of any judgment of any of the courts mentioned in this chapter, and he shall index the same in the same manner as judgments originally rendered in the superior court of the county of which he is clerk. [L. '93, p. 66, § 5.]

Cited in 23 Wash. 545.

§ 454. Satisfaction of Judgments.—When any judgment shall be paid and satisfied, the satisfaction shall be noted upon the records thereof in the execution docket as satisfied, giving the date of such satisfaction, and when the same shall be signed by the judgment creditor or his attorney the lien thereof against said real estate shall be satisfied and discharged. [L. '93, p. 66, § 7.]

Cited in 23 Wash. 545.
Cited in 23 Wash. 545; 63 Wash. 232, 242.
See infra, § 889, satisfaction of judgment against the state.

§ 455. Satisfaction of Judgments of Federal Court—Penalty for Failure.—When the amount due on any judgment is paid off or satisfied in full, the plaintiff, or those legally acting for him, must acknowledge satisfaction thereof in the margin of the record of the judgment, or by the execution of an instrument in writing referring to the judgment, acknowledged and filed in the office of the auditor or recorder in every county where the judgment is a lien. If he fail to do so within sixty days after having been requested in writing so to do, he shall forfeit to the defendant the sum of fifty dollars. [L. '90, p. 98, § 3; 2 H. C., § 458.]

"Any judgment": This section can apply only to judgments of the United States courts.

§ 456. Existing Liens Continued.—All judgments which are liens upon real estate by reason of their having been filed in any county

auditor's office, shall continue to be liens thereupon in the manner now provided by law. [L. '93, p. 67, § 8.]

§ 457. Interest on Judgments. — Judgments hereafter rendered founded on written contracts, providing for the payment of interest until paid at a specified rate, shall bear interest at the rate specified in such contracts, not in any case, however, to exceed ten per cent per annum: Provided, that said interest rate is set forth in the judgment; and all other judgments shall bear interest at the rate of six per centum per annum from date of entry thereof. [L. '99, p. 129, § 6. Cf. 2 H. C. § 459; L. '95, p. 350, § 4.]

Cited in 23 Wash. 417, 63 Wash. 290.

§ 458. Appeal Does not Suspend Lien.—An appeal to the supreme court or stay of execution shall not affect any existing lien; and in all cases of an appeal the date of final judgment in the supreme court shall be the time from which said five years shall commence to run. Personal property shall only be held from the time it is actually levied upon. [Cf. '54, p. 175, §§ 240, 241; L. '60, p. 79, § 319; Cd. '81, § 322; 2 H. C., § 461.]

Cited in 4 Wash. 762; 28 Wash. 196; 32 Wash. 88; 59 Wash. 100.

CHAPTER XVI.

Revival of Judgments.

§ 459. Judgment Lien Expires When.—After the expiration of six years from the rendition of any judgment it shall cease to be a lien or charge against the estate or person of the judgment debtor. [L. '97, p. 52, § 1.]

Cited in 19 Wash. 207, 219; 21 Wash. 400; 23 Wash. 411; 24 Wash. 48, 485; 38 Wash. 627, 631; 39 Wash. 175, 219, 588; 44 Wash. 159, 516; 59 Wash. 100; 78 Wash. 190; 85 Wash. 17; 87 Wash. 325.

This and the next two sections are void as to existing contracts.

For former laws see: L. '54, pp. 175, 176, §§ 242, 243; L. '69, p. 79, §§ 318, 320; Cd. '81, § 323; 2 H. C., § 462.

§ 460. Proceedings for Extension Denied. — No suit, action, or other proceedings shall ever be had on any judgment rendered in the state of Washington by which the lien or duration of such judgment, claim or demand, shall be extended or continued in force for any greater or longer period than six years from the date of the entry of the original judgment. [L. '97, p. 52, § 2.]

Cited in 37 Wash. 270; 39 Wash. 219; 50 Wash. 488, 489; 59 Wash. 100; 78 Wash. 190; 85 Wash. 17; 87 Wash. 325.

§ 461. Exceptions.—When the lien of any judgment, as specified in section 459, has run six years, or its duration will be less than one year by reason of this act, then the lien of such judgment shall continue for one year from and after the taking effect of this act. [L. '97, p. 52, § 3.]

Cited in 21 Wash. 400; 37 Wash. 270; 59 Wash. 100; 85 Wash. 17.

"This act" took effect June 9, 1897.

§ 462. When Judgments may be Revived — Procedure. — If any judgment shall remain unsatisfied in whole or in part, at the end of five years after the date of its rendition, the lien thereof may be revived and continued, as in this section provided:

(1) The judgment creditor, his assignee, or the party to whom said judgment is due and payable, shall file a motion with the clerk of the court where judgment is entered, to revive and continue the lien of the same, with leave to issue an execution. The motion shall state the names of the parties to the judgment, the date of its entry, the amount claimed to be due thereon, or the particular property, of which the possession was thereby adjudged to such party, remaining undelivered. The motion shall be subscribed and verified in the same manner as an original complaint.

(2) At any time after filing such motion, the party may cause notice to be served on the judgment debtor in like manner and with like effect as a summons; said notice shall be attached to a copy of said motion, by the clerk of the court, and be served by the sheriff or other officer as an original summons. It shall cite the judgment debtor to appear and show cause why the said motion should not be allowed. The time in which the judgment debtor shall be required to appear, shall be the same as is prescribed for answer to a complaint, and the law applicable to service of a summons, shall apply to the service of such notice. In case the judgment debtor be dead, the notice may be served upon his legal representatives.

(3) The judgment debtor, or in case of his death, his representatives, may file an answer or demurrer to such motion within the time allowed by law to answer a complaint, alleging any defense to such motion which may exist. If no answer be filed within the time prescribed, the motion shall be allowed as of course. The moving party may demur or reply to the answer. The pleadings shall be subscribed and verified, and the proceedings concluded as in original actions.

(4) The word "representatives," in this section shall be deemed to include any or all of the persons in whose possession property of

the judgment debtor may be which is liable to be taken and sold or delivered in satisfaction of the execution, and not otherwise.

(5) The order shall specify the amount due upon such unsatisfied judgment for which execution is to issue, or the particular property, possession of which is to be delivered; it shall be entered in the journal and docketed as a judgment, and a final record shall be made of the proceedings in the same manner as a judgment. [Cd. '81, § 323; 2 H. C., § 462.]

This and the next section were repealed by L. '97, p. 53, § 4, but are retained, as the repeal did not affect any existing contract obligations or judgments recovered thereon.

§ 463. Proof for Revival—No Revival After Six Years.—Such motion shall not be granted unless it be established by oath of the party, or other satisfactory proof, that the judgment, or some part thereof, remains unsatisfied. The order of the court granting such leave shall operate as a revival of the judgment for the amount found due at the time of such revival, and the same shall be and continue a lien upon real estate of the judgment debtor for a period of five years from and after the date of such order, in like manner with the original judgment: Provided, that a transcript thereof shall, within twenty days, be filed in the office of the county auditor of the county where the lands lie of such judgment debtor, or said lien shall be suspended till such transcript be filed. Revived judgments shall bear the same interest and be in all respects similar to original judgments as to lien and enforcement of collection: Provided, however, that no judgment shall be revived or continued unless proceedings for such revival or continuance shall be commenced within six years after the date of its rendition: Provided further, that this act shall not apply to any judgment now in existence until one year from the time this act takes effect. [L. '91, p. 165, § 1; 2 H. C., § 463.]

See notes to last section.

CHAPTER XVII.

Vacation and Modification of Judgments.

§ 464. Causes for Vacation or Modification of Judgments.—The superior court in which a judgment has been rendered, or by which or the judge of which a final order has been made, shall have power, after the term [time] at which such judgment or order was made, to vacate or modify such judgment or order:—

1. By granting a new trial for the cause, within the time and in the manner, and for any of the causes prescribed by the sections relating to new trials;

2. By a new trial granted in proceedings against defendant, served by publication only as prescribed in section 235;

3. For mistakes, neglect, or omission of the clerk, or irregularity in obtaining the judgment or order;

4. For fraud practiced by the successful party in obtaining the judgment or order;

5. For erroneous proceedings against a minor [or] person of unsound mind, when the condition of such defendant does not appear in the record, nor the error in the proceedings;

6. For the death of one of the parties before the judgment in the action;

7. For unavoidable casualty or misfortune preventing the party from prosecuting or defending;

8. For error in a judgment shown by a minor, within twelve months after arriving at full age. [L. '75, p. 20, § 1; Cd. '81, § 436; 2 H. C., § 1393.]

Cited in 5 Wash. 302; 7 Wash. 482; 8 Wash. 594; 10 Wash. 271, 311, 646, 675; 13 Wash. 675; 17 Wash. 357, 566; 21 Wash. 161, 433, 482, 639, 675; 22 Wash. 251, 499; 23 Wash. 247; 24 Wash. 98; 25 Wash. 470, 573, 655, 659, 670; 28 Wash. 128, 301; 31 Wash. 59; 32 Wash. 160, 174; 34 Wash. 307; 35 Wash. 115; 37 Wash. 437; 39 Wash. 680, 681; 43 Wash. 511; 45 Wash. 264; 48 Wash. 430; 50 Wash. 477; 52 Wash. 39; 53 Wash. 419; 55 Wash. 43, 44; 56 Wash. 151; 57 Wash. 177; 58 Wash. 582; 59 Wash. 200; 67 Wash. 472; 68 Wash. 348; 70 Wash. 348, 349; 74 Wash. 643; 79 Wash. 489; 81 Wash. 140; 83 Wash. 63, 86, 87; 84 Wash. 399, 400; 87 Wash. 550, 551, 552, 556.

See supra, § 235, relief in cases where personal service not had.
See supra, § 303, relief from judgments, etc.
See supra, § 398 et seq., new trials.

§ 465. Petition for New Trial.—When the grounds for a new trial could not with reasonable diligence have been discovered before, but are discovered after the term [time] when the verdict, report of referee, or decision was rendered or made, the application may be made by petition filed as in other cases, not later than after the discovery, on which notice shall be served and returned, and the defendant held to appear as in an original action. The facts stated in the petition [complaint] shall be considered as denied without answer. The case shall be tried as other cases by ordinary proceedings, but no motion shall be filed more than one year after the final judgment was rendered. [L. '75, p. 21, § 2; Cd. '81, § 437.]

Cited in 25 Wash. 470, 573; 56 Wash. 151, 573; 87 Wash. 550, 551, 552, 556.

§ 466. Petition to Vacate, etc., to be by Motion, When.—The proceedings to vacate or modify a judgment or order for mistakes or omissions of the clerk, or irregularity in obtaining the judgment or order, shall be by motion served on the adverse party, or on his attorney in the action, and within one year. [Cf. L. '75, p. 21, § 3; Cd. '81, § 438; L. '91, p. 44, § 1; 2 H. C., § 1394.]

Cited in 3 Wash. 720; 13 Wash. 675; 23 Wash. 251; 25 Wash. 470, 573, 659; 44 Wash. 295; 53 Wash. 419, 420; 56 Wash. 151, 572; 57 Wash. 177; 59 Wash. 200; 68 Wash. 348, 350; 83 Wash. 87.

§ 467. Petition to be Verified, When.—The proceedings to obtain the benefit of subdivisions 2, 3, 4, 5, 6, and 7 of section 464 shall be by petition verified by affidavit, setting forth the judgment or order, the facts or errors constituting a cause to vacate or modify it, and if the party is a defendant, the facts constituting a defense to the action; and such proceedings must be commenced within one year after the judgment or order was made, unless the party entitled thereto be a minor or person of unsound mind, and then within one year from the removal of such disability. [Cf. L. '75, p. 21, § 4; Cd. '81, § 439; L. '91, p. 45, § 2; 2 H. C., § 1395.]

Cited in 7 Wash. 482; 10 Wash. 272; 17 Wash. 601; 21 Wash. 161; 23 Wash. 247; 24 Wash. 100; 25 Wash. 270, 573, 655, 659; 28 Wash. 301; 31 Wash. 59; 34 Wash. 307; 37 Wash. 437; 39 Wash. 680; 43 Wash. 25; 45 Wash. 22; 50 Wash. 477; 53 Wash. 420; 55 Wash. 43; 56 Wash. 151, 152; 68 Wash. 349, 350; 83 Wash. 63, 88; 87 Wash. 551.

§ 468. Proceedings.—In such proceedings the party shall be brought into court in the same way, on the same notice as to time, mode of service and mode of return, and the pleadings shall be governed by the same principles, and issues be made up by the same form, and all the proceedings conducted in the same way, as near as can be, as in original action by ordinary proceedings, except that the facts stated in the petition shall be deemed denied without answer, and defendant shall introduce no new cause, and the cause of the petition shall alone be tried. [Cf. L. '75, p. 22, § 5; Cd. '81, § 440; L. '91, p. 45, § 3; 2 H. C., § 1396.]

Cited in 7 Wash. 482; 21 Wash. 639; 23 Wash. 247; 25 Wash. 470, 573, 655; 31 Wash. 59; 32 Wash. 178, 437; 34 Wash. 307; 43 Wash. 512; 53 Wash. 419; 59 Wash. 581; 68 Wash. 349, 350; 83 Wash. 88.

§ 469. Valid Defense.—The judgment shall not be vacated on motion or petition until it is adjudged that there is a valid defense to the action in which the judgment is rendered; or if the plaintiff seeks its vacation, that there is a valid cause of action; and when judg-

ment is modified, all liens and securities obtained under it shall be preserved to the modified judgment. [L. '75, p. 22, § 6; Cd. '81, § 441; 2 H. C., § 1397.]

Cited in 11 Wash. 388; 25 Wash. 671; 43 Wash. 25; 79 Wash. 489.

§ 470. Grounds to Vacate must First be Tried.—The court may first try and decide upon the grounds to vacate or modify a judgment or order, before trying or deciding upon the validity of the defense or cause of action. [L. '75, p. 22, § 7; Cd. '81, § 442; 2 H. C., § 1398.]

Cited in 10 Wash. 311; 55 Wash. 97; 79 Wash. 493.

§ 471. Injunction.—The party seeking to vacate or modify a judgment or order may obtain an injunction suspending proceedings on the whole or part thereof, which injunction may be granted by the court or the judge, upon its being rendered probable, by affidavit or petition sworn to, or by exhibition of the record, that the party is entitled to have such judgment or order vacated or modified. [L. '75, p. 22, § 8; Cd. '81, § 443; 2 H. C., § 1399.]

§ 472. Construction. The provisions of this chapter shall not be so construed as to affect the power of the court to vacate or modify judgments or orders as elsewhere in this code provided; nor shall any judgment of acquittal in a criminal action be vacated under the provisions of this chapter. [L. '91, p. 45, § 4; 2 H. C., § 1400.]

Cited in 10 Wash. 36; 25 Wash. 655.

§ 473. Judgment upon Denial of Application.—In all cases in which an application under this chapter to vacate or modify a judgment or order for the recovery of money is denied, if proceedings on the judgment or order shall have been suspended, judgment shall be rendered against the plaintiff [in this proceeding] for the amount of the former judgment or order, interest, and costs, together with damages at the discretion of the court, not exceeding ten per cent on the amount of the judgment or order. [Cf. L. '75, p. 22, § 9; Cd. '81, § 444; L. '91, p. 45, § 5; 2 H. C., § 1041.]

Cited in 55 Wash. 44.

CHAPTER XVIII.

Costs and Disbursements.

§ 474. Compensation of Attorneys—Costs.—The measure and mode of compensation of attorneys and counselors shall be left to the agreement, expressed or implied, of the parties, but there shall

be allowed to the prevailing party upon the judgment certain sums by way of indemnity for his expenses in the action, which allowances are termed costs. [L. '54, p. 201, § 367; Cd. '81, § 505; 2 H. C., § 823.]

Cited in 9 Wash. 465; 26 Wash. 136; 34 Wash. 138; 35 Wash. 294; 42 Wash. 596; 52 Wash. 164; 58 Wash. 99, 678; 66 Wash. 421; 75 Wash. 273; 86 Wash. 670.

§ 475. Amount, How Fixed.—In all cases of foreclosure of mortgages and in all other cases in which attorneys' fees are allowed, the amount thereof shall be fixed by the court at such sum as the court shall deem reasonable, any stipulations in the note, mortgage or other instrument to the contrary notwithstanding; but in no case shall said fee be fixed above contract price stated in said note or contract. [Cf. L. '85, p. 176, § 1; L. '88, p. 9, § 1; L. '91, p. 83, § 1; 2 H. C., § 803; L. '95, p. 81, § 1.]

Cited in 7 Wash. 323; 11 Wash. 110; 15 Wash. 207; 18 Wash. 463, 508, 556; 19 Wash. 84, 192, 612, 630; 70 Wash. 284; 86 Wash. 670.

§ 476. Prevailing Party Entitled to Costs and Disbursements.—In any action in the superior court of Washington, the prevailing party shall be entitled to his costs and disbursements; but the plaintiff shall in no case be entitled to costs taxed as attorneys' fees in actions within the jurisdiction of a justice of the peace, when commenced in the superior court. [Cf. L. '54, p. 201, §§ 368, 369; Cd. '81, §§ 506, 507; L. '83, p. 42, § 1; L. '90, p. 337, § 1; 2 H. C., § 824.]

Cited in 4 Wash. 14; 7 Wash. 96; 39 Wash. 345; 71 Wash. 180; 82 Wash. 363.

§ 477. Limitations.—In an action for an assault and battery, or for false imprisonment, libel, slander, malicious prosecution, criminal conversation, or seduction, if the plaintiff recover less than ten dollars, he shall be entitled to no more costs or disbursements than the damage recovered. [L. '54, p. 202, § 370; L. '69, p. 123, § 460; Cd. '81, § 508; 2 H. C., § 825.]

Cited in 4 Wash. 12, 16.

§ 478. Limited to One of Several Actions.—When several actions are brought on one bond, undertaking, promissory note, bill of exchange, or other instrument in writing, or in any other case for the same cause of action against several parties, who might have been joined as defendants in the same action, no costs or disbursements shall be allowed to the plaintiff in more than one of such actions,

which may be at his election, if the parties proceeded against in the other actions were, at the commencement of the previous action, openly within this state. [L. '54, p. 202, § 371; Cd. '81, § 509; 2 H. C., § 826.]

§ 479. Costs to Defendant, When.—In all cases where costs and disbursements are not allowed to the plaintiff, the defendant shall be entitled to have judgment in his favor for the same. [L. '54, p. 202, § 372; Cd. '81, § 510; 2 H. C., § 827.]

Cited in 7 Wash. 96; 82 Wash. 363.

§ 480. Costs to Defendants Defending Separately.—In all actions where there are several defendants not united in interest, and making separate defenses by separate answers, and the plaintiff fails to recover judgment against all, the court may award costs to such defendants as recover judgments in their favor, or either of them. [L. '54, p. 202, § 373; Cd. '81, § 511; 2 H. C., § 828.]

Cited in 30 Wash. 391.

§ 481. Costs as Attorney Fee—Amount Taxable.—When allowed to either party, costs, to be called the attorney fee, shall be as follows:—

1. In all actions settled before issue is joined, five dollars;
2. In all actions where judgment is rendered without a jury, ten dollars;
3. In all actions where judgment is rendered after impaneling a jury, fifteen dollars;
4. In all actions removed to the supreme court and settled before argument, ten dollars;
5. In all actions where judgment is rendered in the supreme court after argument, fifteen dollars. [L. '54, p. 202, § 374; L. '69, p. 124, § 464; Cd. '81, § 512; 2 H. C., § 829.]

Cited in 26 Wash. 136; 34 Wash. 434; 40 Wash. 453, 454; 56 Wash. 412; 58 Wash. 202; 81 Wash. 399.

§ 482. Disbursements, etc.—Cost Bill.—The prevailing party, in addition to allowance for costs, as provided in the last section, shall also be allowed for all necessary disbursements, including the fees of officers allowed by law, the fees of witnesses, the necessary expenses of taking depositions, by commission or otherwise, and the compensation of referees. The disbursements shall be stated in detail and verified by affidavit, and shall be served on the opposite party or his attorney, and filed with the clerk of the court, within ten days after

the judgment; Provided, the clerk of the court shall keep a record of all witnesses in attendance upon any civil action, for whom fees are to be claimed, with the number of days in attendance and their mileage, and no fees or mileage for any witness shall be taxed in the cost bill unless they shall have reported their attendance at the close of each day's session to the clerk in attendance at such trial. [L. '05, p. 32, § 1. Cf. L. '54, p. 202, § 375; L. '69, p. 124, § 465; L. '77, p. 109, § 517; Cd. '81, § 513; 2 H. C., § 830.]

Cited in 24 Wash. 412; 58 Wash. 660; 59 Wash. 264; 65 Wash. 128, 129; 67 Wash. 539; 76 Wash. 118; 81 Wash. 399; 87 Wash. 437.

§ 483. Fees of Referees.—The fees of referees shall be five dollars to each for every day necessarily spent in the business of the reference, and twenty cents per folio for writing testimony; but the parties may agree in writing upon any rate of compensation, and thereupon such rate shall be allowed. [Cf. L. '54, p. 202, § 376; L. '77, p. 109, § 518; Cd. '81, § 514; 2 H. C., § 831.]

Cited in 3 Wash. 741.

§ 484. Costs on Postponement of Trial.—When an application shall be made to a court or referees to postpone a trial, the payment to the adverse party of a sum not exceeding ten dollars, besides the fees of witnesses, may be imposed as the condition of granting the postponement. [L. '54, p. 203, § 377; Cd. '81, § 515; 2 H. C., § 832.]

Cited in 9 Wash. 225.

§ 485. Costs Where Tender is Made.—When, in an action for the recovery of money, the defendant alleges in his answer that, before the commencement of the action, he tendered to the plaintiff the full amount to which he is entitled, in such money as by agreement ought to be tendered, and thereupon brings into court, for the plaintiff, the amount tendered, and the allegation be found true, the plaintiff shall not recover costs, but shall pay them to the defendant. [Cf. L. '54, p. 203, § 378; Cd. '81, § 516; 2 H. C., § 833.]

Cited in 51 Wash. 665; 56 Wash. 377.

§ 486. Deposit With Clerk by Defendant of Tender, Effect of.—If the defendant, in any action pending, shall at any time deposit with the clerk of the court, for the plaintiff, the amount which he admits to be due, together with all costs that have accrued, and notify the plaintiff thereof, and such plaintiff shall refuse to accept the same in discharge of the action, and shall not afterwards recover a larger amount than that deposited with the clerk, exclusive of inter-

est and cost, he shall pay all costs that may accrue from the time such money was so deposited. [L. '54, p. 203, § 379; Cd. '81, § 517; 2 H. C., § 834.]

Cited in 4 Wash. 671; 56 Wash. 377.

§ 487. Costs in Appeals from Justice's Court.—In all civil actions tried before a justice of the peace, in which an appeal shall be taken to the superior court, and the party appellant shall not recover a more favorable judgment in the superior court than before the justice of the peace, such appellant shall pay all costs. [L. '54, p. 203, § 380; Cd. '81, § 518; 2 H. C., § 835.]

§ 488. Costs Against Guardian of Infant Plaintiff.—When costs are adjudged against an infant plaintiff, the guardian or person by whom he appeared in the action shall be responsible therefor, and payment may be enforced by execution. [L. '54, p. 203, § 381; Cd. '81, § 519; 2 H. C., § 836.]

§ 489. Costs in Cases of Executors, etc.—In [an] action prosecuted or defended by an executor, administrator, trustee of an express trust, or a person expressly authorized by statute, costs shall be recovered as in an action by or against a person prosecuting [or defending] in his own right, but such costs shall be chargeable only upon or collected of the estate of the party represented, unless the court shall direct the same to be paid by the plaintiff or defendant personally for mismanagement or bad faith in such action or defense. [L. '54, p. 203, § 382; Cd. '81, § 520; 2 H. C., § 837.]

§ 490. Assignee Liable for Costs, When.—When the cause of action, after the commencement of the action, by assignment, or in any other manner, becomes the property of a person not a party thereto, and the prosecution or defense is thereafter continued, such person shall be liable to the costs in the same manner as if he were a party, and payment thereof may be enforced by execution. [Cf. L. '54, p. 203, § 383; L. '69, p. 125, § 473; Cd. '81, § 521; 2 H. C., § 838.]

§ 491. Costs Against State or County.—In all actions prosecuted in the name and for the use of the state, or in the name and for the use of any county, the state or county shall be liable for costs in the same case and to the same extent as private parties. [L. '54, p. 203, § 384; Cd. '81, § 522; 2 H. C., § 839.]

Cited in 40 Wash. 10; 70 Wash. 643.

§ 492. Costs in Revisory Proceedings.—When the decision of a court of inferior jurisdiction, in an action or special proceeding, is brought before the supreme court or a superior court for review, such proceedings shall, for purpose of costs, be deemed an action at issue upon a question of law from the time the same is brought into the supreme court or superior court, and costs thereon may be awarded and collected in such manner as the court shall direct, according to the nature of the case. [L. '54, p. 204, § 385; Cd. '81, § 523; 2 H. C., § 840.]

See infra, § 1744, costs on appeal.

§ 493. Costs in Discretion of Court.—In all actions and proceedings other than those mentioned in this chapter, where no provision is made for the recovery of costs, they may be allowed or not; and if allowed, may be apportioned between the parties, in the discretion of the court. [L. '54, p. 204, § 387; Cd. '81, § 525; 2 H. C., § 842.]

Cited in 79 Wash. 38.

§ 494. Retaxation of Costs.—Any party aggrieved by the taxation of costs by the clerk of the court may, upon application, have the same retaxed by the court in which the action or proceeding is had. [L. '54, p. 204, § 388; Cd. '81, § 526; 2 H. C., § 843.]

Cited in 35 Wash. 137.

§ 495. Security for Costs, When Required.—When a plaintiff in an action resides out of the county, or is a foreign corporation, security for the costs and charges which may be awarded against such plaintiff may be required by the defendant. When required, all proceedings in the action shall be stayed until a bond, executed by two or more persons, be filed with the clerk, conditioned that they will pay such costs and charges as may be awarded against the plaintiff by judgment, or in the progress of the action, not exceeding the sum of two hundred dollars. A new or additional bond may be ordered by the court or judge, upon proof that the original bond is insufficient security, and proceedings in the action stayed until such new or additional bond be executed and filed. The plaintiff may deposit with the clerk the sum of two hundred dollars in lieu of a bond. [L. '54, p. 204, § 389; Cd. '81, § 527; 2 H. C., § 844.]

Cited in 8 Wash. 310; 16 Wash. 337; 17 Wash. 565; 28 Wash. 168; 34 Wash. 156; 39 Wash. 259; 48 Wash. 427; 60 Wash. 666; 82 Wash. 362.

§ 496. Judgment Against Surety on Cost Bond.—Whenever any bond or undertaking for the payment of any costs to any party shall

be filed in any action or other legal proceeding in any court in this state and judgment should be rendered for any such costs against the principal on any such bonds or against the party primarily liable therefor in whose behalf any such bond or undertaking has been filed, such judgment for costs shall be rendered against the principal on such bond or the party primarily liable therefor and at the same time also against his surety or sureties on any or all such bonds or undertakings filed in any such action or other legal proceeding. [L. '09, p. 633, § 1.]

§ 497. Schedule of Fees of Officers, Witnesses, etc.—The several officers herein named shall collect the fees herein prescribed for their official services:

CLERK OF THE SUPREME COURT.

Upon filing his first paper or record and making an appearance in the supreme court, the appellant shall pay to the clerk of said court a docket fee of $5.

Upon making his appearance in the supreme court, the respondent in any appealed case shall pay to the clerk a fee of $2.

The applicant or petitioner in any special proceeding in the supreme court, upon making his appearance, shall pay to the clerk thereof a fee of $3.

The respondent in a special proceeding, and each respondent appearing separately therein, at the time of his appearance, shall pay to the clerk a fee of $1.

The foregoing fees shall be all the fees connected with the appeal or special proceeding: Provided, that no fees shall be required to be advanced by the state, or any municipal corporation, or any public officer prosecuting or defending on behalf of such state or municipal corporation.

For filing application, entering admission and issuing certificate to an attorney upon admission to practice, $20.

For all services for which no fee is hereinbefore prescribed, the clerk of the supreme court shall receive the same fees as are prescribed for clerks of the superior courts for like services.

CLERKS OF THE SUPERIOR COURT.

The plaintiff, or other party instituting any civil action or proceeding shall pay, when the case is entered in the court or when the first paper on his part is filed therein, a fee of $4.

The defendant or other adverse party or any one or more of several defendants or other adverse parties, or interveners, appearing sep-

arately from the others, shall pay when his or their appearance is entered in the case, or when his or their first appearance is filed therein, a fee of $2.

When no issue of fact is joined in the case and no judgment other than a dismissal or discontinuance, without trial of an issue of fact is rendered, no further fee need be paid.

Where, after an issue of fact has been joined, the cause is dismissed or discontinued without trial of such issue, the party causing such dismissal or discontinuance to be entered shall pay, at the time of the entry thereof, a further fee of $1.

If a judgment other than a dismissal or discontinuance is rendered, the party obtaining the same shall pay, at the time of the entry thereof, a further fee as follows:

1. Where the judgment is rendered without the taking of proof of any fact pleaded:

(a) If no adverse party has appeared in the case, $2.

(b) Or if an adverse party has appeared, $3.

2. Where the judgment is rendered upon proof taken, but without the assessment of damages by a jury, and in a case other than the foreclosure of a lien or mortgage or partition of real estate:

(a) If no adverse party has appeared in the case, $3.

(b) If an adverse party has appeared, $5.

3. Where the judgment is rendered upon an assessment of damages by a jury, no adverse party having appeared in the case, $5.

4. Where the judgment is rendered after an appearance by an adverse party, and a trial by jury, or by the court or a judge, referee or commissioner, in a cause other than the foreclosure of a lien or mortgage, or partition of real estate, $6.

5. Where the judgment is rendered in an action for the foreclosure of a lien or mortgage or partition of real estate:

(a) If no adverse party has appeared in the case, $6.

(b) If an adverse party has appeared, $8.

6. For making a transcript on appeal to the supreme court, or for transcribing the records in any action for any purpose, 10 cents per folio.

7. For comparing a transcript on appeal, or transcript of the record in any action where the party has prepared it himself, 5 cents per folio.

The appellant in appeals from judgments of a justice of the peace, shall at the time of docketing his appeal, pay a docket fee of $4.

The adverse party in appeals from judgment of a justice of the peace at the time of his appearance in the superior court shall pay a fee of $2.

Other fees shall be charged as are charged in actions originally begun in the superior court.

For filing an abstract of a judgment entered in the supreme court or of any other superior court of the state or of any United States court held in this state, or a transcript of a judgment of a justice court, a fee of $1.

For taking an affidavit with or without seal, 50 cents.

For certificate with or without seal, 50 cents.

For entering a declaration to become a citizen of the United States, $1.50.

For entering the final admission of an alien to citizenship and for a certified copy thereof under seal, $3.

For filing all instruments required by law to be filed in his office, where no other fee is provided, 10 cents.

For filing and recording marriage certificates, the same to be collected as provided by law, $1.

For approving bond, including justification thereon, in other than civil actions and probate proceedings, 50 cents.

In probate proceedings the party instituting such proceedings shall pay, at the time of the filing of the first paper therein, a fee of $5.

Upon the filing of a petition for the sale of real estate, there shall be paid at the time of filing such petition a fee of $3.

Upon the filing of a final account in the settlement of the decedent's estate, there shall be paid a fee of $5.

For issuing commission to take deposition, there shall be paid a fee of $1.

For filing any petition to contest a will admitted to probate, or to prove a will which has been rejected and for all other services in connection with such petition, subsequent to its filing and up to final settlement of the issues raised by such petition, to be paid at the time of filing such petition, a fee of $25.

SHERIFF'S FEES.

For service of each summons and complaint, and return thereon, on each defendant, besides mileage, 60 cents.

For making a return of not found in the county upon a summons, besides mileage actually traveled, 30 cents.

For levying each writ of attachment or writ of execution upon real or personal property, besides mileage, 60 cents.

For serving writ of possession or restitution without aid of the county, besides mileage, $1.50.

For serving writ of possession or restitution with aid of the county, besides mileage, $2.

For service and return of subpoena, upon each person served, besides mileage, 25 cents.

For summoning each juror, in a justice of the peace court, besides mileage, 25 cents.

For serving an arrest warrant in a civil action or proceeding, besides mileage, 80 cents.

For serving or executing any other writ or process in a civil action or proceeding, besides mileage, 60 cents.

For taking and approving any bond, in a civil action or proceeding, required by law to be taken or approved by him, except indemnity bonds, 50 cents.

For posting each notice, besides mileage, 25 cents.

For each mile actually and necessarily traveled by him in going to or returning from any place of service, 10 cents.

For making a deed to lands sold upon execution or order of sale, or other decree of court, to be paid by the purchaser, $3.

For making copy of any complaint, notice, writ or process, necessary to complete service, per folio, 10 cents:

Provided, that he shall not be required to make any certified copies for a fee less than $1.

WITNESS FEES.

Witnesses shall receive for each day's attendance in all courts of this state, besides mileage at ten cents per mile each way, $2. [L. '07, p. 88, § 1. See pp. 88–94. Cf. L. '54, pp. 368–376; L. '61, pp. 34-42; L. '63, pp. 391–399; L. '66, pp. 94–99; Cd. '81, § 2086; 1 H. C., § 3017; L. '93, pp. 421, 425, §§ 1, 2; L. '03, pp. 290–298.]

Cited in 8 Wash. 489, 537; 31 Wash. 121; 42 Wash. 659; 79 Wash. 228, 233.

Former laws cited in 7 Wash. 446, 450; 8 Wash. 233, 537; 9 Wash. 108, 109, 110, 694; 17 Wash. 488; 25 Wash. 280; 29 Wash. 60; 31 Wash. 121, 565; 39 Wash. 184.

§ 498. Witnesses and Jurors in Criminal Cases.—No fees shall be allowed to witnesses in criminal causes unless they shall have reported their attendance at the close of each day's session to the clerk in attendance thereon. No allowance of mileage shall be made to a juror or witness who has not verified his claim of mileage under oath before the clerk of the court on which he is in attendance. [L. '95, p. 15, §§ 1, 2.]

Cited in 14 Wash. 373.

§ 499. Salaried Officers not to Receive Fees.—No state, county, municipal or other public officer within the state of Washington, who receives from the state, or from any county or municipality therein, a fixed and stated salary as compensation for services rendered as such public officer, shall be allowed or paid any per diem for attending or testifying on behalf of the state of Washington, or any county or municipality therein, at any trial or other judicial proceeding, in any state, county or municipal court within this state; nor shall such officer, in any case, be allowed nor paid any per diem for attending or testifying in any state or municipal court of this state, in regard to matters and information that have come to his knowledge in connection with and as a result of the performance of his duties as a public officer as aforesaid: Provided, this act shall not apply when any deduction shall be made from the regular salary of such officer by reason of his being in attendance upon the superior court, but in such cases regular witness fees shall be paid; and further, that if a public officer be subpoenaed and required to appear or testify in judicial proceedings in a county other than that in which he resides, then said public officer shall be entitled to receive per diem and mileage as provided by statute in other cases; and, provided further, that this act shall not apply to police officers when called as witnesses in the superior courts during hours when they are off duty as such officers. [L. '01, p. 212, § 1; L. '03, p. 10, § 1.]

§ 500. "Folio" Defined, and Matters Concerning.—The term "folio" when used as a measure for computing fees or compensation, shall be construed to mean one hundred words, counting every two figures necessarily used as a word. Any portion of a folio, when in the whole draft or paper there should not be a complete folio, and when there shall be an excess over the last folio exceeding a quarter, it shall be computed as a folio. The filing of a paper shall be construed to include the certificate of the same. [L. '69, p. 373, § 5; Cd. '81, § 2093; 1 H. C. § 3022.]

§ 501. Mileage in Certain Cases.—When any sheriff, constable, or coroner serves more than one process in the same cause, or on the same person, not requiring more than one journey from his office, he shall receive mileage only for the most distant service. [L. '69, p. 373, § 16; Cd. '81, § 2094; 1 H. C., § 3023.]

§ 502. Witness Fee not Allowed to Attorney.—No attorney in any case shall be allowed any fees as a witness in such case. [L. '69, p. 374, § 17; Cd. '81, § 2095; 1 H. C., § 3024.]

§ 503. Mileage to be Computed from Courthouse, When.—Mileage of officers who are required to reside at the county seat shall be computed from the courthouse of the county and every portion of a mile shall be computed as one mile. [L. '69, p. 374, § 19; Cd. '81, § 2097; 1 H. C., § 3026.]

§ 504. Costs of Publication to be Paid in Advance.—When, by law, any publication is required to be made by an officer of any suit, process, notice, order, or other papers, the costs of such publication shall, if demanded, be tendered by the party procuring such publication before such officer shall be compelled to make publication thereof. [L. '69, p. 373, § 14; Cd. '81, § 2092; 1 H. C., § 3021.]

§ 505. Fees Payable in Advance, When.—All fees are invariably due in advance where demanded by the officer required to perform any official act, and no officer shall be required to perform any official act unless his fees are paid when he demands the same: Provided, this section shall not apply when the officer performs any official act for his county, or for the state. [L. '69, p. 374, § 21; Cd. '81, § 2099; 1 H. C., § 3028.]

Cited in 1 Wash. 96.

§ 506. Officers not to Serve Until Fees are Paid—Liability Afterwards.—The officers mentioned in this act shall not, in any case except for the state or county, perform any official services unless the fees prescribed for such service are paid in advance, and on such payment the officer must perform the services required. For every failure or refusal to perform official duty when the fees are tendered, the officer is liable on his official bond. [L. '90, p. 315, § 39; 1 H. C., § 3009.]

Cited in 8 Wash. 260.

§ 507. Fees of Witness are to be Paid in Advance, When.—Witnesses in civil cases shall be entitled to receive upon demand their fees for one day's attendance, together with mileage going to the place where they are required to attend, if such demand is made to the officer or person serving the subpoena at the time of service. [L. '69, p. 374, § 22; Cd. '81, § 2100; 1 H. C., § 3029.]

§ 508. County to Pay Costs, When and When not.—Each county shall be liable to pay the per diem and mileage, or other compensation in lieu thereof, to jurors of the county attending the district court; the fees of the sheriff for maintaining prisoners charged with crimes,

and his costs in conveying them to and from the district court, as well as their board while there; the per diem and mileage, or such other compensation as is allowed in lieu thereof, of the sheriff of the county, when in criminal cases he is required to attend or travel to the superior court out of the limits of his own county; the costs in criminal cases taken from the county to the district court: Provided, that none shall be so paid by the treasurer unless the particular items shall be approved by the judge and certified by the clerk under the seal of the court: And provided further, that for the time or travel which may be paid by the parties or United States, no payment from the county fund shall be allowed, and no officer, juror, or witness shall receive from the county double pay as a per diem for the same time, or as traveling expenses or mileage for the same travel, in how many different capacities or in however many different causes they may be summoned, notified, or called upon to testify or attend in. [Cf. L. '57, p. 22, § 10; L. '63, p. 425, § 10; L. '69, p. 420, § 9; Cd. '81, § 2103; 1 H. C., § 3050.]

Cited in 70 Wash. 643.

See supra, § 491, costs against state or county.

This and the next following section are for the most part incompatible with the organization of the courts under the state constitution. There being a doubt as to what portions thereof survive, they are given as they appeared in the code of 1881.

§ 509. Expenses in Lieu of Mileage.—Whenever a juror, witness, or officer is required to attend a court, or travel on official business out of the limits of his own county, and entitled to mileage, in lieu thereof he may at his option receive his actual and necessary traveling expenses by the usually traveled route in going to and returning from the place where the court is held, or where the business is discharged. [Cf. L. '63, p. 424, §§ 6, 8; L. '69, p. 419, § 7; Cd. '81, § 2109; 1 H. C., § 3049.]

This is only a part of Bal. Code, § 1625; see § 4085, infra.

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CHAPTER I.

Executions.

§ 510. Execution to Enforce Judgment.—The party in whose favor judgment has been given or may hereafter be given or entered in any court of record in this state or the territory of Washington may have an execution issued at any time for the collection or enforcement of the same: Providing, that if a period of five years shall have elapsed without an execution being issued on such judgment, then execution shall not issue thereafter until such judgment shall be revived in the

manner provided for by law. [Cf. L. '54, p. 175, § 242; L. '69, p. 79, § 320; Cd. '81, § 325; L. '88, p. 94, § 1; 2 H. C., § 464.]

Cited in 12 Wash. 518; 23 Wash. 546; 32 Wash. 90; 78 Wash. 190, 192.

Superseded and modified by §§ 445, 458, supra.
See supra, § 445, duration of judgment lien.
See supra, § 459, revival of judgments.

§ 511. Four Kinds of Executions.—There shall be four kinds of execution; One against the property of the judgment debtor; another against his person; the third for the delivery of the possession of real or personal property, or such delivery with damages for withholding the same; and the fourth, commanding the enforcement of or obedience to any special order of the court. And in all cases there shall be an order to collect the costs. [L. '54, p. 176, § 245; Cd. '81, § 327; 2 H. C., § 465.]

Cited in 22 Wash. 309.

§ 512. Enforcement in Particular Cases.—When a judgment requires the payment of money, or the delivery of real or personal property, the same may be enforced in those respects by execution, as provided in this chapter. When it requires the performance of any other act, a certified copy of the judgment may be served on the party against whom it is given, or the person or officer who is required thereby, or by law, to obey the same, and a writ shall be issued commanding him to obey or enforce the same. If he refuses, he may be punished by the court as for a contempt. [L. '54, p. 176, § 244; Cd. '81, § 326; 2 H. C., § 466.]

Cited in 71 Wash. 497.

§ 513. Form and Contents of Writ.—The writ of execution shall be issued in the name of the state of Washington, sealed with the seal of the court, and subscribed by the clerk, and shall be directed to the sheriff of the county in which the property is situated, or coroner when the sheriff is a party or interested, and shall intelligibly refer to the judgment, stating the court, the county where judgment was rendered, the names of the parties, the amount of the judgment if it be for money, and the amount actually due thereon, and shall require substantially as follows:—

1. If it be against the property of the judgment debtor, it shall require the sheriff to satisfy the judgment, with interest, out of the personal property of the debtor, and if sufficient personal property

cannot be found, out of his real property upon which the judgment is a lien;

2. If it be against real or personal property in the hands of personal representatives, heirs, devisees, legatees, tenants of real property, or trustees, it shall require the sheriff to satisfy the judgment, with interest, out of such property;

3. If it be against the person of the judgment debtor, it shall require the sheriff to arrest such debtor, and commit him to the jail of the county until he shall pay the judgment, with interest, or be discharged according to law;

4. If it be for the delivery of the possession of real or personal property, it shall require the sheriff to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may, at the same time, require the sheriff to satisfy any charges, damages, or rents and profits recovered by the same judgment, out of the personal property of the party against whom it was rendered, and the value of the property for which the judgment was recovered, shall be specified therein. If a delivery thereof cannot be had, and if sufficient personal property cannot be found, then out of his real property. When it is to enforce obedience to any special order, it shall particularly command what is required to be done or to be omitted. When the nature of the case shall require it, the execution may embrace one or more of the requirements above mentioned. And in all cases the execution shall require the collection of all interest, costs, and increased costs thereon. [Cf. L. '54, p. 176, § 246; L. '69, p. 81, § 324; Cd. '81, § 328; 2 H. C., § 467.]

Cited in 12 Wash. 517; 24 Wash. 707; 26 Wash. 75; 46 Wash. 406; 71 Wash. 497.

§ 514. To What County Execution may Issue.—The party in whose favor judgment has been rendered, entered, or given in any court of record in this state for the recovery of money, or against the property of a judgment debtor, may have execution issued thereon for the collection or enforcement of such judgment to the sheriff of any county in this state: Provided, that when a judgment requires the delivery of real or personal property execution shall be issued to the sheriff of the county where the property, or some part thereof, is situated. [Cf. L. '54, p. 177, § 247; Cd. '81, § 329; L. '88, p. 95, § 2; 2 H. C., § 468.]

§ 515. Sheriff's Duty on Receiving Execution.—The sheriff shall indorse upon the writ of execution the time when he received the

same, and such execution shall be returnable within sixty days after its date to the clerk who issued the same. And no sheriff shall retain any moneys collected on execution more than twenty days before paying the same to the clerk of the court who issues the writ, under penalty of twenty per cent on the amount collected, to be paid by the sheriff, and one-half to the party to whom the judgment is payable, and the other half to the county commissioners of the county wherein the action was brought, for the use of the school fund of said county. And the clerk shall, immediately after the receipt of any moneys collected on any judgment, notify the party to whom the same is payable, and pay over the amount to the said party on demand. On failure to so notify and pay over, without reasonable cause shown for delay, the clerk shall forfeit and pay the same penalty to the same parties as is above prescribed for the sheriff. [Cf. L. '54, p. 177, § 248; L. '69, p. 83, § 226; Cd. '81, § 330; 2 H. C., § 469.]

Cited in 3 Wash. 704; 12 Wash. 517; 21 Wash. 275; 26 Wash. 76; 86 Wash. 303.

§ 516. Execution Against the Person.—If the action be one in which the defendant may be arrested as provided by law, an execution against the person of the judgment debtor may be issued to any county in the state: Provided, that the sheriff shall not arrest the defendant if he shall deliver to him the property subject to levy, sufficient to satisfy said judgment. [L. '54, p. 177, § 249; Cd. '81, § 331; 2 H. C., § 470.]

Cited in 71 Wash. 497; 84 Wash. 60.

§ 517. Imprisonment of Defendant upon Execution.—A person arrested on execution shall be imprisoned within the jail, or the liberties thereof, and kept at his own expense until satisfaction of the execution or his legal discharge; but the plaintiff shall be liable to the sheriff, in the first instance, for such expense as in other cases of arrest in the same manner and to the same extent as therein prescribed. [L. '54, p. 177, § 250; Cd. '81, § 332; 2 H. C., § 471.]

§ 518. What Property Subject to Execution.—All property, real and personal, of the judgment debtor, not exempt by law, shall be liable to execution. [L. '54, p. 177, § 251; Cd. '81, § 333; 2 H. C., § 479.]

Cited in 15 Wash. 489; 31 Wash. 457.

§ 519. Execution in Name of Assignee, Executor, etc.—In all cases in which a judgment has been recovered in any of the courts

of this state, which shall have been assigned to any person, execution may issue in the name of the assignee, upon the assignment being recorded in the execution docket by the clerk of the court in which the judgment is recovered; and in all cases in which a judgment has been recovered in any such court, and the person in whose name execution might have issued dies, execution may issue in the name of the executor, administrator, or legal representative of such deceased person upon the letters testamentary or of administration, or other sufficient proof, being filed in said cause and minuted upon said execution docket by the clerk of the court in which said judgment is entered, and upon an order of said court, or the judge thereof, which may be made on an ex parte application, and the provisions of this section shall extend to all judgments heretofore recovered, as well as to those hereafter to be recovered, and to cases of persons now deceased, as well as to those who may hereafter die. [L. '69, p. 84, § 330; Cd. '81, § 334; L. '86, p. 75, § 1; 2 H. C., § 472.]

§ 520. Franchises Liable to Sale Under Execution or Foreclosure. All franchises of every kind and nature heretofore or hereafter granted, shall be subject to sale upon execution, and upon order of sale issued upon foreclosure of mortgage, in the same manner as any other personal property may be sold upon execution or upon order of sale under foreclosure of mortgage, except as hereinafter provided. [L. '97, p. 96, § 1.]

Cited in 21 Wash. 54; 22 Wash. 490; 86 Wash. 322.

§ 521. Manner of Levy and Sale of Franchises.—The levy of such execution or order of sale shall be made by filing in the office of the auditor of the county in which the franchise was granted, a copy of the same, together with a notice in writing that under such execution or order of sale the officer levying the same has levied upon the franchise to be sold, specifying the time and place of sale, the name of the owner of the franchise, the amount of the claim or judgment for the satisfaction of which the franchise is to be sold, and the name of the plaintiff in the action in which the decree of foreclosure or judgment is entered; and by serving a copy of such execution or order of sale and notice, upon the judgment debtor, or his attorney of record, if any, in the action in which judgment was rendered, twenty days prior to the date of sale. Notice may be served upon a defendant in the same manner that summons is served in civil actions. The sale of any franchise under execution or order of sale upon foreclosure must be made at the front door of the courthouse in the

county in which the franchise was granted, not less than twenty days after the levy of the execution or order of sale and the giving of the notice as in this act provided. [L. '97, pp. 96, 97, §§ 2, 3.]

CHAPTER II.

The Stay of Executions.

§ 522. Stay, in What Cases Allowed.—Stay of execution shall be allowed on judgments rendered in the supreme court and superior courts as follows:—

In the supreme court,—

1. On all sums under five hundred dollars, thirty days;

2. On all sums over five and under fifteen hundred dollars, sixty days;

3. On all sums over fifteen hundred dollars, ninety days;

On judgments rendered in the superior court,—

1. On all sums under three hundred dollars, two months;

2. On all sums over three hundred and under one thousand dollars, five months;

3. On all sums over one thousand dollars, six months. [Cf. L. '54, p. 377, § 1; L. '60, p. 328, § 1; Cd. '81, § 335; 2 H. C., § 473.]

§ 523. Bond Required for Stay.—Before any execution shall be stayed under the provisions of this chapter, the defendant shall give bond to the opposite party in double the amount of the judgment and costs, with surety, to the satisfaction of the clerk, conditioned to pay said judgment, interest, costs, and increased costs at the expiration of the period of said stay. [L. '54, p. 378, § 2; Cd. '81, § 336; 2 H. C., § 474.]

Cited in 50 Wash. 40, 41.

§ 524. Judgment may be Entered Against Sureties.—If the judgment is not satisfied at any time after the expiration of the period for which execution has been stayed, the plaintiff may, upon motion supported by an affidavit that such judgment, or any part thereof, is unpaid, and stating how much still remains due thereon, have judgment against the sureties upon said bond for the balance remaining due, and have an execution therefor, upon which no stay shall be allowed. [L. '54, p. 378, § 3; Cd. '81, § 337; 2 H. C., § 475.]

Cited in 50 Wash. 41.

§ 525. Qualification and Justification of Sureties.—The sureties upon a bond for stay of execution shall possess the same qualifica-

tions and justify in the same manner as bail upon arrest in civil actions. [L. '54, p. 378, § 4; Cd. '81, § 338; 2 H. C., § 476.]

§ 526. Stay for Part of Period.—When execution has not been stayed, and execution issues before the time has elapsed for which it might have been stayed, as is herein provided, the defendant may have stay for the balance of the time upon giving the proper bond and surety, which bond and surety shall be approved by and justified before the sheriff. [L. '54, p. 378, § 5; Cd. '81, § 339; 2 H. C., § 477.]

§ 527. Bond Lodged With Clerk.—Bonds required by this chapter shall, when taken, be lodged with the clerk of the court where the judgment was rendered and placed on file in his office. [L. '54, p. 378, § 6; Cd. '81, § 340; 2 H. C., § 478.]

CHAPTER III.

Homesteads and Exemptions.

§ 528. Homestead, of What Consists.—The homestead consists of the dwelling-house, in which the claimant resides, and the land on which the same is situated, selected as in this chapter provided. [L. '95, p. 109, § 1.]

Cited in 16 Wash. 377; 17 Wash. 435; 25 Wash. 5; 30 Wash. 40, 54, 313; 32 Wash. 83, 98; 41 Wash. 460, 461, 464, 465; 46 Wash. 577; 48 Wash. 377; 56 Wash. 59; 57 Wash. 44; 75 Wash. 614; 78 Wash. 547; 87 Wash. 360.

For former laws on this subject see: L. '54, p. 178; L. '61, pp. 42, 52; L. '69, p. 85; Cd. '81, §§ 341–348; 2 H. C., §§ 480–490.

§ 529. Exemption of Homestead—Time for Selection.—There shall be also exempt from execution and attachment to every householder, being the head of a family, a homestead not exceeding in value the sum of one thousand dollars, while occupied as such by the owner thereof, or his or her family. Said homestead may consist of a house and lot or lots in any city, or of a farm consisting of any number of acres, so that the value of the same shall not exceed the aforesaid sum of one thousand dollars. Such homestead may be selected at any time before sale. [Cd. '81, § 342; 2 H. C., § 481.]

Cited in 78 Wash. 547, 549; 84 Wash. 666.

This section, except the last sentence, seems to be superseded.

§ 530. From What may be Selected.—If the claimant be married the homestead may be selected from the community property, or the

separate property of the husband, or, with the consent of the wife, from her separate property. When the claimant is not married, but is the head of a family within the meaning of section 553 the homestead may be selected from any of his or her property. [L. '95, p. 109, § 2.]

Cited in 56 Wash. 59; 66 Wash. 166.

§ 531. When Selected from Wife's Separate Estate.—The homestead cannot be selected from the separate property of the wife without her consent, shown by her making the declaration of homestead. [L. '95, p. 109, § 3.]

§ 532. Exempt from Forced Sale.—The homestead is exempt from execution or forced sale, except as in this chapter provided. [L. '95, p. 109, § 4.]

Cited in 66 Wash. 166, 167.

The exception "as in this chapter provided" is stated in § 537, infra.

§ 533. When Homestead Subject to Execution.—The homestead is subject to execution or forced sale in satisfaction of judgments obtained: 1. On debts secured by mechanic's, laborer's, materialmen's or vendor's liens upon the premises. 2. On debts secured by mortgages on the premises executed and acknowledged by the husband and wife or by any unmarried claimant. [L. '95, p. 110, § 5; L. '09, p. 71, § 1.]

Cited in 66 Wash. 166, 167, 517; 87 Wash. 360.

§ 534. How Conveyed or Encumbered.—The homestead of a married person cannot be conveyed or encumbered unless the instrument by which it is conveyed or encumbered is executed and acknowledged by both husband and wife. [L. '95, p. 110, § 6.]

Cited in 44 Wash. 168, 169; 50 Wash. 112.

§ 535. How Abandoned.—A homestead can be abandoned only by a declaration of abandonment, or a grant thereof, executed and acknowledged,—

1. By the husband and wife if the claimant is married;
2. By the claimant, if unmarried. [L. '95, p. 110, § 7.]

Cited in 30 Wash. 56; 35 Wash. 159; 44 Wash. 168; 78 Wash. 547, 549.

§ 536. Declaration, When Effectual.—A declaration of abandonment is effectual only from the time it is filed in the office in which the homestead was recorded. [L. '95, p. 110, § 8.]

§ 537. Proceedings on Execution Against Homestead.—When the execution for the enforcement of a judgment obtained in a case not within the classes enumerated in section 533 is levied upon the homestead, the judgment creditor may apply to the superior court of the county in which the homestead is situated for the appointment of persons to appraise the value thereof. [L. '95, p. 110, § 9.]

Cited in 44 Wash. 169.

§ 538. Verified Petition.—The application must be made upon verified petition, showing,—

1. The fact that an execution has been levied upon the homestead;

2. The name of the claimant;

3. That the value of the homestead exceeds the amount of the homestead exemption. [L. '95, p. 110, § 10.]

§ 539. Petition, Where Filed.—The petition must be filed with the clerk of the superior court. [L. '95, p. 110, § 11.]

§ 540. Notice.—A copy of the petition, with a notice of the time and place of hearing, must be served upon the claimant at least ten days before the hearing. [L. '95, p. 110, § 12.]

§ 541. Hearing and Appointment of Appraisers.—At the hearing the judge may, upon the proof of the service of a copy of the petition and notice and of the facts stated in the petition, appoint three disinterested resident freeholders of the county to appraise the value of the homestead. [L. '95, p. 110, § 13.]

§ 542. Oath of Appraisers.—The persons appointed, before entering upon the performance of their duties, must take an oath to faithfully perform the same. [L. '95, p. 111, § 14.]

§ 543. View of Premises.—They must view the premises and appraise the value thereof, and if the appraised value exceeds the homestead exemption, they must determine whether the land claimed can be divided without material injury. [L. '95, p. 111, § 15.]

§ 544. Report of Appraisers.—Within fifteen days after their appointment they must make to the court a report in writing, which report must show the appraised value and their determination upon the matter of a division of the land claimed. [L. '95, p. 111, § 16.]

§ 545. Division of Property, When.—If, from the report, it appears to the court that the land claimed can be divided without ma-

terial injury the court must, by an order, direct the appraisers to set off to the claimant so much of the land including the residence, as will amount in value to the homestead exemption, and the execution may be enforced against the remainder of the land. [L. '95, p. 111, § 17.]

§ 546. Sale, When.—If, from the report, it appears to the court that the land claimed exceeds in value the amount of the homestead exemption and that it cannot be divided, the court must make an order directing its sale under the execution. [L. '95, p. 111, § 18.]

§ 547. Bids.—At such sale no bid must be received unless it exceeds the amount of the homestead exemption. [L. 95, p. 111, § 19.]

§ 548. Application of Proceeds.—If the sale is made, the proceeds thereof, to the amount of the homestead exemption, must be paid to the claimant and the balance applied to the satisfaction of the execution. [L. '95, p. 111, § 20.]

§ 549. Money from Sale Protected.—The money paid to the claimant is entitled to the same protection against legal process and the voluntary disposition of the husband which the law gives to the homestead. [L. '95, p. 111, § 21.]

§ 550. Compensation of Appraisers.—The compensation of the appraisers shall be two dollars per day each. [L. '95, p. 111. § 22.]

§ 551. Costs.—The execution creditor must pay the costs of these proceedings in the first instance; but in the case provided for in sections 545 and 546 the amount so paid must be added as costs on execution, and collected accordingly. [L. '95, p. 111, § 23.]

§ 552. Selection and Value of Homestead.—Homesteads may be selected and claimed in lands and tenements with the improvements thereon, not exceeding in value the sum of two thousand dollars. The premises thus included in the homestead must be actually intended and used for a home for the claimants, and shall not be devoted exclusively to any other purposes. [L. '95, p. 112, § 24.]

Cited in 30 Wash. 38; 57 Wash. 44; 78 Wash. 547, 549.

§ 553. Head of a Family Defined.—The phrase "head of the family," as used in this chapter, includes within its meaning,—

1. The husband or wife, when the claimant is a married person;

2. Every person who has residing on the premises with him or her, and under his or her care and maintenance, either,—

1. His or her minor child or the minor child of his or her deceased wife or husband;

2. A minor brother or sister or the minor child of a deceased brother or sister;

3. A father, mother, grandmother or grandfather;

4. The father, mother, grandfather or grandmother of deceased husband or wife;

5. An unmarried sister, or any other of the relatives mentioned in this section who has attained the age of majority, and are unable to take care of or support themselves. [L. '95, p. 112, § 25.]

§ 554. Alienation in Case of Insanity.—In case of a homestead, if either the husband or wife shall become hopelessly insane, upon application of the husband or wife not insane to the superior court of the county in which the homestead is situated, and upon due proof of such insanity, the court may make an order permitting the husband or wife not insane to sell and convey or mortgage such homestead. [L. '95, p. 112, § 26.]

Cited in 45 Wash. 23.

§ 555. Notice of Application.—Notice of the application for such order shall be given by publication of the same in a newspaper published in the county in which such homestead is situated, if there be a newspaper published therein, once each week for three successive weeks prior to the hearing of such application, and a copy of such notice shall be served upon the nearest male relative of such insane husband or wife, resident in this state, at least three weeks prior to such application, and in case there be no such male relative known to the applicant, a copy of such notice shall be served upon the prosecuting attorney of the county in which such homestead is situated; and it is hereby made the duty of such prosecuting attorney, upon being served with a copy of such notice, to appear in court and see that such application is made in good faith, and that the proceedings therein are fairly conducted. [L. '95, p. 112, § 27.]

§ 556. Petition—Thirty days before the hearing of any application under the provisions of this chapter, the applicant shall present and file in the court in which such application is to be heard a petition for the order mentioned, subscribed and sworn to by the applicant, setting forth the name and age of the insane husband

or wife; a description of the premises constituting the homestead; the value of the same; the county in which it is situated; and such facts in addition to that of the insanity of the husband or wife relating to the circumstances and necessities of the applicant and his or her family as he or she may rely upon in support of the petition. [L. '95, p. 113, § 28.]

§ 557. Order and Effect.—If the court shall make the order provided for in section 554, the same shall be entered upon the minutes of the court; and thereafter any sale, conveyance [or] mortgage made in pursuance of such order shall be as valid and effectual as if the property affected thereby was the absolute property of the person making such sale, conveyance or mortgage in fee simple. [L. '95, p. 113, § 29.]

§ 558. Mode of Selection.—In order to select a homestead the husband or other head of a family, or in case the husband has not made such selection, the wife must execute and acknowledge, in the same manner as a grant of real property is acknowledged, a declaration of homestead, and file the same for record. [L. '95, p. 113, § 30.]

Cited in 30 Wash. 38; 56 Wash. 59; 76 Wash. 455; 86 Wash. 59; 87 Wash. 365.

§ 559. Declaration, What to Contain.—The declaration of homestead must contain,—

1. A statement showing that the person making it is the head of a family; or when the declaration is made by the wife, showing that her husband has not made such declaration, and that she therefore makes the declaration for their joint benefit;

2. A statement that the person making it is residing on the premises or has purchased the same for a homestead and intends to reside thereon and claims them as a homestead;

3. A description of the premises;

4. An estimate of their actual cash value. [L. '95, p. 113, § 31.]

Cited in 30 Wash. 39, 54; 70 Wash. 560; 87 Wash. 359, 365.

§ 560. Declaration must be Recorded.—The declaration must be recorded in the office of the auditor of the county in which the land is situated. [L. '95, p. 114, § 32.]

Cited in 30 Wash. 39; 87 Wash. 359, 365.

§ 561. Tenure by Which Homestead is Held.—From and after the time the declaration is filed for record the premises therein de-

scribed constitute a homestead. If the selection was made by a married person from the community property, the land, on the death of either of the spouses, vests in the survivor, subject to no other liability than such as exists or has been created under the provisions of this chapter; in other cases, upon the death of the person whose property was selected as a homestead, it shall go to his heirs or devisees, subject to the power of the superior court to assign the same for a limited period to the family of the decedent; but in no case shall it be held liable for the debts of the owner, except as provided in this chapter. [L. '95, p. 114, § 33.]

Cited in 24 Wash. 174; 30 Wash. 39, 55; 34 Wash. 90, 91; 56 Wash. 59, 61; 86 Wash. 62.

See infra, § 1465, probate homestead.

§ 562. Subsequent Homestead Acquired by Proceeds of Former.—In case of the sale of said homestead, any subsequent homestead acquired by the proceeds thereof shall also be exempt from attachment and execution; nor shall any judgment or other claim against the owner of such homestead be a lien against the same in the hands of a bona fide purchaser for a valuable consideration. [L. '95, p. 87, § 342; Cd. '81, § 346; 2 H. C., § 485.]

Cited in 20 Wash. 7; 44 Wash. 169; 50 Wash. 112.

§ 563. Specification of Exempt Property.—The following property shall be exempt from execution and attachment, except as hereinafter specially provided:—

1. All wearing apparel of every person and family;

2. All private libraries, not to exceed five hundred dollars in value, and all family pictures and keepsakes;

3. To each householder, one bed and bedding, and one addition[al] bed and bedding for each additional member of the family, and other household goods and utensils and furniture not exceeding five hundred dollars, coin, in value. The other household goods and utensils and furniture specified above shall on the demand of the officer having the execution or attachment in hand, be selected by the husband, if present, if not present they shall be selected by his wife, and in case neither husband or wife, nor other person entitled to the exemption by having the description of a householder, shall be present to make the selection, then the sheriff shall make a selection of the household goods, utensils and furniture equal in value to said five hundred dollars, and shall return the same as exempt by inventory, and such selection by the sheriff or other person described

above shall be prima facie evidence,—1. That such household goods, utensils, and furniture are exempt from execution and attachment; 2. That the value of the property so selected is not over five hundred dollars;

4. To each householder, two cows, with their calves, five swine, two stands of bees, thirty-six domestic fowls, and provisions and fuel for the comfortable maintenance of such householder and family for six months, also feed for such animals for six months: Provided, that in case such householder shall not possess or shall not desire to retain the animals above named, he may select from his property and retain other property not to exceed two hundred and fifty dollars, coin, in value. The selection in the proviso mentioned shall be made in the manner and by the person and at the time mentioned in subdivision three, and said selection shall have the same effect as selections made under subdivision three of this section;

5. To a farmer, one span of horses or mules, with harness, or two yoke of oxen, with yokes and chains, and one wagon; also farming utensils actually used about the farm, not exceeding in value five hundred dollars in coin; also one hundred and fifty bushels of wheat, one hundred and fifty bushels of oats or barley, fifty bushels of potatoes, ten bushels of corn, ten bushels of peas, and ten bushels of onions for seeding purposes;

6. To a mechanic, the tools and instruments used to carry on his trade for the support of himself and family, also material used in his trade, not exceeding in value five hundred dollars in coin;

7. To a physician, his library, not to exceed in value five hundred dollars in coin; also, one horse, with harness and buggy the instruments used in his practice, and medicines not exceeding in value two hundred dollars in coin;

8. To attorneys, clergymen, and other professional men, their libraries, not exceeding one thousand dollars, in coin, value; also office furniture, fuel, and stationery, not exceeding in value two hundred dollars in coin;

9. All firearms kept for the use of any person or family;

10. To any person, a canoe, skiff, or small boat, with its oars, sails, and rigging, not exceeding in value two hundred and fifty dollars;

11. To a person engaged in lightering for his support or that of his family, one or more lighters, barges, or scows, and a small boat, with oars, sails, and rigging, not exceeding in the aggregate two hundred and fifty dollars, in coin, value;

12. To a teamster or drayman engaged in that business for the support of himself or his family, his team, consisting of one span of horses, or mules, or two yoke of oxen, or a horse and mule, with harness, yoke, one wagon, truck, cart, or dray;

13. To a person engaged in the business of logging for his support or that of his family, three yoke of work cattle and their yokes, and axes, chains, implements for the business, and camp equipments, not exceeding three hundred dollars, coin, in value;

14. A sufficient quantity of hay, grain, or feed to keep the animals mentioned in the several subdivisions of this chapter for six weeks. But no property shall be exempt from an execution issued upon a judgment for the price thereof, or any part of the price thereof, or for any tax levied thereon.

Each person shall be entitled to select the property to which he is entitled under the several subdivisions of this section. [Cf. L. '54, p. 178, § 253; L. '69, p. 87, § 343; L.'79, p. 157, § 1; Cd. '81, § 347; L. '83, p. 36, § 1; L. '86, p. 96, § 1; 2 H. C., § 486.]

Cited in 6 Wash. 329, 330; 8 Wash. 259; 11 Wash. 468; 13 Wash. 179; 26 Wash. 173; 58 Wash. 49, 50; 59 Wash. 83; 80 Wash. 359, 363.

See Const., Art. XIX, § 1.

See infra, § 637, exemption of personal earnings and trust funds.

See infra, § 703, exemptions of wages, etc., in garnishment.

See infra, §§ 1102, 1103, exemption in assignment for benefit of creditors.

§ 564. No Exemption Against Wages.—No property shall be exempt from execution for clerk's, laborer's or mechanic's wages earned within this state, nor for actual necessaries, not exceeding fifty dollars in value or amount furnished to the defendant or his family within sixty days preceding the beginning of an action to recover therefor, nor shall any property be exempt from execution issued upon a judgment against an attorney or agent on account of any liability incurred by such attorney or agent to his client or principal on account of any moneys or other property coming into his hands from or belonging to his client or principal: Provided, that nothing herein shall be construed as repealing or in any wise affecting section 703, infra. [L. '97, p. 93, § 1; L. '01, p. 323, § 1; L. '03, p. 135, § 1.]

Cited in 70 Wash. 560.

§ 565. Householder Defined.—A householder, as designated in all statutes relating to exemptions, is defined to be:—

1. The husband and wife, or either;

2. Every person who has residing with him or her, and under his or her care and maintenance, either,—

(a) His or her minor child, or the minor child of his or her deceased wife or husband;

(b) A minor brother or sister, or the minor child of a deceased brother or sister;

(c) A father, mother, grandfather or grandmother;

(d) The father, mother, grandfather or grandmother of deceased husband or wife;

(e) An unmarried sister, or any other of the relatives mentioned in this section who has attained the age of majority, and are unable to take care of or support themselves. [L. '97, p. 93, § 2.]

Cited in 70 Wash. 560.

§ 566. Pension Money Exempt.—Any money received by any citizen of the state of Washington as a pension from the government of the United States, whether the same be in the actual possession of such person or be deposited or loaned by him, shall be exempt from execution, attachment, or seizure by or under any legal process whatever. [L. '90, p. 88, § 1; 2 H. C., § 487.]

Cited in 70 Wash. 560.

§ 567. When Pension Money Exempt to Family.—When a debtor dies or absconds, and leaves his family any money exempted by the last preceding section, the same shall be exempt to his family as provided in said section. [L. '90, p. 89, § 2; 2 H. C., § 488.]

§ 568. Fire Insurance Money Exempt, When.—Whenever property, which by the laws of this state is exempt from execution or attachment, is insured and the same is destroyed by fire, then the insurance money coming to or belonging to the person thus insured, to an amount equal to the exempt property thus destroyed, shall be exempt from execution and attachment. [L. '95, p. 135, § 1.]

§ 569. Proceeds of Life Insurance Exempt.—The proceeds or avails of all life and accident insurance shall be exempt from all liability for any debt. [Cf. L. '95, p. 336, § 1; L. '97, p. 70, § 1.]

Cited in 38 Wash. 372, 373; 65 Wash. 375; 77 Wash. 629; 79 Wash. 48; 83 Wash. 236.

§ 570. Separate Property of Wife Exempt, When.—All real and personal estate belonging to any married woman at the time of her marriage, and all which she may have acquired subsequently to such

marriage, or to which she shall hereafter become entitled in her own right, and all her personal earnings, and all the issues, rents, and profits of such real estate, shall be exempt from attachment and execution upon any liability or judgment against the husband, so long as she or any minor heir of her body shall be living: Provided, that her separate property shall be liable for debts owing by her at the time of her marriage. [L. '54, p. 178, § 252; L. '69, p. 85, § 337; Cd. '81, § 341; H. C., § 480.]

Cited in 6 Wash. 512; 69 Wash. 571; 70 Wash. 560.

§ 571. Waiver of Exemption—Absconding Debtors.—This chapter shall not be so construed as to prevent any single man, or married man, his wife joining him, from waiving, by agreement in writing, the benefit of this chapter: Provided, that any agreement of waiver made by a husband and wife shall be witnessed and acknowledged as required in case of a deed conveying real estate: And provided also, that nothing in this chapter shall be construed to exempt from attachment or execution the property, real or personal, of nonresidents, or a person who has left or is about to leave the state with the intent to defraud his creditors. [L. '69, p. 88, § 344; L. '77, p. 74, § 352; Cd. '81, § 348; 2 H. C., § 489.]

Cited in 6 Wash. 331; 43 Wash. 181, 182; 48 Wash. 504; 58 Wash. 50.

§ 572. Claim of Exemption and Proceedings Thereon.—When a debtor claims personal property as exempt, he shall deliver to the officer making the levy an itemized list of all the personal property owned or claimed by him, including money, bonds, bills, notes, claims, and demands, with the residence of the person indebted upon the said bonds, bills, notes, claims, and demands, and shall verify such list by affidavit. He shall also deliver to such officer a list, by separate items, of the property he claims as exempt. If the husband be absent or incapable of acting, the claim may be made, the list delivered and verified, by the wife. If the creditor, his agent or attorney, demand an appraisement thereof, two disinterested householders of the neighborhood shall be chosen, one by the debtor and the other by the creditor, his agent or attorney, and these two, if they cannot agree, shall select a third; [but if either party fail to choose an appraiser, or the two fail to select a third, or] if one or more of the appraisers fail to act, the officer shall appoint one. The appraisers shall forthwith proceed to make a list, by separate items, of the personal property selected by the debtor as exempt, which they shall decide as exempt, stating the value of each article, and

annexing to the list their affidavit to the following effect: "We solemnly swear that, to the best of our judgment, the above is a fair cash valuation of the property therein described," which affidavit shall be signed by two appraisers at least, and be certified by the officer administering the oaths. The list shall be delivered to the officer holding the execution or other process, and be by him annexed to and made part of his return, and the property therein specified shall be exempt from levy and sale, and the other personal estate of the debtor shall remain subject thereto. In case no appraisement be required, the officer shall return with the process the list of the property claimed as exempt by the debtor. The appraisers shall each be entitled to one dollar, to be paid by the creditor, if all the property claimed by the debtor shall be exempt; otherwise, to be paid by the debtor. [L. '69, p. 88, § 346; L. '77, p. 74, § 353; Cd. '81, § 349; 2 H. C., § 490.]

Cited in 32 Wash. 553, 556; 33 Wash. 355, 358; 34 Wash. 393; 39 Wash. 41; 51 Wash. 328; 58 Wash. 50.

CHAPTER IV.

Adverse Claims to Property Levied upon.

§ 573. Claim by Third Person to Property Levied on or Attached. When any other person than the judgment debtor shall claim property levied upon or attached, he may have the right to demand and receive the same from the sheriff or other officer making the attachment or levy, upon his making an affidavit that the property is his, or that he has a right to the immediate possession thereof, stating on oath the value thereof, and giving to the sheriff or officer a bond, with sureties in double the value of such property, conditioned that he will appear in the superior court of the county in which the property was seized within ten days after the bond is accepted by the sheriff or other officer, and make good his title to the same, or that he will return the property or pay its value to the said sheriff or other officer. [Cf. L. '54, p. 179, § 256; Cd. '81, § 350; L. '91, p. 79, § 1; 2 H. C., § 491.]

Cited in 3 Wash. 678; 4 Wash. 4, 597; 5 Wash. 772; 6 Wash. 88; 9 Wash. 637; 10 Wash. 227, 335; 16 Wash. 45; 18 Wash. 92; 19 Wash. 405; 22 Wash. 62; 26 Wash. 257; 34 Wash. 155, 156; 35 Wash. 530, 534; 54 Wash. 299; 63 Wash. 140; 65 Wash. 651, 653; 70 Wash. 589; 78 Wash. 598; 83 Wash. 77; 84 Wash. 421, 699.

§ 574. Justification of Sureties.—If the sheriff or other officer require it, the sureties shall justify as in other cases, and in case

they do not so justify when required, the sheriff or officer shall retain the property; if the sheriff or officer do not require the bail to justify, he shall stand good for their sufficiency. He shall date and indorse his acceptance upon the bond. [Cf. L. '54, p. 179, § 256; Cd. '81, § 351; 2 H. C., § 492.]

§ 575. Return of Officer—Trial.—The officer shall return the affidavit, bond, and justification, if any, to the office of the clerk of the superior court, and this [the] case shall stand for trial in said court. [Cf. L. '54, p. 179, § 257; Cd. '81, § 352; L. '91, p. 80, § 2; 2 H. C., § 493.]

Cited in 4 Wash. 763.

§ 576. Parties.—The person claiming the property shall be plaintiff, and the sheriff and plaintiff in the execution defendants. [L. '54, p. 179, § 258; Cd. '81, § 353; 2 H. C., § 494.]

Cited in 16 Wash. 47.

§ 577. Judgment and Costs.—If the claimant makes good his title to the property, the bond shall be canceled; if to a portion thereof, a like proportion of the bond shall be canceled; but if he shall not maintain his title, judgment shall be rendered against him and his sureties for the value of the property, or for such less amount as shall not exceed the amount due on the original execution or attachment. When the judgment is in favor of the sheriff for the entire property, the claimant shall pay the costs; when the claimant recovers all the property, judgment shall be given in favor of the claimant for costs; when the claimant recovers a portion of the property only, the costs shall be apportioned. When the plaintiff prevails, the costs may be taxed against the defendant who was plaintiff in the execution or attachment, or the court may, if it shall be of opinion that the sheriff attached or levied upon said property without the exercise of due caution, adjudge him to pay the costs, or any portion thereof. [L. '54, p. 179, § 259; Cd. '81, § 354; 2 H. C., § 495.]

Cited in 4 Wash. 4; 34 Wash. 155, 156; 35 Wash. 533, 534; 65 Wash. 651; 78 Wash. 599.

CHAPTER V.

Sale of Property Under Execution and Redemption.

§ 578. Writ, How Executed.—When the writ of execution is against the property of the judgment debtor, it shall be executed by the sheriff as follows:—

1. If property has been attached, he shall indorse on the execution and pay to the clerk forthwith the amount of the proceeds of sales of perishable property or debts due the defendant received by him sufficient to satisfy the judgment;

2. If the judgment is not then satisfied, and property has been attached and remains in his custody, he shall sell the same, or sufficient thereof to satisfy the judgment;

3. If then any portion of the judgment remains unsatisfied, or if no property has been attached, or the same has been discharged, he shall levy on the property of the judgment debtor sufficient to satisfy the judgment;

4. Property shall be levied on in like manner and with like effect as similar property is attached;

5. Until a levy, personal property shall not be affected by the execution. When property has been sold or debts received by the sheriff on execution, he shall pay the proceeds thereof, or sufficient to satisfy the judgment, as commanded in the writ;

6. When property has been attached, and it is probable that such property will not be sufficient to satisfy the judgment, the execution may be levied on other property of the judgment debtor without delay. If after satisfying the judgment any property, or the proceeds thereof, remain in the custody of the sheriff, he shall deliver the same to the judgment debtor. [L. '69, p. 91, § 351; Cd. '81, § 355; 2 H. C., § 496.]

Cited in 20 Wash. 6; 28 Wash. 423; 54 Wash. 301.

§ 579. Levy on Joint Realty.—When a defendant in execution owns real estate subject to execution jointly or in common with any other person, the judgment shall be a lien, and the execution be levied upon the interest of the defendant only. [L. '54, p. 220, § 499; Cd. '81, § 751; 2 H. C., § 802.]

Cited in 15 Wash. 135.

§ 580. Levy on Joint Personalty.—When he owns personal property jointly or in copartnership with any other person, and the interest cannot be separately attached, the sheriff shall take possession of the property, unless the other person having an interest therein shall give the sheriff a sufficient bond, with surety, to hold and manage the property according to law; and the sheriff shall then proceed to sell the interest of the defendant in such property, describing such interest in his advertisement as nearly as may be, and the purchaser shall acquire all the interest of such defendant therein; but

nothing herein contained shall be so construed as to deprive the copartner of any such defendant of his interest in any such property. [L. '54, p. 220, § 499; Cd. '81, § 752; 2 H. C., § 802.]

Cited in 21 Wash. 14.

§ 581. Judgment Debtor may Retain Property, When.—When the sheriff shall levy upon personal property by virtue of an execution, he may permit the judgment debtor to retain the same, or any part thereof, in his possession until the day of sale, upon the defendant executing a written bond to the sheriff, with sufficient surety, in double the value of such property, to the effect that it shall be delivered to the sheriff at the time and place of sale; and for non-delivery thereof, an action may be maintained upon such bond by the sheriff or the plaintiff in the execution; but the sheriff shall not thereby be discharged from his liability to the plaintiff for such property. [Cf. L. '54, p. 182, § 268; L. '69, p. 92, § 354; Cd. '81, § 358; 2 H. C., § 499.]

§ 582. Notice of Sale.—Before the sale of property under execution, order of sale or decree, notice thereof shall be given as follows:

1. In case of personal property, by posting written or printed notice of the time and place of sale in three (3) public places in the county where the sale is to take place, for a period of not less than ten (10) days prior to the day of sale.

2. In case of real property, by posting a similar notice, particularly describing the property for a period of not less than four (4) weeks prior to the day of sale, in three (3) public places in the county, one of which shall be at the courthouse door, where the property is to be sold, and publishing a copy thereof once a week, consecutively, for the same period, in a newspaper of general circulation published in the county.

3. All notices of sales of property on execution or order of sale required by law to be published in any newspaper shall be so published in a newspaper of the county which shall be selected by the sheriff, and if there is no newspaper published, in the county, then such notice shall be published in the newspaper published in this state nearest to the place of sale: Provided, that if the person at whose instance the execution or order of sale is issued, or his attorney, shall present to the sheriff a receipt of the publisher of any newspaper, showing full payment for the publication, then the notice shall be published in that newspaper: And provided, further, that the charge for any such publication shall not exceed seventy-five

cents per square for first insertion, and thirty-seven and one-half cents per square for each subsequent insertion. [L. '03, p. 381, § 1. Cf. L. 97, p. 265, § 1; L. '99, p. 86, § 3.]

Cited in 17 Wash. 612, 643; 18 Wash. 555, 583; 21 Wash. 400; 33 Wash. 60; 66 Wash. 115; 77 Wash. 136; 84 Wash. 300.

§ 583. Sale, How Conducted.—All sales of property under execution, orders of sale or decree, shall be made by auction between 9 o'clock in the morning and 4 o'clock in the afternoon. After sufficient property has been sold to satisfy the execution, no more shall be sold. Neither the office [officer] holding the execution, nor his deputy, shall become a purchaser, or be interested in any purchase at such sale. When the sale is of personal property capable of manual delivery, and not in the possession of a third person, association or corporation, it shall be within view of those who attend the sale, and be sold in such parcels as are likely to bring the highest price; and when the sale is of real property, consisting of several known lots or parcels, they shall be sold separately or otherwise as is likely to bring the highest price, or when a portion of such real property is claimed by a third person, and he requires it to be sold separately, such portion shall be sold separately. Sales of real property shall be made at the courthouse door on Saturday. [L. '97, p. 71, § 2; L. '99, p. 87, § 4.]

Cited in 18 Wash. 558, 592; 56 Wash. 440; 81 Wash. 283.

§ 584. Sale of Leasehold Absolute.—Upon a sale of real property under execution, decree or order of sale, when the estate is less than a leasehold of two years unexpired term, the sale shall be absolute. In all other cases such property shall be subject to redemption, as hereinafter provided. At the time of the sale the sheriff shall give to the purchaser a certificate of the sale, containing a particular description of the property sold, the price bid for each distinct lot, or parcel, the whole price paid, and when subject to redemption, it shall be so stated. The matters contained in such certificate shall be substantially stated in the sheriff's return of his proceedings upon the writ. [L. '99, p. 87, § 5.]

§ 585. Postponement of Sale.—If, at the time appointed for the sale, the sheriff should be prevented from attending at the place appointed, or, being present, should deem it for the advantage of all concerned to postpone the sale for want of purchasers, or other sufficient cause, he may postpone the sale not exceeding one week next after the day appointed, and so from time to time, for the like

cause, giving notice of every adjournment by public proclamation made at the same time, and by posting written notices of such adjournment under the notices of sale originally posted by him. The sheriff, for like causes, may also adjourn the sale from time to time, not exceeding thirty days beyond the day at which the writ is made returnable, with the consent of the plaintiff indorsed upon the writ. [Cf. L. '54, p. 182, § 269; L. '69, p. 93, § 357; Cd. '81, § 361; 2 H. C., § 502.]

§ 586. Bill of Sale by Sheriff.—When the purchaser of any personal property capable of manual delivery, and not in the possession of a third person, association, or corporation, shall pay the purchase money, the sheriff shall deliver to him the property, and if desired, shall give him a bill of sale containing an acknowledgment of the payment. In all other sales of personal property the sheriff shall give the purchaser a bill of sale with the like acknowledgment. [Cf. L. '54, p. 183, 270; L. '69, p. 94, § 358; Cd. '81, § 362; 2 H. C., § 503.]

§ 587. Manner of Selling Real Estate.—The form and manner of sale of real estate by execution shall be as follows: The sheriff shall proclaim aloud at the place of sale, in the hearing of all the bystanders: "I am about to sell the following tracts of real estate (here reading the description) upon the following execution" (here reading the execution). He shall also state the amount which he is required to make upon the execution, which shall include damages, interests, and costs up to the day of sale, and increased costs. He shall then offer the land for sale, the lots and parcels separately or together, as he shall deem most advantageous. All land, except town lots, shall be sold by the acre. [Cf. L. '54, p. 181, § 262; L. '69, p. 94, § 359; Cd. '81, § 363; 2 H. C., § 504.]

Cited in 11 Wash. 266, 689; 19 Wash. 378; 56 Wash. 440; 81 Wash. 283.

§ 588. Allotment When Sold by Acre.—When the land is sold by the acre, and any less number of acres than the whole tract or parcel is sold, it shall be measured off to the purchaser in a square form, from the northeast corner of the tract or parcel, unless some person having an interest in the land shall, at the sale, or prior thereto, and before the bidding is made, request that the land sold shall be taken from some other part, or in some other form; in such case, if such request is reasonable, the officer making the sale shall sell accordingly. [L. '54, p. 181, § 263; Cd. '81, § 364; 2 H. C., § 505.]

Cited in 11 Wash. 689.

§ 589. Sale by Acre not to be Measured.—When an entire tract or parcel of land is sold by the acre, it shall not be measured, but shall be deemed and taken to contain the number of acres named in the description, and be paid for accordingly; and when the number of acres is not contained in the description, the officer shall declare, according to his judgment, how many acres are contained therein, which shall be deemed and taken to be the true number of acres. [L. '54, p. 182, § 264; Cd. '81, § 365; 2 H. C., § 506.]

§ 590. Striking Off, Return, and Payment.—The officer shall strike off the land to the highest bidder, who shall forthwith pay the money bid to the officer, who shall return the money with his execution and his doings thereon to the clerk of the court from which the execution issued, according to the order thereof: Provided, however, that when final judgment shall have been entered in the supreme court, and the execution upon which sale has been made issued from said court, the proceedings on execution and return shall be docketed for confirmation in the superior court in which the action was originally commenced, and like proceedings shall be had as though said execution had issued from the said superior court. [L. '54, p. 182, § 265; L. '69, p. 95, § 362; Cd. '81, § 366; 2 H. C., § 507.]

Cited in 9 Wash. 109; 12 Wash. 517; 18 Wash. 119; 26 Wash. 76; 46 Wash. 406; 56 Wash. 442.

§ 591. Confirmation of Sale of Land—Disposition of Proceeds.—Upon the return of any sale of real estate as aforesaid, the clerk shall enter the cause, on which the execution or order of sale issued, by its title, on the motion docket, and mark opposite the same: "Sale of land for confirmation," and the following proceedings shall be had:

(1.) The plaintiff at any time after ten days from the filing of such return shall be entitled, on motion therefor, to have an order confirming the sale, unless the judgment debtor, or in case of his death, his representative, shall file with the clerk within ten days after the filing of such return, his objections thereto.

(2.) If such objections be filed the court shall, notwithstanding, allow the order confirming the sale, unless on the hearing of the motion, it shall satisfactorily appear that there were substantial irregularities in the proceedings concerning the sale, to the probable loss or injury of the party objecting. In the latter case, the court shall disallow the motion and direct that the property be resold, in whole or in part, as the case may be as upon an execution received of that date.

(3.) Upon the return of the execution, the sheriff shall pay the proceeds of sale to the clerk, who shall then apply the same, or so much thereof as may be necessary, in satisfaction of the judgment. If an order of resale be afterward made, and the property sell for a greater amount to any person other than the former purchaser, the clerk shall first repay to such purchaser the amount of his bid out of the proceeds of the latter sale.

(4.) Upon a resale, the bid of the purchaser at the former sale shall be deemed to be renewed and continue in force, and no bid shall be taken, except for a greater amount. An order confirming a sale shall be a conclusive determination of the regularity of the proceedings concerning such sale as to all persons in any other action, suit or proceeding whatever.

(5.) If, after the satisfaction of the judgment, there be any proceeds of the sale remaining, the clerk shall pay such proceeds to the judgment debtor, or his representative, as the case may be, at any time before the order is made upon the motion to confirm the sale: Provided, such party file with the clerk a waiver of all objections made or to be made to the proceedings concerning the sale; but if the sale be confirmed, such proceeds shall be paid to said party of course; otherwise they shall remain in the custody of the clerk until the sale of the property has been disposed of. [L. '99, p. 87, § 6. Cf. L. '54, p. 182, § 266; L. '69, p. 95, § 363; Cd. '81, § 367; 2 H. C., § 508.]

Cited in 11 Wash. 266; 17 Wash. 612, 643; 18 Wash. 119, 463, 558; 52 Wash. 59; 72 Wash. 38.

§ 592. **Eviction of Purchaser—Recovery.**—If the purchaser of real property sold on execution, or his successor in interest, be evicted therefrom in consequence of the reversal of the judgment, he may recover the price paid, with interest, and the costs and disbursements of the suit by which he was evicted, from the plaintiff in the writ of execution. [L. '69, p. 96, § 364; Cd. '81, § 368; 2 H. C., § 509.]

§ 593. **Contribution and Subrogation.**—When property liable to an execution against several persons is sold thereon, and more than a due proportion of the judgment is levied upon the property of one of them, or one of them pays without a sale more than his proportion, he may compel contributions from the others; and when a judgment is against several, and is upon an obligation or contract of one of them as security for another, and the surety pays the amount, or any part thereof, either by sale of his property or before

sale, he may compel repayment from the principal. In such case the person so paying or contributing shall be entitled to the benefit of the judgment to enforce contribution or repayment if within thirty days after his payment he file with the clerk of the court where the judgment was rendered notice of his payment and claim to contribution or repayment. Upon filing such notice, the clerk shall make an entry thereof in the margin of the docket where the judgment is entered. [L. '54, p. 183, § 272; Cd. '81, § 369; 2 H. C., § 510.]

§ 594. Redemption from Sale.—Property sold subject to redemption, as above provided, or any part thereof separately sold, may be redeemed by the following persons, or their successors in interest:—

1. The judgment debtor or his successor in interest, in the whole or any part of the property separately sold.

2. A creditor having a lien by judgment, decree or mortgage, on any portion of the property, or any portion of any part thereof, separately sold, subsequent in time to that on which the property was sold. The persons mentioned in subdivision two of this section are termed redemptioners. [L. '99, p. 89, § 7. Cf. L. '97, p. 75, § 15.]

Cited in 69 Wash. 648.

§ 595. Time for Redemption.—The judgment debtor or his successor in interest, or any redemptioner, may redeem the property at any time within one year after the sale, on paying the amount of the bid, with interest thereon at the rate of eight per cent per annum to the time of redemption, together with the amount of any assessment or taxes which the purchaser or his successor in interest may have paid thereon after purchase, and like interest on such amount; and if the purchaser be also a creditor having a lien by judgment, decree or mortgage, prior to that of the redemptioner, other than the judgment under which such purchase was made, the amount of such lien with interest. [L. '99, p. 89, § 8.]

Cited in 69 Wash. 648; 83 Wash. 121.

Compare L. '54, p. 183; L. '69, p. 97; Cd. '81, § 370 et seq.; 2 H. C., § 511 et seq., superseded by the act of March 10, '97.

§ 596. Successive Redemptions.—If property be so redeemed by a redemptioner, another redemptioner may, within sixty days after the last redemption, again redeem it from the last redemptioner by paying the sum paid on such last redemption with interest at the rate of eight per cent per annum, and the amount of any taxes or assessment which the last redemptioner may have paid thereon after

the redemption by him, with like interest on such amount, and in addition thereto by paying the amount of any liens, by judgment, decree or mortgage, held by said last redemptioner prior to his own, with interest; but the judgment under which the property was sold need not be so paid as a lien. The property may be again, and as often as a redemptioner is so disposed, redeemed from any previous redemptioner within sixty days after the last redemption, on paying the sum paid on the last previous redemption with interest thereon at the rate of eight per cent per annum, and the amount of any assessments or taxes which the last previous redemptioner paid after the redemption by him, with like interest thereon, and the amount of any liens by judgment, decree or mortgage, other than the judgment under which the property was sold, held by the last redemptioner, previous to his own, with interest. If the purchaser or redemptioner shall pay any taxes or assessments, or have or acquire any such lien as herein mentioned, he must file a statement thereof with the auditor of the county where said property is situate before the property shall have been redeemed from him, otherwise the property may be redeemed without paying such tax, assessment or lien. Such statement shall be recorded by such auditor. [L. '99, p. 89, § 9.]

§ 597. Certificate of Redemption.—If no redemption be made within one year after the sale the purchaser, or his assignee is entitled to a conveyance; or, if so redeemed, whenever sixty (60) days have elapsed, and no other redemption has been made, or notice given operating to extend period of redemption, and the time for redemption has expired, the last redemptioner or his assignee is entitled to a sheriff's deed; but in all cases the judgment debtor shall have the entire period of one year from the date of the sale to redeem the property. If the judgment debtor redeem he must make the same payments as are required to effect a redemption by the redemptioner. If the judgment debtor redeem, the effect of the sale is terminated and he is restored to his estate. A certificate of redemption must be filed and recorded in the office of the auditor of the county in which the property is situated, and the auditor must note the record thereof in the margin of the record of the certificate of sale. [L. '99, p. 90, § 10. Cf. L. '97, p. 75, § 16.]

§ 598. Payment on Successive Redemptions.—When two or more persons apply to the sheriff to redeem at the same time he shall allow the person having the prior lien to redeem first, and so on. The sheriff shall immediately pay the money over to the person from

whom the property is redeemed, if he attend at the redemption; or if not, at any time thereafter when demanded. When a sheriff shall wrongfully refuse to allow any person to redeem, his right to redeem shall not be prejudiced thereby, and the sheriff may be required, by order of the court, to allow such redemption. [L. '99, p. 91, § 11.]

§ 599. Notice of Redemption—Certificate.—The mode of redeeming shall be as provided in this section. The person seeking to redeem shall give the sheriff at least five days written notice of his intention to apply to the sheriff for that purpose. It shall be the duty of the sheriff to notify the purchaser or redemptioner, as the case may be, or his attorney, of the receipt of such notice, if such person be within such county. At the time and place specified in such notice the person seeking to redeem may do so by paying to the sheriff the sum required. The sheriff shall give the person redeeming a certificate stating therein the sum paid on redemption, from whom redeemed, the date thereof and a description of the property redeemed. A person seeking to redeem shall submit to the sheriff the evidence of his right thereto, as follows:—

(1) If he be a lien creditor, a copy of the docket of the judgment or decree under which he claims the right to redeem, certified by the clerk of the court where such judgment or decree is docketed; or if he seeks to redeem upon mortgage, the certificate of the record thereof; also an affidavit, verified by himself or agent, showing the amount then actually due thereon.

(2) A copy of any assignment necessary to establish his claim, verified by the affidavit of himself or agent, showing the amount then actually due on the judgment, decree or mortgage.

(3) If the redemptioner or purchaser has a lien prior to that of the lien creditor seeking to redeem, such redemptioner or purchaser shall submit to the sheriff the evidence thereof, and the amount due thereon, or the same may be disregarded. [L. '99, p. 91, § 12.]

Cited in 62 Wash. 205; 69 Wash. 648.

§ 600. Rents and Profits During Period of Redemption.—The purchaser, from the time of the sale until the redemption, and the redemptioner from the time of his redemption until another redemption, except as hereinafter provided, is entitled to receive from the tenant in possession the rents of the property sold, or the value of the use and occupation thereof. But when any rents or profits have been received by such person or persons thus entitled thereto, from the property thus sold, preceding the redemption thereof from him, the amount of such rents and profits, over and above the expenses paid

for operating, caring for, protecting and insuring the property, shall be a credit upon the redemption money to be paid; and if the redemptioner or other person entitled to make such redemption, before the expiration of the time allowed for such redemption, files with the sheriff a demand in writing for a written and verified statement of the amounts of such rents and profits thus received, and expenses paid and incurred, the period for redemption is extended five (5) days after such sworn statement is given by such person thus receiving such rents and profits, or by his agent, to the person making such demand, or to the sheriff. It shall be the duty of the sheriff to serve a copy of such demand upon the person receiving such rents and profits, his agent or his attorney, if such service can be made in the county where the property is situate. If such person shall, for a period of ten days after such demand has been given to the sheriff, fail or refuse to give such statement, such redemptioner or other person entitled to redeem from such sale, making such demand, may bring an action within sixty days after making such demand, but not later, in any court of competent jurisdiction, to compel an accounting and disclosure of such rents, profits and expenses, and until fifteen days from and after the final determination of such action the right of redemption is extended to such redemptioner or other person making such demand who shall be entitled to redeem. If a sworn statement is given by the purchaser or other person receiving such rents and profits, and such redemptioner or other person entitled to redeem, who makes such demand, desires to contest the correctness of the same, he must first redeem in accordance with such sworn statement, and if he desires to bring an action for an accounting thereafter he may do so within thirty days after such redemption, but not later: Provided, that if such property be farming or agricultural property and be in possession of any purchaser or any redemptioner and is redeemed after the first day of April and before the first day of December, and the purchaser or his tenant has performed any work in preparing such property for crops, or planted crops, he shall be entitled to reimbursement for such work and labor or the right to retain possession of such property until the first day of December following, and the redemptioner shall be entitled to collect the reasonable rental value thereof during such farming year, unless such reasonable rental shall have been collected by such purchaser and accounted for to the redemptioner. [L. '99, p. 92, § 13.]

§ 601. Restraining Waste During Redemption Period.—Until the expiration of the time allowed for redemption the court may restrain the commission of waste on the property. But it is not waste for

the person in possession of the property at the time of the sale or entitled to possession afterward during the period allowed for redemption to continue to use it in the same manner in which it was previously used, or to use it in the ordinary course of husbandry, or to make the necessary repairs of buildings thereon, or to use wood or timber on the property therefor, or for the repairs of fences, or for fuel in his family while he occupies the property. [L. '99, p. 93, § 14.]

§ 602. Possession During Period of Redemption.—The purchaser from the day of sale until a resale or redemption, and the redemptioner from the day of his redemption until another redemption, shall be entitled to the possession of the property purchased or redeemed, unless the same be in the possession of a tenant holding under an unexpired lease, and in such case shall be entitled to receive from such tenant the rents or the value of the use and occupation thereof during the period of redemption: Provided, that when a mortgage contains a stipulation that in case of foreclosure the mortgagor may remain in possession of the mortgaged premises after sale and until the period of redemption has expired the court shall make its decree to that effect and the mortgagor have such right: Provided further, that as to any land so sold which is at the time of the sale used for farming purposes, or which is a part of a farm used at the time of sale for farming purposes the judgment debtor shall be entitled to retain possession thereof during the period of redemption and the purchaser or his successor in interest shall if the judgment debtor do not redeem have a lien upon the crops raised or harvested thereon during the period of such possession for interest on the purchase price at the rate of six per cent per annum during the period of possession and for any taxes with interest: And, provided further, that in case of any homestead occupied for that purpose at the time of sale, the judgment debtor shall have the right to retain possession thereof during the period of redemption without accounting for issues or value of occupation. [L. '99, p. 93, § 15.]

Cited in 56 Wash. 62; 67 Wash. 138.

§ 603. Sheriff's Deed.—In all cases where real estate has been, or may hereafter be sold in pursuance of law by virtue of an execution or other process, issued upon an ordinary money judgment, or by virtue of an execution or other process, issued upon a decree for the foreclosure of a mortgage or other lien it shall be the duty of the sheriff or other officer making such sale to execute and deliver to the purchaser, or other person entitled to the same a deed of conveyance of the real estate so sold immediately after the time for redemption

from such sale has expired: Provided, such sale has been duly confirmed by order of the court. In case the term of office of the sheriff or other officer making such sale shall have expired before a sufficient deed has been executed, then the successor in office of such sheriff shall, within the time specified in this act, execute and deliver to the purchaser or other person entitled to the same a deed of the premises so sold, and such deeds shall be as valid and effectual to convey to the grantee the lands or premises so sold, as if the deed had been made by the sheriff or other officer who made the sale. [L. '99, p. 94, § 16. Cf. L. '97, p. 75, § 16.]

§ 604. Entry of Deed.—The party to whom such sheriff's deed is given shall, upon receipt thereof, take the same to the clerk of the superior court, who shall enter in his book of levies, where the levy is recorded, the sale of real estate therein conveyed, and shall indorse the fact upon the deed, with the date when presented to him and when made. And no county auditor shall record any such deed without such indorsement. [L. '99, p. 95, § 17.]

CHAPTER VI.

Commissioners to Convey Real Estate.

§ 605. Court may Appoint, When.—The several superior courts may, whenever it is necessary, appoint a commissioner to convey real estate,—

1. When, by a judgment in an action, a party is ordered to convey real property to another, or any interest therein;

2. When real property, or any interest therein, has been sold under a special order of the court, and the purchase money paid therefor. [L. '54, p. 205, § 390; Cd. '81, § 528; 2 H. C., § 814.]

Cited in 79 Wash. 557.

§ 606. Contents of Deed.—The deed of the commissioner shall so refer to the judgment authorizing the conveyance that the same may be readily found, but need not recite the record in the case generally. [L. '54, p. 205, § 391; Cd. '81, § 529; 2 H. C., § 815.]

§ 607. Conveyance Made in Pursuance of Judgment—Effect of. A conveyance made in pursuance of a judgment shall pass to the grantee the title of the parties ordered to convey the land. [L. '54, p. 205, § 392; Cd. '81, § 530; 2 H. C., § 816.]

§ 608. Conveyance Made in Pursuance of a Sale—Effect of.—A conveyance made in pursuance of a sale ordered by the court shall pass to the grantee the title of all the parties to the action or proceeding. [L. '54, p. 205, § 393; Cd. '81, § 531; 2 H. C., § 817.]

§ 609. Approval by Court Necessary.—A conveyance by a commissioner shall not pass any right until it has been examined and approved by the court, which approval shall be indorsed on the conveyance, and recorded with it. [L. '54, p. 205, § 394; Cd. '81, § 532; 2 H. C., § 818.]

§ 610. Execution of Conveyance.—It shall be sufficient for the conveyance to be signed by the commissioner only, without affixing the name of the parties whose title is conveyed, but the names of the parties shall be recited in the body of the conveyance. [L. '54, p. 205, § 395; Cd. '81, § 533; 2 H. C., § 819.]

§ 611. Recording.—The conveyance shall be recorded in the office in which by law it should have been recorded had it been made by the parties whose title is conveyed by it. [L. '54, p. 205, § 396; Cd. '81, § 534; 2 H. C., § 820.]

§ 612. Conveyance, How Enforced.—In case of a judgment to compel a party to execute a conveyance of real estate, the court may enforce the judgment by attachment or sequestration, or appoint a commissioner to make the conveyance. [L. '54, p. 205, § 397; Cd. '81, § 535; 2 H. C., § 821.]

CHAPTER VII.

Proceedings Supplemental to Execution.

§ 613. Order to Examine Judgment Debtor.—At any time within six years after entry of a judgment for the sum of twenty-five ($25) dollars or over, and after the return of an execution against property wholly or partially unsatisfied upon proof thereof, by affidavit or other competent written evidence satisfactory to the judge or after the issuing of an execution against property and upon proof by the affidavit of a party or otherwise to the satisfaction of the court or a judge thereof judgment debtor has property which he unjustly refuses to apply towards the satisfaction of the judgment, such court or judge may, by an order, require the judgment debtor to appear at a specified time and place before the judge granting the order, or a referee appointed by him, to answer concerning the same; and the judge to whom application is made under this act may, if it is made to appear to him by the affidavit of the judgment creditor, his agent or attorney that there is danger of the debtor absconding, order the sheriff to arrest the debtor and bring him before the judge granting the order. Upon being brought before the judge he may be ordered to enter into a bond, with sufficient sureties, that he will attend from time to time before the judge or referee, as shall be

directed, during the pendency of the proceedings and until the final termination thereof. [L. '93, p. 435, § 1; L. '99, p. 146, § 1.]

Cited in 11 Wash. 653; 13 Wash. 632; 18 Wash. 152; 21 Wash. 200; 54 Wash. 4.

For former laws on this subject compare: L. '54, pp. 183–186; L. '69, pp. 101–102; Cd. '81, §§ 381–387; 2 H. C., §§ 522–528.

See infra, § 647 et seq., attachments.

See infra, § 680 et seq., garnishments.

§ 614. Warrant, How Vacated, etc.—A warrant issued as prescribed in the last section may be vacated or modified by the judge making the same, or by the court out of which the execution was issued, upon giving three days' notice to the opposite party. [L. '93, p. 435, § 2.]

§ 615. Order to Discover Property, etc., of Judgment Debtor.—Upon proof by affidavit or otherwise, to the satisfaction of the judge, that execution has been issued as prescribed by section 613 of this chapter, and also that any person or corporation has personal property of the judgment debtor of the value of twenty-five dollars or over, or is indebted to him in said amount, the judge may make an order requiring such person or corporation, or an officer thereof, to appear at a specified time and place before him, or a referee appointed by him, and answer concerning the same. [L. '93, p. 436, § 2.]

Cited in 20 Wash. 460.

§ 616. Before Whom Examined—Referee to Certify Evidence.—An order requiring a person to attend and be examined, made pursuant to any provision of this chapter, must require him so to attend and be examined either before the judge to whom the order is returnable or before a referee designated therein. Where the examination is taken before a referee, he must certify to the judge to whom the order is returnable all of the evidence and other proceedings taken before him. [L. '03, p. 436, § 4.]

§ 617. Proceedings upon Examination—Adjournment.—Upon an examination made under this chapter, the answer of the party or witness examined must be under oath. A corporation must attend by and answer under the oath of an officer thereof, and the judge may, in his discretion, specify the officer. Either party may be examined as a witness in his own behalf, and may produce and examine other witnesses as upon the trial of an action. The judge or referee may adjourn any proceedings under this chapter, from time to time, as he thinks proper. [L. '93, p. 436, § 5.]

§ 618. Referee to be Sworn.—Unless the parties expressly waive the referees' oath, a referee appointed as prescribed in this chapter

must, before entering upon an examination or taking testimony, subscribe and take an oath that he will faithfully and fairly discharge his duty upon the reference, and make a just and true report according to the best of his understanding. The oath must be returned to the judge with the report of the testimony. [L. '93, p. 436, § 6.]

§ 619. Order Authorizing Payment to Sheriff.—At any time after the commencement of a special proceeding authorized by this chapter, and before the appointment of a receiver therein, or the extension of a receivership thereto, the judge by whom the order or warrant was granted or to whom it is made returnable, may, in his discretion upon proof by affidavit to his satisfaction that a person or corporation is indebted to the judgment debtor, and upon such notice given to such person or corporation as he deems just, or without notice make an order permitting the person or corporation to pay the sheriff designated in the order a sum on account of the alleged indebtedness not exceeding the sum which will satisfy the execution. A payment thus made is to the extent thereof a discharge of the indebtedness except as against a transferee from the judgment debtor in good faith, and for a valuable consideration, of whose rights the person or corporation had actual or constructive notice when the payment was made. [L. '93, p. 436, § 7.]

§ 620. Order Requiring Delivery of Money, etc., to Sheriff or Receiver.—Where it appears from the examination or testimony taken in the special proceedings authorized by this chapter that the judgment debtor has in his possession or under his control money or other personal property belonging to him, or that one or more articles of personal property capable of manual delivery, his right to the possession whereof is not substantially disputed, are in the possession or under the control of another person, the judge by whom the order or warrant was granted, or to whom it is returnable, may in his discretion, and upon such notice given to such persons as he deems just, or without notice, make an order directing the judgment debtor, or other person, immediately to pay the money or deliver the articles of personal property to a sheriff designated in the order, unless a receiver has been appointed or a receivership has been extended to the special proceedings, and in that case to the receiver. [L. '93, p. 437, § 8.]

Cited in 38 Wash. 375; 75 Wash. 459.

§ 621. Duty of Sheriff.—If the sheriff to whom money is paid or other property is delivered, pursuant to an order made as prescribed in the last section of this chapter, does not then hold an execution upon the judgment against the property of the judgment

debtor, he has the same rights and power, and is subject to the same duties and liabilities with respect to the money or property, as if the money had been collected or the property had been levied upon by him by virtue of such an execution, except as provided in the next section. [L. '93, p. 437, § 9.]

§ 622. How Money or Property Applied.—After a receiver has been appointed or a receivership has been extended to the special proceedings, the judge must, by order, direct the sheriff to pay the money, or the proceeds of the property, deducting his fees, to the receiver; or if the case so requires to deliver to the receiver the property in his hands. But if it appears to the satisfaction of the judge that an order appointing a receiver or extending a receivership is not necessary, he may, by an order reciting that fact, direct the sheriff to apply the money so paid, or the proceeds of the property so delivered, upon an execution in favor of the judgment creditor issued either before or after the payment or delivery to the sheriff. [L. '93, p. 438, § 10.]

§ 623. Balance, How Disposed of.—Where money is paid or property is delivered as prescribed in the last four sections and afterwards the special proceeding is discontinued or dismissed, or the judgment is satisfied without resorting to the money or property, or a balance of the money or of the proceeds of the property, or a part of the property remains in the sheriff's or receiver's hands after satisfying the judgment and the costs and expenses of the special proceeding, the judge must make an order directing the sheriff or receiver to pay the money or deliver the property so remaining in his hands to the debtor, or to such other person as appears to be entitled thereto, upon payment of his fees and all other sums legally chargeable against the same. [L. '93, p. 438, § 11.]

§ 624. Transfer of Property may be Enjoined, etc.—The judge by whom the order or warrant was granted or to whom it is returnable may make an injunction order restraining any person or corporation, whether a party or not a party to the special proceeding, from making or suffering any transfer or other disposition of or interference with the property of the judgment debtor or the property or debt concerning which any person is required to attend and be examined, until further direction in the premises. Such an injunction may be made simultaneously with the order or warrant by which the special proceeding is instituted, and upon the same papers or afterward, upon an affidavit showing sufficient grounds therefor. The judge or court may, as a condition of granting an application to vacate or modify the injunction order require the applicant to

give security in such sum and in such manner as justice requires. [L. '93, p. 438, § 12.]

Cited in 75 Wash. 465.

§ 625. Mode of Service of Certain Orders.—An injunction order or an order requiring a person to attend and be examined made as prescribed in this chapter must be served,—

1. By delivering to the person to be served a certified copy of the original order and a copy of the affidavit on which it was made;

2. Service upn a corporation is sufficient if made upon an officer, to whom a copy of a summons must be delivered. Where a summons is personally served upon a corporation, unless the officer to be served is specially designated in the order, the order may be served by any person who can serve a summons in an action. [L. '93, p. 439, § 13.]

§ 626. Service of Warrant.—The sheriff, when he arrests a judgment debtor by virtue of a warrant issued as prescribed in this chapter, must deliver to him a copy of the warrant and of the affidavit upon which it was granted. [L. '93, p. 439, § 14.]

§ 627. Proceedings, How Discontinued or Dismissed.—A special proceeding instituted as prescribed in this chapter may be discontinued at any time upon such terms as justice requires, by an order of the judge made upon the application of the judgment creditor. Where the judgment creditor unreasonably delays or neglects to proceed, or where it appears that his judgment has been satisfied, his proceedings may be dismissed upon like terms by a like order made upon the application of the judgment debtor, or of plaintiff in a judgment creditors' action against the debtor, or of a judgment creditor who has instituted either of the special proceeding[s] authorized by this chapter. Where an order appointing a receiver or extending a receivership has been made in the course of the special proceeding, notice of the application for an order specified in this section must be given in such manner as the judge deems proper, to all persons interested in the receivership as far as they can conveniently be ascertained. [L. '93, p. 439, § 15.]

§ 628. Costs to Judgment Creditor.—The judge may make an order allowing to the judgment creditor a fixed sum as costs, consisting of his witness fees and referee's fees and other disbursements, and of a sum in addition thereto not exceeding twenty-five dollars, and directing the payment thereof out of any money which has come or may come to the hands of the receiver or of the sheriff within a time specified in the order. [L. '93, p. 439, § 16.]

Cited in 49 Wash. 320.

§ 629. Costs to Judgment Debtor.—Where the judgment debtor or other person against whom the special proceeding is instituted has been examined, and property applicable to the payment of the judgment has not been discovered, the judge may make an order allowing him a like sum as costs, and directing the payment thereof within a time specified in the order by the judgment creditor. [L. '93, p. 440, § 17.]

§ 630. Disobedience of Order, How Punished.—A person who refuses, or without sufficient excuse neglects, to obey an order of a judge or referee made pursuant to any of the provisions of this chapter, and duly served upon him, or an oral direction given directly to him by a judge or referee in the course of the special proceeding, or to attend before a judge or referee according to the command of a subpoena duly served upon him, may be punished by the judge of the court out of which the execution issued, as for contempt. [L. '93, p. 440, § 18.]

§ 631. Attendance of Judgment Debtor, Where.—A judgment debtor who resides or does business in the state cannot be compelled to attend pursuant to an order made under the provisions of this chapter at a place without the county where his residence or place of business is situated. Where the judgment debtor to be examined under this chapter is a corporation the court may cause such corporation to appear and be examined by making like order or orders as are prescribed in this chapter, directed to any officer or officers thereof. [L. '93, p. 440, § 19.]

§ 632. Not Excused from Answering, When.—A party or witness examined in a special proceeding authorized by this chapter is not excused from answering a question on the ground that his examination will tend to convict him of a commission of a fraud, or to prove that he has been a party to or privy to or knowing of a conveyance, assignment, transfer or other disposition of property for any purpose; or that he or another person claims to be entitled as against the judgment creditor or receiver appointed or to be appointed in the special proceeding to hold property derived from or through the judgment debtor, or to be discharged from the payment of a debt which was due to the judgment debtor or to a person in his behalf. But an answer cannot be used as evidence against the person so answering in a criminal action or criminal proceeding. [L. '93, p. 440, § 20.]

§ 633. Proceedings in Case of Joint Debtors.—When, in proceedings under this chapter, personal service of the summons in the action was not made on all of the defendants, a debt due to, or other

personal property owned by, one or more of the defendants not summoned jointly with the defendants summoned, or with any of them, may be reached by proceedings under this chapter. [L. '93, p. 441, § 21.]

§ 634. Continuance.—A special proceeding under this chapter instituted before one judge may be continued from time to time before another judge of the same court with like effect as if it had been instituted or commenced before the judge who last heard the same. [L. '93, p. 441, § 22.]

§ 635. Proceedings Applicable to Judgments of Justices' Courts. This chapter shall apply to judgments recovered in justice court upon which a transcript has been issued and filed with the clerk of the superior court. [L. '93, p. 441, § 23.]

§ 636. Proceedings, Before Whom Instituted.—Special proceedings under this chapter may be instituted and prosecuted before the superior court of the county in which the judgment was entered or any judge thereof, or before the superior court of any county to the sheriff of which an execution has been issued or in which a transcript of said judgment has been filed in the office of the clerk of said court or before any judge thereof. [L. '99, p. 146, § 2; Cf. L. '93, p. 441, § 24.]

§ 637. Property Exempt from Seizure.—This chapter does not authorize the seizure of, or other interference with any property which is expressly exempt by law from levy and sale by virtue of an execution, or any money, thing in action or other property held in trust for a judgment debtor where the trust has been created by, or the fund so held in trust has proceeded from, a person other than the judgment debtor; or the earnings of the judgment debtor for his personal services rendered within sixty days next before the institution of the special proceeding, where it is made to appear by his oath or otherwise that those earnings are necessary for the use of a family wholly or partly supported by his labor. [L. '93, p. 441, § 25.]

Cited in 38 Wash. 371.

§ 638. Proceedings are Special—To be Heard Without Jury.—Proceedings under this chapter are special proceedings, and shall be heard by the judge or referee before whom the same are returnable without a jury. [L. '93, p. 441, § 26.]

§ 639. Fees of Referee.—The fees of referees appointed in proceedings under this chapter shall be five dollars per day. [L. '93, p. 441, § 27.]

§ 640. Receiver, When and How Appointed.—At any time after making an order requiring the judgment debtor or any other person to attend and be examined, or the issuing of a warrant, as prescribed in this chapter, the judge to whom the order or warrant is returnable, or the court out of which the order was issued, may make an order appointing a receiver of the property of the judgment debtor. At least two days' notice of the application for the order appointing a receiver must be given personally to the judgment debtor, unless the judge or court is satisfied that he cannot, with reasonable diligence, be found within the state, in which case the order must recite that fact and may dispense with the notice, or may direct notice to be given in any manner which the judge thinks proper. But where the order to attend and be examined or the warrant has been served upon the judgment debtor, a receiver may be appointed upon the return thereof, or at the close of the examination, without further notice to him. [L. '93, p. 441, § 28.]

Cited in 75 Wash. 460, 464.

§ 641. Notice to Other Creditors.—The judge must ascertain, if practicable, by the oath of the judgment debtor or otherwise, whether any other special proceeding authorized by this chapter is pending against the judgment debtor, or if a receiver has been appointed or application has been made for the appointment of a receiver of the property of the judgment debtor in any other action by a judgment creditor. If either is pending, and a receiver has not been appointed therein, notice of the application for the appointment of a receiver, and of all of the subsequent proceedings respecting the receivership, must be given in such manner as the judge directs to the judgment creditor prosecuting it. [L. '93, p. 442, § 29.]

§ 642. Only One Receiver Appointed—Extending Receivership.—Only one receiver of the property of the judgment debtor shall be appointed. Where a receiver thereof has already been appointed the judge, instead of making the order prescribed in the last section, must make an order extending the receivership to the special proceedings before him. Such an order gives to the judgment creditor the same rights as if a receiver were appointed upon his application, including the right to apply to the court to control, direct or remove the receiver, or to subordinate the proceedings in or by which the receiver was appointed to those taken under his judgment. [L. '93, p. 442, § 30.]

§ 643. Order to be Filed, Where.—An order appointing a receiver or extending a receivership must be filed in the office of the county clerk wherein the judgment-roll in the action is filed; or if the special

proceeding is founded upon an execution issued out of a court other than that in which the judgment was rendered, in the office of the clerk of the county wherein the transcript of the judgment is filed. [L. '93, p. 442, § 31.]

§ 644. When Property Vests in Receiver.—The property of the judgment debtor is vested in a receiver, who has duly qualified, from the time of filing the order appointing him or extending his receivership, as the case may be, subject to the following exceptions:—

1. Real property is vested in the receiver only from the time when the order, or a certified copy thereof, as the case may be, is filed with the auditor of the county where it is situated;

2. When the judgment debtor, at the time when the order is filed, resides in another county of the state, his personal property is vested in the receiver only from the time when a copy of the order, certified by the auditor in whose office it is recorded, is filed with the auditor of the county where he resides. [L. '93, p. 443, § 32.]

Cited in 75 Wash. 460.

§ 645. Receiver's Title, How Extended by Relation.—Where the receiver's title to personal property has become vested, as prescribed in the last section, it also extends back by relation, for the benefit of the judgment creditor, in whose behalf the special proceeding was instituted as follows:—

1. When an order requiring the judgment debtor to attend and be examined, or a warrant requiring the sheriff to arrest him and bring him before the judge, has been served, before the appointment of the receiver, or the extension of the receivership, the receiver's title extends back so as to include the personal property of the judgment debtor at the time of the service of the order or warrant;

2. Where an order or warrant has not been served as specified in the foregoing subdivision, but an order has been made requiring a person to attend and be examined concerning property belonging or a debt due to the judgment debtor, the receiver's title extends to the personal property belonging to the judgment debtor, which was in the hands or under the control of the person or corporation thus required to attend at the time of the service of the order, and to a debt then due to him from that person or corporation;

3. In every other case where notice of application for the appointment of a receiver was given to the judgment debtor, the receiver's title extends to the personal property of the judgment debtor at the time when the notice was served, either personally or by complying with the requirements or [of] an order prescribing a substitute for personal service;

4. Where the case is within two or more of the foregoing subdivisions of this section, the rule most favorable to the judgment creditor must be adopted. But this section does not affect the title of a purchaser in good faith without notice, and for a valuable consideration; or the payment of a debt in good faith and without notice. [L. '93, p. 443, § 33.]

§ 646. Records to be Kept by Clerk.—Each county clerk must keep in his office a book indexed to the names of the judgment debtors, styled "book of orders appointing receivers of judgment debtors." A county clerk in whose office an order or a certified copy of an order is filed, as prescribed in this chapter, must immediately note thereupon the time of filing it, and as soon as practicable, must record it in the book so kept by him. He must also, upon request, furnish forthwith to any party or person interested, one or more certified copies thereof. For each omission to comply with any provision of this section, a county clerk forfeits to the party aggrieved two hundred and fifty dollars, in addition to all damages sustained by reason of the omission. [L. '93, p. 444, § 34.]

TITLE V.

PROVISIONAL REMEDIES.

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CHAPTER I.

Attachments.

§ 647. Attachment, When Granted.—The plaintiff at the time of commencing an action, or at any time afterward before judgment, may have the property of the defendant, or that of any one or more of several defendants, attached in the manner hereinafter prescribed, as security for the satisfaction of such judgment as he may recover. [L. '86, p. 39, § 1; 2 H. C., § 288.]

Cited in 10 Wash. 450; 29 Wash. 203; 86 Wash. 304.

For former enactments on this subject see: L. '54, pp. 155–162; L. '60, pp. 30–36; L. '63, pp. 112–120; L. '69, pp. 41–47; L. '71, pp. 9, 10; L. '73, pp. 43–50; L. '77, pp. 35–40; Cd. '81, §§ 174–192.

The foregoing provisions are repealed by the provisions of this chapter.

§ 648. Issuance of Writ, Affidavit for.—The writ of attachment shall be issued by the clerk of the court in which the action is pending; but before any such writ of attachment shall issue, the plaintiff, or someone in his behalf, shall make and file with such clerk an affidavit showing that the defendant is indebted to the plaintiff (specifying the amount of such indebtedness over and above all just credits and offsets), and that the attachment is not sought and the action is not prosecuted to hinder, delay, or defraud any creditor of the defendant, and either,—

1. That the defendant is a foreign corporation; or

2. That the defendant is not a resident of this state; or

3. That the defendant conceals himself so that the ordinary process of law cannot be served upon him; or

4. That the defendant has absconded or absented himself from his usual place of abode in this state, so that the ordinary process of law cannot be served upon him; or

5. That the defendant has removed or is about to remove any of his property from this state, with intent to delay or defraud his creditors; or

6. That the defendant has assigned, secreted, or disposed of, or is about to assign, secrete, or dispose of, any of his property, with intent to delay or defraud his creditors; or

7. That the defendant is about to convert his property, or a part thereof, into money, for the purpose of placing it beyond the reach of his creditors; or

8. That the defendant has been guilty of a fraud in contracting the debt or incurring the obligation for which the action is brought; or

9. That the damages for which the action is brought are for injuries arising from the commission of some felony, or for the seduction of some female. [L. '86, p. 39, § 2; 2 H. C., § 289.]

Cited in 1 Wash. 463; 2 Wash. 151; 12 Wash. 284; 17 Wash. 297; 19 Wash. 557; 21 Wash. 635; 47 Wash. 164; 54 Wash. 509; 79 Wash. 467; 81 Wash. 38.

§ 649. Attachment on Debt not Due.—An action may be commenced and the property of a debtor may be attached previous to the time when the debt becomes due, when nothing but time is wanting to fix an absolute indebtedness, and when the affidavit, in addition to that fact, states,—

1. That the defendant is about to dispose of his property with intent to defraud his creditors; or

2. That the defendant is about to remove from the state, and refuses to make any arrangements for securing the payment of the debt when it falls due, and which contemplated removal was not known to the plaintiff at the time the debt was contracted; or

3. That the defendant has disposed of his property, in whole or in part, with intent to defraud his creditors; or

4. That the debt was incurred for property obtained under false pretenses. [L. '86, p. 39, § 3; 2 H. C., § 290.]

Cited in 1 Wash. 153; 2 Wash. 382; 23 Wash. 595; 40 Wash. 337; 54 Wash. 509; 76 Wash. 526.

§ 650. Answer, When to be Filed in Case Debt not Due.—If the debt or demand for which the attachment is sued out is not due at the time of the commencement of the action, the defendant is not required to file any pleadings until the maturity of such debt or demand, but he may, in his discretion, do so, and go to trial as early as the cause is reached. [L. '86, p. 40, § 4; 2 H. C., § 291,]

§ 651. Judgment Suspended.—No final judgment shall be rendered in such action, unless the party consents, as in the last section, until the debt or demand upon which it is based becomes due. But property of a perishable nature may be sold as in other cases of attachment. [L. '86, p. 40, § 5; 2 H. C., § 292.]

See references to § 647.

§ 652. Bond for Attachment.—Before the writ of attachment shall issue the plaintiff, or someone in his behalf, shall execute and file with the clerk a bond or undertaking, with two or more sureties, in the sum in no case less than three hundred dollars, in the superior court, nor less than fifty dollars in the justice court, and double the amount for which plaintiff demands judgment, conditional that the plaintiff will prosecute his action without delay and will pay all costs that may be adjudged to the defendant, and all damages which he may sustain by reason of the attachment, not exceeding the amount specified in such bond or undertaking, as the penalty thereof, should the same be wrongfully, oppressively or maliciously sued out. With said bond or undertaking there shall also be filed the affidavit of the sureties, from which it must appear that such sureties are qualified and that they are, taken together, worth the sum specified in the bond or undertaking, over and above all debts and liabilities, and property exempt from execution. No person not qualified to become bail upon arrest shall be qualified to become surety upon a bond or undertaking for an attachment: Provided, that when it is desired to attach real estate only, and such fact is stated in the affidavit for attachment and the ground of attachment is that the defendant is a foreign corporation or is not a resident of the state, or conceals himself so that the ordinary process of law cannot be served upon him, or has absconded or absented himself from his usual place of abode, so that the ordinary process of law cannot be served upon him,

the writ of attachment shall issue without bond or undertaking by or on behalf of the plaintiff: And provided further, that when the claim, debt or obligation, whether in contract or tort, upon which plaintiff's cause of action is based, shall have been assigned to him, and his immediate or any other assignor thereof retains or has any interest therein, then the plaintiff and every assignor of said claim, debt or obligation who retains or has any interest therein, shall be jointly and severally liable to the defendant for all costs that may be adjudged to him and for all damages which he may sustain by reason of the attachment, should the same be wrongfully, oppressively or maliciously sued out. [L. '03, p. 47, § 1; Cf. L. '86, p. 40, § 6; 2 H. C., § 293.]

Cited in 6 Wash. 306; 11 Wash. 187; 20 Wash. 110; 68 Wash. 66.

§ 653. Additional Security, When may be Required.—The defendant may, at any time before judgment, move the court or judge for additional security on the part of the plaintiff, and if, on such motion, the court or judge is satisfied that the surety in the plaintiff's bond has removed from this state, or is not sufficient, the attachment may be vacated, and restitution directed of any property taken under it, unless in a reasonable time, to be fixed by the court or judge, further security is given by the plaintiff in form as provided in the preceding section. [L. '86, p. 40, § 7; 2 H. C., § 294.]

Cited in 48 Wash. 428.

§ 654. Action on Bond, Damages.—In an action on such bond, the plaintiff therein may recover, if he shows that the attachment was wrongfully sued out, and that there was no reasonable cause to believe the ground upon which the same was issued to be true, the actual damages sustained and reasonable attorney's fees to be fixed by the court; and if it be shown that such attachment was sued out maliciously, he may recover exemplary damages, nor need he wait until the principal suit is determined before suing on the bond. [L. '86, p. 41, § 8; 2 H. C., § 295.]

Cited in 6 Wash. 29, 307; 12 Wash. 16; 20 Wash. 108; 79 Wash. 468.

§ 655. Contents of Writ—Levy.—The writ of attachment shall be directed to the sheriff of any county in which property of the defendant may be, and shall require him to attach and safely keep the property of such defendant within his county, to the requisite amount, which shall be stated in conformity with the affidavit. The sheriff shall in all cases attach the amount of property directed, if sufficient not exempt from execution be found in his county, giving that in which the defendant has a legal and unquestionable title a

preference over that in which his title is doubtful or only equitable, and he shall, as nearly as the circumstances of the case will permit, levy upon property fifty per cent greater in valuation than the amount which plaintiff in his affidavit claims to be due. When property is seized on attachment, the court may allow to the officer having charge thereof such compensation for his trouble and expenses in keeping the same as shall be reasonable and just. [L. '86, p. 41, § 9; 2 H. C., § 296.]

Cited in 5 Wash. 689.

§ 656. Writs to Different Counties—Costs.—Writs of attachment may be issued from the superior courts to different counties, and several may, at the option of the plaintiff, be issued at the same time, or in succession and subsequently, until sufficient property has been attached; but only those executed shall be taxed in the costs, unless otherwise ordered by the court, and if more property is attached in the aggregate than the plaintiff is entitled to have held, the surplus must be abandoned and the plaintiff pay all costs incurred in relation to such surplus. After the first writ shall have issued, it shall not be necessary for the plaintiff to file any further affidavit or bond, but he shall be entitled to as many writs as may be necessary to secure the amount claimed. [L. '86, p. 41, § 10; 2 H. C., § 297.]

Cited in 25 Wash. 183.

§ 657. Order of Execution of Writs.—Where there are several attachments against the same defendant, they shall be executed in the order in which they were received by the sheriff. [L. '86, p. 41, § 11; 2 H. C., § 298.]

Cited in 15 Wash. 645; 86 Wash. 122, 304.

§ 658. Following Property into Adjoining County.—If, after an attachment has been placed in the hands of the sheriff, any property of the defendant is moved from the county, the sheriff may pursue and attach the same in an adjoining county, within twenty-four hours after removal. [L. '86, p. 42, § 12; 2 H. C., § 299.]

§ 659. Manner of Executing Writ.—The sheriff to whom the writ is directed and delivered must execute the same without delay, as follows:—

1. Real property shall be attached by filing a copy of the writ, together with a description of the property attached, with the county auditor of the county in which the attached real estate is situated;

2. Personal property capable of manual delivery shall be attached by taking into custody;

3. Stock or shares, or interest in stock or shares, of any corporation, association, or company shall be attached by leaving with the

president or other head of the same, or the secretary, cashier, or managing agent thereof, a copy of the writ, and a notice stating that the stock or interest of the defendant is attached in pursuance of such writ. [L. '86, p. 42, § 13; 2 H. C., § 300.]

Cited in 14 Wash. 177; 28 Wash. 423; 54 Wash. 301; 86 Wash. 528.

§ 660. Examination of Defendant Touching His Property.—Whenever it appears by the affidavit of the plaintiff, or by the return of the attachment, that no property is known to the plaintiff or officer on which the attachment can be executed, or not enough to satisfy the plaintiff's claim, and it being shown to the court or judge by affidavit that the defendant has property within the state not exempt, the defendant may be required by such court or judge to attend before the court or judge, or referee appointed by the court or judge, and give information on oath respecting the same. [L. '86, p. 42, § 14; 2 H. C., § 301.]

§ 661. Receiver Appointed for Attached Property.—The court before whom the action is pending, or the judge thereof, may at any time appoint a receiver to take possession of property attached under the provisions of this chapter, and to collect, manage, and control the same, and pay over the proceeds, according to the nature of the property and the exigency of the case. [L. '86, p. 42, § 15; 2 H. C., § 302.]

Cited in 7 Wash. 80; 14 Wash. 326; 20 Wash. 249.

§ 662. Sale Before Judgment, Perishable Property.—If any of the property attached be perishable, or in danger of serious and immediate waste or decay, the sheriff shall sell the same in the manner in which such property is sold on execution. Whenever it shall be made to appear satisfactorily to the court or judge that the interest of the parties to the action will be subserved by a sale of any attached property, the court or judge may order such property to be sold in the same manner as like property is sold under execution. Such order shall be made only upon notice to the adverse party or his attorney, in case such party shall have been personally served with a summons in the action. [L. '86, p. 42, § 16; 2 H. C., § 303.]

Cited in 5 Wash. 690.

§ 663. Custody of Money Received.—All moneys received by the sheriff under the provisions of this chapter and all other attached property shall be retained by him to answer any judgment that may be recovered in the action, unless sooner subjected to execution upon another judgment recovered previous to the issuing of the attachment. [L. '86, p. 43, § 17; 2 H. C., § 304.]

Cited in 23 Wash. 697.

§ 664. Attachment of Moneys in Hands of Officer.—A sheriff or constable may be garnished for money of the defendant in his hands. So may a judgment debtor of the defendant when the judgment has not been previously assigned on the record, or by writing filed in the office of the clerk, and by him minuted as an assignment on the margin of the execution docket, and also an executor or administrator may be garnished for money due from the decedent to the defendant. [L. '86, p. 43, § 19; 2 H. C., § 306.]

Cited in 3 Wash. 375; 14 Wash. 177; 16 Wash. 127; 20 Wash. 215; 30 Wash. 273.

§ 665. Attachment of Moneys in Court.—When the property to be attached is a fund in court, the execution of a writ of attachment shall be by leaving with the clerk of the court [a copy] thereof, with notice in writing specifying the fund. [L. '86, p. 43, § 20; 2 H. C., § 307.]

Cited in 3 Wash. 375; 16 Wash. 127; 20 Wash. 216; 30 Wash. 273.

§ 666. Inventory of Sheriff.—The sheriff shall make a full inventory of the property attached, and return the same with the writ. [L. '86, p. 43, § 21; 2 H. C., § 308.]

§ 667. Subjection of Attached Property to Judgment.—If judgment be recovered by the plaintiff, the sheriff shall satisfy the same out of the property attached by him which has not been delivered to the defendant or claimant as in this chapter provided, or subjected to execution on another judgment recovered previous to the issuing of the attachment, if it be sufficient for that purpose,—

1. By applying on the execution issued on said judgment the proceeds of all sales of perishable or other property sold by him, or so much as shall be necessary to satisfy the judgment;

2. If any balance remain due, he shall sell under the execution so much of the property, real or personal, as may be necessary to satisfy the balance, if enough for that purpose remain in his hands.

Notice of the sale shall be given and the sale conducted as in other cases of sales on execution. [L. '86, p. 44, § 25; 2 H. C., § 312.]

Cited in 6 Wash. 62; 23 Wash. 697.

§ 668. Collection When Property Attached Insufficient—Surplus.—If, after selling all the property attached by him remaining in his hands, and applying the proceeds, deducting his fees, to the payment of the judgment, any balance shall remain due, the sheriff shall proceed to collect such balance as upon an execution in other cases. Whenever the judgment shall have been paid, the sheriff, upon reasonable demand, shall deliver over to the defendant the attached property remaining in his hands and any proceeds of the

property attached unapplied on the judgment. [L. '86, p. 44, § 26; 2 H. C., § 313.]

Cited in 23 Wash. 697; 71 Wash. 668.

See note to § 659, omission of portion of section explained.

§ 669. Procedure in Case Execution Returned Unsatisfied.—If the execution be returned unsatisfied, in whole or in part, the plaintiff may proceed as in other cases upon the return of an execution. [L. '86, p. 45, § 27; 2 H. C., § 314.]

§ 670. Judgment for Defendant, Effect of.—If the defendant recover judgment against the plaintiff, all the proceeds of sales and money collected by the sheriff, and all the property attached remaining in the sheriff's hands, shall be delivered to the defendant or his agent. The order of attachment shall be discharged, and the property released therefrom. [L. '86, p. 45, § 28; 2 H. C., § 315.]

Cited in 23 Wash. 697.

§ 671. Discharge of Attachment on Counter Bond.—If the defendant, at any time before judgment, causes a bond to be executed to the plaintiff with sufficient sureties, to be approved by the officer having the attachment, or after the return thereof, by the clerk, to the effect that he will perform the judgment of the court, the attachment shall be discharged and restitution made of property taken or proceeds thereof. The execution of such bond shall be deemed an appearance of such defendant to the action. [L. '86, p. 45, § 29; 2 H. C., § 316.]

Cited in 1 Wash. 463; 2 Wash. 151; 37 Wash. 485, 487–489.

§ 672. Judgment on Bond.—Such bond shall be part of the record, and if judgment go against the defendant, the same shall be entered against him and sureties. [L. '86, p. 45, § 30; 2 H. C., § 317.]

Cited in 37 Wash. 485, 488.

§ 673. Motion to Discharge Attachment.—The defendant may at any time after he has appeared in the action, either before or after the release of the attached property, or before any attachment shall have been actually levied, apply on motion, upon reasonable notice to the plaintiff, to the court in which the action is brought, or to the judge thereof, that the writ of attachment be discharged on the ground that the same was improperly or irregularly issued. [L. '86, p. 45, § 31; 2 H. C., § 318.]

Cited in 1 Wash. 463; 2 Wash. 151; 15 Wash. 311; 19 Wash. 284; 23 Wash. 597; 25 Wash. 191; 37 Wash. 489; 48 Wash. 26; 68 Wash. 69.

§ 674. Hearing of Motion to Discharge—Affidavits.—If the motion be made upon affidavits upon the part of the defendant, but not other-

wise, the plaintiff may oppose the same by affidavits or other evidence in addition to those on which the attachment was issued. [L. '86, p. 45, § 32; 2 H. C., § 319.]

Cited in 1 Wash. 463; 2 Wash. 151.

§ 675. Discharge of Writ.—If upon application it satisfactorily appears that the writ of attachment was improperly or irregularly issued, it must be discharged. [L. '86, p. 45, § 33; 2 H. C., § 320.]

§ 676. Return of Sheriff.—The sheriff must return the writ of attachment with the summons, if issued at the same time, otherwise, within twenty days after its receipt, with a certificate of his proceedings indorsed thereon or attached thereto, and whenever an order has been made discharging or releasing an attachment upon real property, a certified copy of such order may be filed in the offices of the county auditors in which the notices of attachment have been filed, and be indexed in like manner. [L. '86, p. 45, § 34; 2 H. C., § 321.]

§ 677. Liberal Construction—Amendments.—This chapter shall be liberally construed, and the plaintiff, at any time when objection is made thereto, shall be permitted to amend any defect in the complaint, affidavit, bond, writ, or other proceeding; and no attachment shall be quashed or dismissed, or the property attached released, if the defect in any of the proceedings has been or can be amended so as to show that a legal cause for the attachment existed at the time it was issued, and the court shall give the plaintiff a reasonable time to perfect such defective proceedings. The causes for attachment shall not be stated in the alternative. [L. '86, p. 46, § 35; 2 H. C., § 322.]

Cited in 16 Wash. 127; 17 Wash. 296; 19 Wash. 557; 21 Wash. 635; 25 Wash. 184; 40 Wash. 339.

§ 678. Power of Judge at Chambers.—The judge of any superior court shall have power to make every order which, by the provisions of this chapter, may be made by the court. [L. '86, p. 46, § 36; 2 H. C., § 323.]

§ 679. Sheriff, Defined—Proceedings in Justices' Courts.—The word "sheriff," as used in this chapter, is meant to apply to constables, when the proceedings are in a justice's court; and when the proceedings are in a justice's court, the justice is to be regarded as the clerk of the court for all purposes herein contemplated: Provided, that nothing contained in this chapter shall be construed to confer upon a justice of the peace power to issue a writ of attachment to be served out of the county in which such justice shall have his office, or to confer upon a sheriff, constable, or other officer power or authority

to serve a writ of attachment issued out of justice's court beyond the limits of the county in which such justice shall have his office, except in cases provided for in section 658. And provided further, that nothing contained in this chapter shall be construed or held to authorize the attachment of real estate, or of any interest therein, under a writ of attachment issued out of any justice's court. [L. '86, p. 46, § 37; 2 H. C., § 324.]

Cited in 71 Wash. 597.

See supra, § 44, subd. 8, jurisdiction of justices of the peace in attachments.

See supra, § 647 note.

CHAPTER II.

Garnishments.

§ 680. Writ, Grounds for Issuance of.—The clerks of the superior courts in the various counties in the state may issue writs of garnishment returnable to their respective courts in the following cases:—

1. Where an original attachment has been issued in accordance with the statutes in relation to attachments;

2. Where the plaintiff sues for a debt and makes affidavit that such debt is just, due and unpaid, and that the garnishment applied for is not sued out to injure either the defendant or the garnishee;

3. Where the plaintiff has a judgment wholly or partially unsatisfied in the court from which he seeks to have a writ of garnishment issued. [L. '93, p. 95, § 1.]

Cited in 8 Wash. 537; 10 Wash. 162; 16 Wash. 127; 17 Wash. 369; 30 Wash. 273.

For former laws on the subject of garnishment, see 2 Hill's Code, §§ 497, 498, and notes to §§ 647 and 659, supra.

§ 680–1. Municipal Corporations Subject to.—Counties, cities, towns, school districts and other municipal corporations shall be subject to garnishment in the superior and justice courts, but only after judgment shall have been entered against the defendant in the main action. [L. '15, p. 357, § 1.]

§ 680–2. Enforcement Against Municipal Corporations.—No regular judgment in garnishment shall be entered against any municipal corporation, but the judge of the superior court, or justice of the peace shall by written order command the auditing officer, or body of such municipal corporation to audit and pay to the judgment creditor the amount due from the garnishee to the principal defendant, not exceeding the amount of the judgment in the main action, whereupon the same shall be paid by the garnishee, provided, nothing in this act shall be construed to impair the rights of defendants

to claim exemptions of wages as provided by law. [L. '15, p. 357, § 2.]

§ 681. Bond to be Executed, When.—In the case mentioned in subdivision two of the preceding section the plaintiff shall execute a bond with two or more good and sufficient sureties, to be approved by the clerk issuing the writ, payable to the defendant in the suit, in double the amount of the debt claimed therein, conditioned that he will prosecute his suit and pay all damages and costs that may be adjudged against him for wrongfully suing out such garnishment. [L. '93, p. 95, § 2.]

"Preceding section," refers to § 680.

§ 682. Application for—Affidavit.—Before the issuance of the writ of garnishment the plaintiff or someone in his behalf shall make application therefor by affidavit, stating the facts authorizing the issuance of the writ, and that the plaintiff has reason to believe, and does believe, that the garnishee, stating his name and residence, is indebted to the defendant, or that he has in his possession, or under his control, personal property or effects belonging to the defendant, or that the garnishee is an incorporated or joint stock company, and that the defendant is the owner of shares in such company or has an interest therein. [L. '93, p. 95, § 3.]

Cited in 70 Wash. 30.

§ 683. Writ, When and How Issued.—When the foregoing requisites have been complied with the clerk shall docket the case in the name of the plaintiff as plaintiff and of the garnishee as defendant, and shall immediately issue a writ of garnishment directed to the garnishee, commanding him to appear before the court from which it is issued within twenty days after the service of the writ upon him, if the same be served upon him within the county in which the same is issued, or within thirty days if served in any other county in this state, and to answer on oath what, if anything, he is indebted to the defendant, and was when such writ was served, and what personal property or effects, if any, of the defendant he has in his possession or under his control, or had when such writ was served. [L. '93, p. 96, § 4.]

Cited in 8 Wash. 537; 23 Wash. 68; 40 Wash. 578; 79 Wash. 495.

§ 684. Writ Against Incorporated Companies, How Served.—Where it appears from the plaintiff's affidavit that the garnishee is an incorporated or joint stock company, in which the defendant is the owner of shares, or is interested therein, the writ of garnishment shall further require the garnishee to answer upon oath what num-

ber of shares, if any, the defendant owns in such company, or owned when such writ was served. [L. '93, p. 96, § 5.]

§ 685. Writ, Form of.—Said writ may be substantially in the following form:—

State of Washington, to A B, Greeting:

Whereas, in the superior court of the state of Washington, in and for —— county, in a certain cause wherein C D is plaintiff and E F is defendant, the plaintiff claiming an indebtedness against the said E F of —— dollars, besides interest and cost of suit, has applied for a writ of garnishment against you:

Now, therefore, you are hereby commanded to be and appear before the said court within twenty days after the service upon you of this writ, if served within —— county, and within thirty days after the service of this writ upon you if served in any other county of this state, then and there to answer upon oath what, if anything, you are indebted to the said E F, and were when this writ was served upon you, and what effects, if any, of the said E F you have in your possession or under your control, and had when this writ was served (and if the garnishee be an incorporated or joint stock company, in which the defendant is alleged to be the owner of shares, or interested therein, then the writ shall proceed; and further, to answer what number of shares, if any, the said E F owns in such company, and owned when this writ was served upon you). [L. '93, p. 96, § 6.]

Cited in 40 Wash. 578; 79 Wash. 496.

§ 686. Dating and Attestation.—The writ of garnishment shall be dated and tested [attested] in like manner as the writ of attachment and the name and office address of the plaintiff's attorney shall be indorsed thereon or in case the plaintiff has no attorney, then the name and address of the plaintiff shall be indorsed thereon and delivered by the clerk who issues it to the plaintiff or his attorney. [L. '93, p. 97, § 7; L. '03, p. 91, § 1.]

§ 687. Service of.—The writ of garnishment may be served by the sheriff or any constable of the county in which the garnishee lives or it may be served by any citizen of the state of Washington over the age of twenty-one years and not a party to the action in which it is issued in the same manner as a summons in an action is served. And in case such writ is served by an officer, such officer shall make his return thereon showing the time, place and manner of service and noting thereon his fees for making such service and shall sign his name to such return. In case such service is made by any person other than an officer, such person shall attach to the original writ his affidavit showing his qualifications to make such service and the time,

place and manner of making service, but no fee shall be allowed for the service of such writ unless the same is served by an officer. [L. '93, p. 97, § 8; L. '03, p. 91, § 2.]

Cited in 43 Wash. 375; 79 Wash. 491.

§ 688. Effect of Service.—From and after the service of such writ of garnishment, it shall not be lawful for the garnishee to pay to the defendant any debt or to deliver to him any effects, nor shall the garnishee if an incorporated or joint stock company, in which the defendant is alleged to be the owner of shares or to have an interest, permit or recognize any sale or transfer of such shares or interest; and any such payment, delivery, sale or transfer shall be void and of no effect as to so much of said debt, effects, shares, or interest as may be necessary to satisfy the plaintiff's demand. [L. '93, p. 97, § 9.]

Cited in 23 Wash. 68; 26 Wash. 587; 40 Wash. 578; 79 Wash. 496.

§ 689. Bond to Discharge Writ.—If the defendant in the principal action, cause a bond to be executed to the plaintiff with sufficient sureties, to be approved by the officer having the writ or garnishment, or after the return of said writ, by the clerk of the court out of which said writ was issued, to the effect that he will perform the judgment of the court: The writ of garnishment shall, upon the filing of said bond with the clerk, be immediately discharged, and all proceedings had thereunder shall be vacated: Provided, that the garnishee shall not be thereby deprived from recovering any costs in said proceeding, to which he would otherwise be entitled under this act. [L. '03, p. 282, § 1.]

Cited in 55 Wash. 399.

§ 690. Answer and Service of.—The answer of the garnishee shall be under oath in writing and signed by him, and shall make true answers to the several matters inquired of in the writ of garnishment, and shall be served upon the plaintiff or his attorney and filed with the clerk of the superior court. [L. '93, p. 97, § 10.]

Cited in 23 Wash. 69; 79 Wash. 494.

§ 691. Garnishee Discharged When.—Should it appear from the answer of the garnishee that he is not indebted to the defendant, and was not so indebted when the writ of garnishment was served on him, and that he has not in his possession or under his control any personal property or effects of the defendant, and had not when the writ was served; and when the garnishee is an incorporated or joint stock company in which the defendant is alleged to be the owner of shares of stock or interested therein, if it shall further

appear from such answer that the defendant is not, and was not when the writ was served, the owner of any of such shares or interested in such company, and should the answer of the garnishee not be controverted as hereinafter provided, and within the time hereinafter provided, the court shall enter judgment discharging the garnishee. [L. '93, p. 98, § 11.]

§ 692. Judgment by Default, When.—Should the garnishee fail to make answer to the writ within the time prescribed therein, it shall be lawful for the court, and on or after the time to answer such writ has expired, to render judgment by default against such garnishee for the full amount claimed by plaintiff against the defendant, or in case plaintiff has a judgment against defendant, for the full amount of such judgment with all accruing interest and costs. [L. '93, p. 98, § 12.]

Cited in 40 Wash. 578; 79 Wash. 496.

§ 693. Judgment Against Garnishee, Enforcement of.—Should it appear from the answer of the garnishee or should it be otherwise made to appear, as hereinafter provided, that the garnishee is indebted to the defendant in any amount, or was so indebted when the writ of garnishment was served, the court shall render judgment for the plaintiff against such garnishee for the amount so admitted or found to be due to the defendant from the garnishee, unless such amount shall exceed the amount of plaintiff's claim or demand against the defendant with interest and costs, in which case it shall be for the amount of such claim or demand, interest and costs: Provided, however, if it shall appear from the answer of the garnishee and the same is not controverted, or if it shall appear from the trial hereinafter provided for, that the garnishee is indebted to the principal defendant in any sum, but that such indebtedness is not matured and is not due and payable, the court shall make an order requiring the garnishee to pay such sum into court when the same becomes due, the date when such payment is to be made to be specified in said order, and in default thereof that judgment shall be entered against the garnishee for the amount of such indebtedness so admitted or found due. In case the garnishee shall pay said sum at the time specified in said order, said payment shall operate as a discharge, otherwise judgment shall be entered against him for the amount of such indebtedness, which judgment shall have the same force and effect, and be enforced in like manner as other judgments provided for in this chapter: Provided further, that if judgment shall be rendered in favor of the principal defendant, or if any judgment rendered against him be satisfied prior to the date of payment specified in said order, the garnishee shall not be required to make the

payment hereinbefore provided for, nor shall any judgment in such case be entered against him. [L. '93, p. 98, § 13.]

Cited in 18 Wash. 318; 24 Wash. 243; 40 Wash. 579; 77 Wash. 557; 79 Wash. 496.

§ 694. Execution.—Execution may be issued on the judgment against the garnishee herein provided for in like manner as upon any other judgment. The amount made upon any such execution shall be paid by the officer executing the same to the clerk of the superior court from which such execution was issued; and in cases where judgment has been rendered against the defendant the amount made on the execution shall be applied to the satisfaction of the judgment, interests and costs against the defendant. In case judgment has not been rendered against the defendant at the time execution issued against the garnishee is returned, any amount made on said execution shall be paid to the clerk of the court from which such execution issued who shall retain the same until judgment be rendered in the action between the plaintiff and defendant. In case judgment be rendered therein in favor of the plaintiff, the amount made on the execution against the garnishee shall be applied to the satisfaction of such judgment and the surplus, if any there be, shall be paid to the defendant. In case judgment be rendered in such action in favor of the defendant, the amount made on said execution against the garnishee shall be paid to the defendant. [L. '93, p. 99, § 14.]

Cited in 48 Wash. 131.

§ 695. Decree to Deliver Effects.—Should it appear from the garnishee's answer or otherwise that the garnishee has in his possession or under his control, or had when the writ was served any personal property or effects of the defendant liable to execution, the court shall render a decree requiring the garnishee to deliver up to the sheriff on demand such personal property or effects or so much of them as may be necessary to satisfy the plaintiff's claim. In cases where a judgment has been rendered in favor of the plaintiff against the defendant, such personal property or effects may be sold in like manner as any other property is sold upon an execution issued on said judgment. In cases where judgment has not been rendered in the principal action, the sheriff shall retain said personal property or effects in his possession until the rendition of judgment therein, and in case judgment is rendered in said principal action in favor of the plaintiff, said goods or effects, or sufficient of them to satisfy such judgment, may be sold in like manner as other property is sold on execution, by virtue of an execution issuing on said judgment. In case judgment shall be rendered in said action against the plaintiff and in favor of the defendant, such effects and personal property

shall be by the sheriff returned to the defendant: Provided, however, that in cases where such effects or personal property are of a perishable nature, or the interests of the parties will be subserved by making a sale thereof before judgment, the court may order a sale thereof by the sheriff in like manner as sales upon execution are made and the proceeds of such sale shall be paid to the clerk of the superior court, and like disposition shall be made of such proceeds at the termination of the action as would have been made of such personal property or effects under the provisions of this section, in case such sale had not been made. [L. '93, p. 100, § 15.]

Cited in 10 Wash. 162; 18 Wash. 318; 23 Wash. 68.

§ 696. Procedure on Failure of Garnishee to Surrender Effects.—Should the garnishee adjudged to have effects or personal property of the defendant in his possession or under his control as provided in the [last] preceding article [section], fail or refuse to deliver them to the sheriff on such demand, the officer shall immediately make return of such failure or refusal, whereupon, on motion of the plaintiff, the garnishee shall be cited to show cause why he should not be attached for contempt of court for such failure or refusal, and should the garnishee fail to show some good and sufficient excuse for such failure and refusal, he shall be fined for such contempt and imprisoned until he shall deliver such personal property or effects. [L. '93, p. 101, § 16.]

Cited in 10 Wash. 162; 32 Wash. 609.

§ 697. Sale of Shares of Stock, When.—Where the garnishee is an incorporated or joint stock company, and it appears by the answer or otherwise that the defendant is or was, when the writ of garnishment was served, the owner of any shares of stock in such company or any interest therein, the court shall render a decree ordering the sale under execution in favor of the plaintiff, against the defendant, of such shares or interest of the defendant in such company, or so much thereof as may be necessary to satisfy such execution. [L. '93, p. 101, § 17.]

Cited in 26 Wash. 587.

§ 698. Sale, How Made.—The sale so ordered shall be conducted in all respects as other sales of personal property under execution, and the sheriff making such sales shall execute a transfer of such shares or interest to the purchaser with a brief recital of the judgment of the court under which the same was sold. [L. '93, p. 101, § 18.]

§ 699. Effect of Sale.—Such sale shall be valid and effectual to pass to the purchaser all the right, title and interest which the de-

fendant had in such shares of stock, or in such company, and the proper officers of such company shall enter such sale and transfer on the books of the company in the same manner as if the sale had been made by the defendant himself. [L. '93, p. 101, § 19.]

§ 700. Plaintiff may Controvert Answer.—If the plaintiff should not be satisfied with the answer of the garnishee he may controvert the same by affidavit in writing signed by him, stating that he has good reason to believe and does believe that the answer of the garnishee is incorrect, stating in what particulars he believes the same is incorrect. [L. '93, p. 101, § 20.]

Cited in 11 Wash. 242; 23 Wash. 68; 30 Wash. 551.

§ 701. Defendant may Controvert Answer.—The defendant may also in like manner controvert the answer of the garnishee. [L. '93, p. 101, § 21.]

Cited in 51 Wash. 329.

§ 702. Issue and Trial.—If the answer of the garnishee is controverted, as provided in the two preceding sections, an issue shall be formed, under the direction of the court, and tried as other cases: Provided, however, no pleadings shall be necessary on such issue other than the affidavit of the plaintiff, the answer of the garnishee and the reply of the plaintiff or defendant controverting such answer, unless otherwise ordered by the court. [L. '93, p. 101, § 22.]

Cited in 11 Wash. 242; 23 Wash. 519; 71 Wash. 54.

§ 703. Exemption of Wages and Family Necessaries.—Current wages or salary to the amount of one hundred dollars ($100) for personal services rendered by any person having a family dependent upon him for support, shall be exempt from garnishment, and where it appears upon the trial, or by answer of the garnishee, when not controverted as hereinafter provided, that the garnishee is indebted to the defendant for such current wages or salary for an amount not exceeding one hundred dollars ($100), the garnishee shall be discharged as to such indebtedness: Provided, that if the garnishment be founded upon a debt for actual necessaries furnished to the defendant or his family or his dependents, no exemption shall be allowed in excess of ten dollars ($10) out of each week's wages or salary, whether said wages or salary are paid, or to be paid, weekly, bi-weekly, monthly or at other intervals, and whether there be due the defendant wages for one week or a longer period: Provided, however, that said exemption shall in no event be allowed out of wages or salary for a longer period than four (4) consecutive weeks: And provided further, that no money due or earned as wages or salary shall

be exempt from garnishment in lieu of any other property. The provisions of this section shall apply to actions in the superior court or before justice of the peace, and shall govern exemptions of wages or salary to the exclusion of all other statutes or parts of statutes. [L. '07, p. 477, § 1. Cf. L. '93, p. 102, § 23; L. '97, p. 24, § 1; L. '01, p. 294, § 1.]

Cited in 79 Wash. 497; 80 Wash. 359, 363.

See supra, § 563, specification of exempt property.

See supra, § 564, property not exempt from wages of clerks, laborers, etc.

§ 704. Costs and Attorneys' Fees.—Where the garnishee is discharged upon his answer, the costs of the proceeding, including a reasonable compensation to the garnishee for attorneys' fees, shall be taxed against the plaintiff; where the answer of the garnishee has not been controverted and the garnishee is held thereon such costs shall be taxed against the defendant and included in the judgment. Where the answer is controverted the costs shall abide the issue of such contest. [L. '93, p. 102, § 24.]

Cited in 43 Wash. 178.

§ 705. Sufficiency of Answer Against Defendant.—It shall be a sufficient answer to any claim of the defendant against the garnishee founded on any indebtedness of such garnishee or on the possession by him of any personal property or effects, or where the garnishee is an incorporated or joint stock company, in which the defendant was the owner of shares of stock or other interest therein for the garnishee to show that such indebtedness was paid or such effects delivered, or such shares of stock or other interest in such company were sold under the judgment of the court in accordance with the provisions of this chapter. [L. '93, p. 102, § 25.]

Cited in 67 Wash. 493.

§ 706. Provisions Inapplicable to Justices of the Peace.—The provisions of this chapter shall not apply to actions and proceedings before justices of the peace, but garnishments shall be made in such actions and proceedings in the manner now provided by existing laws. [L. '93, p. 102, § 26.]

CHAPTER III.

Claim and Delivery (Replevin).

§ 707. Plaintiff may Claim Immediate Delivery.—The plaintiff in an action to recover the possession of personal property may, at the time of issuing the summons, or at any time before answer, claim the

immediate delivery of such property as herein provided. [L. '54, p. 150, § 100; L. '69, p. 35, § 140; Cd. '81, § 142; 2 H. C., § 255.]

Cited in 10 Wash. 227; 21 Wash. 95; 54 Wash. 669; 70 Wash. 687.

§ 708. Affidavit for Delivery.—When a delivery is claimed, an affidavit shall be made by the plaintiff, or by someone in his behalf, showing,—

1. That the plaintiff is the owner of the property claimed (particularly describing it), or is lawfully entitled to the possession thereof, by virtue of a special property therein, the facts in respect to which shall be set forth;

2. That the property is wrongfully detained by defendant;

3. That the same has not been taken for a tax, assessment, or fine pursuant to a statute, or seized under an execution or attachment against the property of the plaintiff, or if so seized, that it is by law exempt from such seizure; and

4. The actual value of the property. [Cf. L. '54, p. 150, § 101; L. '69, p. 35, § 141; Cd. '81, § 143; 2 H. C., § 256.]

Cited in 3 Wash. 678; 21 Wash. 95; 54 Wash. 669; 70 Wash. 688; 73 Wash. 404.

§ 709. Bond—Service of Bond and Affidavit.—Upon the receipt of the affidavit, and a bond to the defendant, executed by one or more sufficient sureties, approved by the sheriff, to the effect that they are bound in double the value of the property as stated in the affidavit, for the prosecution of the action, for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may for any cause be recovered against the plaintiff, the sheriff shall forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. He shall also, without delay, serve on the defendant a copy of the affidavit and bond by delivering the same to him personally, if he can be found, or his agent, from whose possession the property is taken; or if neither can be found, by leaving them at the usual place of abode of either, with some person of suitable age and discretion; or if neither have any known place of abode, by putting them in the postoffice, directed to the defendant, at the postoffice nearest his place of residence. [Cf. L. '54, p. 150, § 102; L. '69, p. 35, § 142; Cd. '81, § 144; 2 H. C., § 157.]

Cited in 32 Wash. 553; 73 Wash. 404, 407.

§ 710. Objections to Bond—Justification of Sureties.—The defendant may, within three days after the service of a copy of the affidavit and bond, give notice to the sheriff that he excepts to the sufficiency of the sureties; if he fail to do so he shall be deemed

to have waived all objections to them. When the defendant excepts, the sureties shall justify on notice in like manner as bail on arrest, and the sheriff shall be responsible for the sufficiency of the sureties until the objection to them is either waived as above provided, or until they shall justify, or new sureties shall be substituted and justify. If the defendant except to the sureties, he cannot reclaim the property, as provided in the next section. [Cf. L. '54, p. 150, § 103; L. '69, p. 36, § 143; Cd. '81, § 145; 2 H. C., § 258.]

Cited in 70 Wash. 688.

§ 711. Redelivery Bond.—At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof, upon giving to the sheriff a bond, executed by one or more sufficient sureties, to the effect that they are bound in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the defendant. If a return of the property be not so required within three days after the taking and service of notice to the defendant, it shall be delivered to the plaintiff, except as provided in section 716. [Cf. L. '54, p. 151, § 104; L. '69, p. 36, § 144; Cd. '81, § 146; 2 H. C., § 259.]

Cited in 32 Wash. 553; 70 Wash. 688; 73 Wash. 404, 407.

§ 712. Justification of Defendant's Sureties.—The defendant's sureties, upon a notice to the plaintiff or his attorney of not less than two nor more than six days, shall justify in the same manner as bail upon arrest; upon such justification, the sheriff shall deliver the property to the defendant. The sheriff shall be responsible for the defendant's sureties until they justify, or until justification is completed or expressly waived, and may retain the property until that time; but if they, or others in their place, fail to justify at the time and place appointed, he shall deliver the property to the plaintiff. [Cf. L. '54, p. 151, § 105; L. '69, p. 36, § 145; Cd. '81, § 147; 2 H. C., § 260.]

Cited in 14 Wash. 46.

§ 713. Qualifications of Sureties.—The qualification of sureties and their justification shall be as prescribed in respect to bail upon an order of arrest. [L. '54, p. 151, § 106; Cd. '81, § 148; 2 H. C., § 261.]

§ 714. Buildings may be Broken Open, When.—If the property, or any part thereof, be concealed in a building or inclosure, the sheriff shall publicly demand its delivery. If it be not delivered, he shall cause the building or inclosure to be broken open, and take the property into his possession, and if necessary, he may call to his

aid the power of his county. [L. '54, p. 151, § 107; Cd. '81, § 149; 2 H. C., § 262.]

Cited in 44 Wash. 516.

§ 715. Sheriff must Safely Keep Property.—When the sheriff shall have taken the property as herein provided, he shall keep it in a secure place, and deliver it to the party entitled thereto, upon receiving his lawful fees for taking and his necessary expenses for keeping the same. [L. '54, p. 151, § 108; Cd. '81, § 150; 2 H. C., § 263.

§ 716. Proceedings upon Claim by Third Person.—If the property taken be claimed by any other person than the defendant or his agent, and such person make affidavit of his title thereto, or his right to the possession thereof, stating the grounds of such title or right, and serve the same upon the sheriff before the delivery of the property to the plaintiff, the sheriff shall not be bound to keep the property or deliver it to the plaintiff, unless the plaintiff, on demand [of him or his agent], indemnify the sheriff against such claim by a bond, executed by two sufficient sureties, accompanied by their affidavits that they are each worth double the value of the property as specified in the affidavit of plaintiff, over and above their debts and liabilities, exclusive of property exempt from execution, and freeholders or householders of the county; and no claim to such property by any other person than the defendant or his agent shall be valid against the sheriff, unless made as aforesaid; and notwithstanding such claim, when so made, he may retain the property a reasonable time to demand such indemnity. [L. '54, p. 151, § 109; Cd. '81, § 151; 2 H. C., § 264.]

Cited in 70 Wash. 687, 688.

§ 717. Return of Sheriff.—The sheriff shall file the affidavit, with the proceedings thereon, with the clerk of the court in which the action is pending within twenty days after taking the property mentioned therein. [Cf. L. '54, p. 152, § 110; Cd. '81, § 152; L. '91, p. 72, § 1; 2 H. C., § 265.]

CHAPTER IV.

Injunctions.

§ 718. By Whom Granted.—Restraining orders and injunctions may be granted by the superior court, or by any judge thereof. [L. '54, p. 152, § 111; Cd. '81, § 153; 2 H. C., § 266.]

§ 719. When Granted.—When it appears by the complaint that the plaintiff is entitled to the relief demanded, and the relief, or any part thereof, consists in restraining the commission or continuance of some act the commission or continuance of which during the liti-

gation would produce great injury to the plaintiff; or when, during the litigation, it appears that the defendant is doing, or threatening [threatened], or is about to do, or is procuring or is suffering some act to be done, in violation of the plaintiff's rights respecting the subject of the action, tending to render the judgment ineffectual; or where such relief, or any part thereof, consists in restraining proceedings upon any final order or judgment,—an injunction may be granted to restrain such act or proceedings until the further order of the court, which may afterwards be dissolved or modified upon motion. And where it appears, in the complaint, at the commencement of the action, or during the pendency thereof, by affidavit, that the defendant threatens or is about to remove or dispose of his property with intent to defraud his creditors, a temporary injunction may be granted to restrain the removal or disposition of his property. [L. '54, p. 152, § 112; Cd. '81, § 154; 2 H. C., § 267.]

Cited in 18 Wash. 86; 43 Wash. 326; 69 Wash. 557.

§ 720. Injunction for Malicious Erection of Structures.—An injunction may be granted to restrain the malicious erection, by any owner or lessee of land, of any structure intended to spite, injure, or annoy an adjoining proprietor. And where any owner or lessee of land has maliciously erected such a structure with such intent, a mandatory injunction will lie to compel its abatement and removal. [L. '93, p. 44, § 1; 2 H. C., § 268.]

Cited in 22 Wash. 423; 31 Wash. 368; 56 Wash. 593.

§ 721. At What Time Granted.—The injunction may be granted at the time of commencing the action, or at any time afterward, before judgment in that proceeding. [L. '54, p. 163, § 113; Cd. '81, § 155; 2 H. C., § 269.]

§ 722. Notice—Emergency.—No injunction shall be granted until it shall appear to the court or judge granting it that some one or more of the opposite party concerned has had reasonable notice of the time and place of making application, except that in cases of emergency, to be shown in the complaint, the court may grant a restraining order until notice can be given and hearing had thereon. [L. '54, p. 153, § 114; Cd. '81, § 156; 2 H. C., § 270.]

Cited in 4 Wash. 410, 413; 11 Wash. 588; 12 Wash. 649; 14 Wash. 110; 22 Wash. 55; 43 Wash. 326; 45 Wash. 4.

§ 723. Affidavits on Hearing of Application.—On the hearing of an application for an injunction, each party may read affidavits. [L. '54, p. 153, § 115; Cd. '81, § 157; 2 H. C., § 271.]

§ 724. Terms and Conditions Imposed.—Upon the granting or continuing an injunction, such terms and conditions may be imposed

upon the party obtaining it as may be deemed equitable. [L. '54, p. 153, § 116; Cd. '81, § 158; 2 H. C., § 272.]

§ 725. Bond for Injunction.—No injunction or restraining order shall be granted until the party asking it shall enter into a bond, in such a sum as shall be fixed by the court or judge granting the order, with surety to the satisfaction of the clerk of the superior court, to the adverse party affected thereby, conditioned to pay all damages and costs which may accrue by reason of the injunction or restraining order. The sureties shall, if required by the clerk, justify in like manner as bail upon an arrest, and until they so justify, the clerk shall be responsible for their sufficiency. [L. '54, p. 153, § 117; Cd. '81, § 159; 2 H. C., § 273.]

Cited in 10 Wash. 421; 11 Wash. 588; 35 Wash. 77.

§ 726. Second Bond When First Insufficient.—When an injunction is granted upon the hearing, after a temporary restraining order, the plaintiff shall not be required to enter into a second bond, unless the former shall be deemed insufficient, but the plaintiff and his surety shall remain liable upon his original bond. [L. '54, p. 153, § 118; Cd. '81, § 160; 2 H. C., § 274.]

Cited in 4 Wash. 409; 48 Wash. 428.

§ 727. Copy of Order Sufficient Writ.—It shall not be necessary to issue a writ of injunction, but the clerk shall issue a copy of the order of injunction duly certified by him, which shall be forthwith served by delivering the same to the adverse party. [L. '54, p. 153, § 119; Cd. '81, § 161; 2 H. C., § 275.]

§ 728. Stay of Judgment—Release of Errors.—In application to stay proceedings after judgment, the plaintiff shall indorse upon his complaint a release of errors in the judgment whenever required to do so by the judge or court. [L. '54, p. 153, § 120; Cd. '81, § 162; 2 H. C., § 276.]

§ 729. Who Bound by.—An order of injunction shall bind every person and officer restrained from the time he is informed thereof. [L. '54, p. 153, § 121; Cd. '81, § 163; 2 H. C., § 277.]

Cited in 22 Wash. 382; 66 Wash. 641.

§ 730. Notice, When Sufficient Service.—When notice of the application for an injunction has been served upon the adverse party, it shall not be necessary to serve the order upon him, but he shall be bound by the injunction as soon as the bond required of the plaintiff is executed and delivered to the proper officer. [L. '54, p. 154, § 122; Cd. '81, § 164; 2 H. C., § 278.]

§ 731. Money Collected on Enjoined Judgment to be Paid into Court.—Money collected upon a judgment afterward enjoined, re-

maining in the hands of the collecting officer, shall be paid to the clerk of the court granting the injunction, subject to the order of the court. [L. '54, p. 154, § 123; Cd. '81, § 165; 2 H. C., § 279.]

§ 732. Order Disobeyed—Contempt.—Whenever it shall appear to any court granting an order of injunction, or judge thereof, by affidavit, that any person has willfully disobeyed the order after notice thereof, such court or judge shall award an attachment for contempt against the party charged, or a rule to show cause why it should not issue. The attachment or rule shall be issued by the clerk of the court, and directed to the sheriff, and shall be served by him. [L. 54. p. 154, § 124; Cd. '81, § 166; 2 H. C., § 280.]

§ 733. Arrest and Indemnity.—The attachment for contempt shall be immediately served by arresting the party charged, and bringing him into court, if in session, to be dealt with as in other cases of contempt; and the court shall also take all necessary measures to secure and indemnify the plaintiff against damages in the premises. [L. '54, p. 154, § 125; Cd. '81, § 167; 2 H. C., § 281.]

§ 734. Bond for Appearance.—If the court is not in session the officer making the arrest shall cause the person to enter into a bond, with surety, to be approved by the officer, conditioned that he personally appear in open court whenever his appearance shall be required, to answer such contempt, and that he will pay to the plaintiff all his damages and costs occasioned by the breach of the order; and in default thereof, he shall be committed to the jail of the county until he shall enter into such bond with surety, or be otherwise legally discharged. [Cf. L. '54, p. 154, § 126; Cd. '81, § 168; L. '91, p. 97, § 1; 2 H. C., § 282.]

§ 735. Motion to Vacate or Modify.—Motions to dissolve or modify injunctions may be made in open court, or before a judge of the superior court, at any time after reasonable notice to the adverse party. [L. '54, p. 154, § 127; Cd. '81, § 169; L. '91, p. 74, § 1; 2 H. C., § 283.]

Cited in 12 Wash. 655.

§ 736. Damages upon Dissolution of Injunction to Stay Proceedings.—When an injunction to stay proceedings after judgment for debt or damages shall be dissolved, the court shall award such damages, not exceeding ten per cent, on the judgment, as the court may deem right, against the party in whose favor the injunction issued. [L. '54, p. 154, § 128; Cd. '81, § 170; 2 H. C., § 284.]

§ 737. Damages for Waste and Rents, When.—If an injunction to stay proceedings after verdict or judgment in an action for the recovery of real estate, or the possession thereof, be dissolved, the damages

assessed against the party obtaining the injunction shall include the reasonable rents and profits of the land recovered, and all waste committed after granting injunction. [L. '54, p. 154, § 129; Cd. '81, § 171; 2 H. C., § 285.]

§ 738. Motion to Reinstate.—Upon an order being made dissolving or modifying an order of injunction, the plaintiff may move the court to reinstate the order, and the court may, in its discretion, allow the motion, and appoint a time for hearing the same before the court, or a time and place for hearing before some judge thereof, and upon the hearing, the parties may produce such additional affidavits or depositions as the court shall direct, and the order of injunction shall be dissolved, modified, or reinstated, as the court or judge may deem right. Until the hearing of the motion to reinstate the order of injunction, the order to dissolve or modify it shall be suspended. [L. '54, p. 154, § 130; Cd. '81, § 172; 2 H. C., § 286.]

§ 739. Power of Judge or Court.—The judge of the superior court shall have power to make every order which, by the provisions of this chapter, may be made by the court. [L. '69, p. 41, § 171; Cd. '81, § 173; 2 H. C., § 287.]

CHAPTER V.

Receivers.

§ 740. Receiver, Defined.—A receiver is a person appointed by a court or judicial officer to take charge of property during the pending of a civil action or proceeding, or upon a judgment, decree, or order therein, and to manage and dispose of it as the court or officer may direct. [L. '91, p. 90, § 1; 2 H. C., § 325.]

Cited in 15 Wash. 151; 22 Wash. 376; 47 Wash. 184; 86 Wash. 586.

§ 741. In What Cases Appointed.—A receiver may be appointed by the court in the following cases:—

1. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim;

2. In an action between partners, or other persons jointly interested in any property or fund;

3. In all actions where it is shown that the property, fund, or rents and profits in controversy are in danger of being lost, removed or materially injured;

4. In an action by a mortgagee for the foreclosure of a mortgage and the sale of the mortgaged property, when it appears that such property is in danger of being lost, removed, or materially injured; [or when such property is insufficient to discharge the debt, to secure

the application of the rents and profits accruing, before a sale can be had;]

5. When a corporation has been dissolved or is insolvent, or is in imminent danger of insolvency, or has forfeited its corporate rights;

6. And in such other cases as may be provided for by law, or when, in the discretion of the court, it may be necessary to secure ample justice to the parties: Provided, that no party or attorney or other person interested in an action shall be appointed receiver therein. [L. '54, p. 162, §§ 171, 172; Cd. '81, § 193; 2 H. C., § 326.]

Cited in 3 Wash. 589; 4 Wash. 605; 15 Wash. 152, 675; 19 Wash. 452; 20 Wash. 15, 551; 28 Wash. 562; 31 Wash. 225; 33 Wash. 151; 47 Wash. 184; 50 Wash. 389; 51 Wash. 517, 518; 55 Wash. 176; 86 Wash. 586.

The last part of subdivision 4 in brackets superseded by § 804, infra.

See supra, § 613 et seq., receivers in proceedings supplemental to executions.

See supra, § 661, receiver in attachments.

§ 742. Oath and Bond.—Before entering upon his duties, the receiver must be sworn to perform them faithfully, and, with one or more sureties approved by the court, execute a bond to such person as the court may direct, conditioned that he will faithfully discharge the duties of receiver in the action, and obey the orders of the court therein. [L. '54, p. 162, § 173; Cd. '81, § 194; 2 H. C., § 327.]

§ 743. Powers of Receiver.—The receiver shall have power, under control of the court, to bring and defend actions, to take and keep possession of the property, to receive rents, collect debts, and generally to do such acts respecting the property as the court may authorize. [L. '54, p. 163, § 177; Cd. '81, § 198; 2 H. C., § 331.]

§ 744. Order When Part of Claim Admitted. When the answer of the defendant admits part of the plaintiff's claim to be just, the court, on motion, may order the defendant to satisfy that part of the claim, and may enforce the order by execution or attachment. [L. '54, p. 153, § 178; Cd. '81, § 199; 2 H. C., § 332.]

Cited in 86 Wash. 586.

CHAPTER VI.

Deposits in Courts.

§ 745. Deposits in Court. When it is admitted by the pleading or examination of a party that he has in his possession, or under his control, any money, or other thing capable of delivery, which, being the subject of the litigation, is held by him as trustee for another party, or which belongs or is due to another party, the court may order the same to be deposited in court, or delivered to such party, with or without security, subject to the further direction of the court. [L. '54, p. 163, § 174; Cd. '81, § 195; 2 H. C., § 328.]

Cited in 28 Wash. 406; 31 Wash. 103.

§ 746. Manner of Enforcing Order.—Whenever, in the exercise of its authority, a court shall have ordered the deposit or delivery of money or other thing, and the order is disobeyed, the court, besides punishing the disobedience as for contempt, may make an order requiring the sheriff to take the money or thing, and deposit or deliver it, in conformity with the direction of the court. [L. '54, p. 163, § 175; Cd. '81. § 196; 2 H. C., § 329.]

Cited in 71 Wash. 497.

§ 747. Custody of Money Deposited.—Money deposited or paid into a court in an action shall not be loaned out, unless with the consent of all parties having an interest in or making claim to the same. [L. '54, p. 163, § 176; Cd. '81, § 197; 2 H. C., § 330.]

CHAPTER VII.

Arrest and Bail.

§ 748. No Arrest Except as Provided by Statute.—No person shall be arrested or held to bail in any civil action except upon the order of the court where the action is brought, or a judge of the supreme court. [L. '54, p. 145, § 73; Cd. '81, § 115; 2 H. C., § 228.]

Cited in 78 Wash. 695.

§ 749. Defendant, When Subject to Arrest.—The defendant may be arrested in the following cases:—

1. In an action for the recovery of damages, on a cause of action not arising out of contract, where the defendant is a nonresident of the state, or is about to remove therefrom, or where the action is for an injury to person or character, or for injuring, or for wrongfully taking, detaining, or converting property;

2. In an action for a fine or penalty, or on a promise to marry, or for money received, or property embezzled, or fraudulently misapplied, or converted to his own use, by a public officer, or by an attorney, or by an officer or agent of a corporation in the course of his employment as such, or by any factor, agent, broker, or other person in a fiduciary capacity, or for any misconduct or neglect in office or in a professional employment;

3. In an action to recover the possession of personal property unjustly detained, when the property, or any part thereof, has been concealed, removed, or disposed of, so that it cannot be found or taken by the sheriff, and with intent that it should not be so found or taken, or with the intent to deprive the plaintiff of the benefit thereof;

4. When the defendant has been guilty of a fraud in contracting the debt, or incurring the obligation for which the action is brought,

or in concealing or disposing of the property, for the taking, detention, or conversion of which the action is brought;

5. When the defendant has removed or disposed of his property, or is about to do so, with intent to defraud his creditors;

6. When the action is to prevent threatened injury to or destruction of property, in which the party bringing the action has some right, interest, or title, which will be impaired or destroyed by such injury or destruction, and the danger is imminent that such property will be destroyed or its value impaired, to the injury of the plaintiff;

7. On the final judgment or order of any court in this state, while the same remains in force, when the defendant, having no property subject to execution, or not sufficient to satisfy such judgment, has money which he ought to apply in payment upon such judgment, which he refuses to apply, with intent to defraud the plaintiff, or when he refuses to comply with a legal order of the court, with intent to defraud the plaintiff; or when any one or more of the causes exist for which an arrest is allowed in the first class of cases mentioned in this section. [L. '54, p. 145, § 74; Cd. '81, § 116; 2 H. C., § 229.]

Cited in 3 Wash. 136; 81 Wash. 395, 397; 84 Wash. 60.

§ 750. Proof Required to Obtain Order.—The court or judge making the order of arrest shall first be satisfied, by the affidavit of the party, or his agent or attorney, and other proof under oath, exclusive of the complaint, that the case is one in which an arrest is provided for in section 749, and that one or more of the prescribed causes exist, which proof shall be in writing, and, together with the order, be filed with the clerk before he shall issue any warrant for the arrest. [Cf. L. '54, p. 145, § 75; Cd. '81, § 117; L. '88, p. 31, § 1; 2 H. C., § 230.]

§ 751. Court or Judge must Fix Bail.—The court or judge making the order shall, in all cases, specify therein the amount in which the defendant shall be held to bail, which shall, in no case, exceed the demand of the plaintiff, and one hundred dollars in addition thereto, which amount the clerk shall indorse upon the writ, and the court shall also, in the order, fix the amount of the bond to be given by the plaintiff, as provided in the next succeeding section, which amount shall in no case be less than one hundred dollars. [L. '54, p. 146, § 76; Cd. '81, § 118; 2 H. C., § 231.]

§ 752. Bond Required of Plaintiff.—Before any clerk shall issue a warrant for the arrest of the defendant, he shall require the plaintiff to place on file in his office a copy of the order granting the warrant, unless the same was made in open court, and appears in the minutes, the original affidavit and proofs upon which the order was made, and a bond, on behalf of the plaintiff, in such an amount as the court or judge may have fixed in the order, with sureties to the satisfaction

of the clerk, conditioned to pay to the defendant all damages which he shall suffer and all expenses he shall incur by reason of such arrest or imprisonment, if the order shall be vacated in the manner provided for in the next succeeding section, or if the plaintiff fail to recover in his action. [L. '54, p. 146, § 77; Cd. '81, § 119; 2 H. C., § 232.]

§ 753. Defendant may Move to Vacate Order — Proceedings Thereon.—The defendant may, on motion, apply to the court to vacate the order of arrest, on the ground of insufficiency of the proof, or he may show that the facts alleged upon which the order issued are untrue, or he may apply to have the amount of bail reduced. If the court, upon any such motion, shall vacate the order, the defendant shall be discharged from the arrest, and any bond he may have given shall be canceled, but the action, unless dismissed for other cause, shall be conducted in the same manner as in cases where complaint and notice were duly served and filed. [L. '54, p. 146, § 78; Cd. '81, § 120; 2 H. C., § 233.]

§ 754. Warrant must not Issue Till Complaint is Filed.—When an order of arrest is granted prior to the filing of the complaint, the warrant shall not issue until the complaint is filed with the clerk, and a copy of said complaint shall be served on the defendant with the warrant; but an order of arrest may be granted at any time after the action is commenced, and before judgment is satisfied, when the party seeking the order shall comply with the preceding provisions in regard to arrests. [L. '54, p. 146, § 79; Cd. '81, § 121; 2 H. C., § 234.]

§ 755. Warrant must State Cause of Arrest.—The warrant shall, in all cases, contain a short statement of the alleged causes for which the order was granted, and also the amount for which bail is required. [L. '54, p. 146, § 83; Cd. '81, § 125; 2 H. C., § 235.]

§ 756. Defendant Entitled to Copy of Warrant.—The warrant must be delivered to the sheriff, who, upon arresting the defendant, must deliver to him a copy thereof. [L. '54, p. 146, § 80; Cd. '81, § 122; 2 H. C., § 236.]

§ 757. How Warrant Executed—Fees of Sheriff.—The sheriff shall execute the warrant by arresting the defendant, and keeping him in custody until discharged by law. And the plaintiff, in the first instance, shall be liable for the sheriff's fees, for the food and maintenance of any person under arrest, which, if required by the sheriff, shall be paid weekly in advance. And such fees so paid shall be added to the costs taxed or accruing in the case, and be collected as other costs. And if the plaintiff shall neglect to pay such fees for

three days after a demand, in writing, upon the plaintiff or his attorney for payment, the sheriff may discharge defendant out of custody. [L. '54, p. 146, § 81; Cd. '81, § 123; 2 H. C., § 237.]

Cited in 78 Wash. 695.

§ 758. Conditions of Bail Bond.—The defendant may give bail by causing a bond to be executed by two or more sufficient sureties, stating their places of residence and occupations, conditioned that the defendant shall at all times render himself amenable to the process of the court during the pendency of the action, and to such as may be issued to enforce the judgment rendered therein; or if he be arrested for the cause mentioned in the third subdivision of section 749, it shall be further conditioned that the specific article of property, or instrument of writing which is the subject matter of the writ, shall be forthcoming, to abide any order which shall be made therein; or if he be arrested for the cause mentioned in the sixth subdivision of said section, it shall be further conditioned that he will not commit the injury or destruction alleged to be threatened in the affidavit or proofs on which the arrest is ordered. [L. '54, p. 147, § 82; Cd. '81, § 124; 2 H. C., § 238.]

§ 759. Surrender of Defendant.—At any time before a failure to comply with their bonds, the bail may surrender the defendant in their exoneration, or he may surrender himself to the sheriff of the county where he was arrested, in the following manner:—

1. A certified copy of the bail bond shall be delivered to the sheriff, who shall retain the defendant in his custody thereon as upon an order of arrest, and by a certificate in writing, acknowledge the surrender;

2. Upon the production of a copy of the bail bond and sheriff's certificate a judge of the superior court may, upon a notice to the plaintiff of eight days, with a copy of the certificate, order that the bail be exonerated, and on filing the order and the papers used on such application, they shall be exonerated accordingly. But this section does not apply to an arrest for the cause mentioned in the sixth subdivision of section 749. [L. '54, p. 147, § 84; Cd. '81, § 126; 2 H. C., § 239.]

§ 760. Bail may Arrest Defendant, When.—For the purpose of surrendering the defendant, the bail, at any time or place before they are finally discharged, may themselves arrest him, or, by written authority indorsed upon a certified copy of the bond, may empower any person of suitable age and discretion to do so. [L. '54, p. 147, § 85; Cd. '81, § 127; 2 H. C., § 240.]

§ 761. Proceeding Against Bail.—In case of failure to comply with the condition of the bond, the bail can be proceeded against by action only. [L. '54, p. 147, § 86; Cd. '81, § 128; 2 H. C., § 241.]

§ 762. Exoneration of Bail.—The bail may be exonerated either by the death of the defendant, or his imprisonment in the penitentiary, or by his legal discharge from the obligation to render himself amenable to the process, or by his surrender to the sheriff of the county where he was arrested, in exoneration thereof, within twenty days after commencement of the action against the bail, or within such further time as may be granted by the court. [L. '54, p. 148, § 87; Cd. '81, § 129; 2 H. C., § 242.]

§ 763. Return of Sheriff—Exceptions to Bail.—Within the time limited for that purpose, the sheriff must deliver the order of arrest to the clerk, with his return indorsed thereon, and the bond of the bail, or a copy thereof. The plaintiff, within ten days thereafter, may serve upon the sheriff a notice that he does not accept the bail, or he must be deemed to have accepted it, and the sheriff shall be exonerated from liability. [L. '54, p. 148, § 88; Cd. '81, § 130; 2 H. C., § 243.]

§ 764. Notice of Justification.—On the receipt of notice, the sheriff or defendant may, within ten days thereafter, give to the plaintiff or his attorney notice of the justification of the same, or their bail (specifying the places of residences and occupations of the latter), before judgment [the judge] of the court or justice of the peace, at a specified time and place, the time to be not less than five days nor more than ten thereafter. In case other bail be given, there must be a new bond in the form prescribed in section 758. [L. '54, p. 148, § 89; Cd. '81, § 131; 2 H. C., § 244.]

§ 765. Qualifications of Bail.—The qualifications of the bail shall be as follows:—

1. Each of them shall be a resident of the state; but no counselor or attorney at law, sheriff, clerk of the superior court, or other officer of such court, shall be permitted to become bail in any action;

2. Each of the bail shall be worth the amount specified in the order of arrest, or the amount to which the order may be reduced, as provided in this chapter, over and above all debts and liabilities, and exclusive of property exempt from execution; but the judge or justice, on justification, may allow more than two sureties to justify, severally, in amounts less than that expressed in the order, if the whole justification be equivalent to that of two sufficient bail. [L. '54, p. 138, § 90; Cd. '81, § 132; 2 H. C., § 245.]

Cited in 16 Wash. 337.

§ 766. Justification, How Made.—For the purpose of justification, each of the bail must attend before the judge or justice of the peace at the time and place mentioned in the notice, and may be examined on oath on the part of the plaintiff touching his sufficiency, in such manner as the judge or justice of the peace, in his discretion, may

think proper. The examination must be reduced to writing and subscribed by the bail, if required by the plaintiff. [L. '54, p. 148, § 91; Cd. '81, § 133; 2 H. C., § 246.]

§ 767. Order When Bail Found Sufficient.—If the judge or justice find the bail sufficient, he shall indorse his allowance thereof on the bond, and cause it to be filed with the clerk, and the sheriff shall thereupon be exonerated from liability. [L. '54, p. 148, § 92; Cd. '81, § 134; 2 H. C., § 247.]

§ 768. Deposit of Money Instead of Bail.—The defendant may at the time of his arrest, instead of giving bail, deposit with the sheriff the amount mentioned in the order. The sheriff must thereupon give the defendant a certificate of deposit, and the defendant shall be discharged from custody. [L. '54, p. 148, § 93; Cd. '81, § 135; 2 H. C., § 248.]

§ 769. Sheriff must Pay Bail Money into Court.—The sheriff shall, within ten days after the deposit, pay the same into court, and take from the officer receiving the same two certificates of such payment, the one of which he must deliver to the plaintiff and the other to the defendant. For any default in making such payment, the same proceeding may be had on the official bond of the sheriff to collect the sum deposited, as in case of delinquency. [L. '54, p. 149, § 94; Cd. '81, § 136; 2 H. C., § 249.]

§ 770. Bail may be Substituted for Money.—If the money be deposited, as provided in the last two sections, bail may be given and justified, upon notice as hereinbefore provided, at any time before judgment; and thereupon the judge before whom justification is had shall direct in the order of allowance that the money deposited be refunded by the sheriff or clerk to the defendant, and it shall be refunded accordingly. [L. '54, p. 149, § 95; Cd. '81, § 137; 2 H. C., § 250.]

§ 771. Disposition of Bail Money After Judgment.—When money shall have been so deposited, if it remain on deposit at the time of an order or judgment for the payment of money to the plaintiff, the clerk shall, under the direction of the court, apply the same in the satisfaction thereof, and after satisfying judgment, refund the surplus, if any, to the defendant. If the judgment be in favor of the defendant, the clerk shall refund to him the whole sum deposited and remaining unapplied. [L. '54, p. 149, § 96; Cd. '81, § 138; 2 H. C., § 251.]

§ 772. Liability of Sheriff for Escape.—If, after being arrested, the defendant escapes or be rescued, the sheriff himself shall be liable as bail; but he may discharge himself from such liability by giving bail at any time before judgment. [L. '54, p. 149, § 97; Cd. '81, § 139; 2 H. C., § 252.]

§ 773. Judgment—Sheriff as Bail.—If the judgment be recovered against the sheriff upon his liability as bail, and an execution thereon be returned unsatisfied, the same proceedings may be had on the official bond of the sheriff to collect the deficiency as in other cases of delinquency. [L. '54, p. 149, § 98; Cd. '81, § 140; 2 H. C., § 253.]

§ 774. Bail Liable to Sheriff, When.—The bail taken on arrest shall, unless they justify, or other bail be given or justified, be liable to the sheriff, by action, for the damages which he may sustain by reason of such omission. [L. '54, p. 149, § 99; Cd. '81, § 141; 2 H. C., § 254.]

§ 775. Officer Authorized to Take Bail may Examine Surety.—Every court and officer authorized to take any bail or surety shall have power to examine on oath the person offering to become such bail or surety concerning his property and sufficiency as such bail or surety. [L. '54, p. 219, § 488; Cd. '81, § 748; 2 H. C., § 799.]

§ 776. Money may be Deposited for Bail.—Any person required to give bail may deposit with the clerk the amount of money for which he is required to give bail, and thereupon be discharged from arrest. [L. '54, p. 220, § 493; Cd. '81, § 750; 2 H. C., § 801.]

§ 777. Bonds are not to Fail for Want of Form.—No bond required by law, and intended as such bond, shall be void for want of form or substance, recital, or condition; nor shall the principal or surety on such account be discharged, but all the parties thereto shall be held and bound to the full extent contemplated by the law requiring the same, to the amount specified in such bond. In all actions on such defective bond, the plaintiff may state its legal effect in the same manner as though it were a perfect bond. [L. '54, p. 219, § 489; Cd. '81, § 749; 2 H. C., § 800.]

Cited in 5 Wash. 587; 11 Wash. 166; 31 Wash. 492; 60 Wash. 647.

CHAPTER VIII.

Ne Exeat.

§ 778. Affidavit for Writ.—Action may be commenced upon any agreement in writing before the time for the performance of the contract expires, when the plaintiff or his agent shall make and file an affidavit with the clerk of the proper court that the defendant is about to leave the state without performing or making provisions for the performance of the contract, taking with him property, moneys, credits, or effects subject to execution, with intent to defraud plaintiff. [L. '54, p. 209, § 418; Cd. '81, § 636; 2 H. C., § 747.]

§ 779. Complaint—Bond—Order of Arrest.—At the time of filing the affidavit the plaintiff shall also file his complaint in the action,

and thenceforth the action shall proceed as other actions at law, except as otherwise provided in this chapter. Upon such affidavit and complaint being filed, the clerk shall issue an order of arrest and bail, directed to the sheriff, which shall be issued, served, and returned in all respects as such orders in other cases; before such order shall issue, the plaintiff shall file in the office of the clerk a bond, with sufficient surety, to be approved by the clerk, conditioned that the plaintiff will pay the defendant such damages and costs as he shall wrongfully sustain by reason of the action, which sureties shall justify as bail upon an arrest. [Cf. L. '54, p. 209, § 419; Cd. '81, § 637; L. '91, p. 81, §§ 1, 2; 2 H. C., §§ 748, 749.]

§ 780. Recognizance—Commitment—Discharge.—The sheriff shall require the defendant to enter into a bond, with sufficient surety, personally to appear within the time allowed by law for answering the complaint, and to abide the order of the court; and in default thereof the defendant shall be committed to prison until discharged in due course of law; such special bail shall be liable for the principal, and shall have a right to arrest and deliver him up, as in other cases, and the defendant may give other bail. Instead of giving special bail, as above provided, the defendant shall be entitled to his discharge from custody if he will secure the performance of the contract to the satisfaction of the plaintiff. [Cf. L. '54, pp. 209, 210, §§ 420, 421; Cd. '81, §§ 638, 639; L. '91, p. 81, § 3; 2 H. C., §§ 750, 751.]

§ 781. Who may have Writ.—This proceeding may be had in favor of any surety or other person jointly bound with the defendant. It may also be prosecuted by the person in whose favor the contract exists, against any one or more of the persons bound thereby, upon filing such affidavit, when the co-contractors are nonresidents or probably insolvent, or at the request of any of them when they are residents and solvent. [L. '54, p. 210, § 422; Cd. '81, § 640; 2 H. C., § 752.

§ 782. Habeas Corpus.—The defendant may have the same remedy by writ of habeas corpus as in other cases of arrest and bail. [L. '54, p. 210, § 423; Cd. '81, § 641; 2 H. C., § 753.]

§ 783. Before Justices.—The proceedings provided for in this chapter may be had before justices of the peace in all cases within their jurisdiction. [Cf. L. '54, p. 210, § 424; Cd. '81, § 642; L. '91, p. 82, § 4; 2 H. C., § 754.]

§ 784. Venue.—The affidavit and bond may be filed and proceedings had in any county where the defendants may be found. [L. '54, p. 210, § 425; Cd. '81, § 643; 2 H. C., § 755.]

Cited in 23 Wash. 578.

TITLE VI.

ACTIONS IN PARTICULAR CASES.

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CHAPTER I.

Actions for Possession of and Quieting Title to Real Property.

§ 785. Who may Maintain.—Any person having a valid subsisting interest in real property, and a right to the possession thereof, may recover the same by action in the superior court of the proper county, to be brought against the tenant in possession; if there is no such tenant, then against the person claiming the title or some interest therein, and may have judgment in such action quieting or removing a cloud from plaintiff's title; an action to quiet title may be brought by the known heirs of any deceased person, or of any person presumed in law to be deceased, or by the successors in interest of such known heirs against the unknown heirs of such deceased person or against such person presumed to be deceased and his unknown heirs, and if it shall be made to appear in such action that the plaintiffs are heirs of the deceased person, or the person presumed in law to be deceased, or the successors in interest of such heirs, and have been in possession of the real property involved in such action for ten years preceding the time of the commencement of such action, and that during said time no person other than the plaintiff in the action or his grantors has claimed or asserted any right or title or interest in said property, the court may adjudge and decree the plaintiff or plaintiffs in such action to be the owners of such real property, free from all claims of any unknown heirs of such deceased person, or person presumed in law to be deceased; and an action to quiet title may be maintained by any person in the actual possession of real property against the unknown heirs of a person known to be dead, or against any person where it is not known whether such person is dead or not, and against the unknown heirs of such person, and if it shall thereafter transpire that such person was at the time of commencing such action dead the judgment or decree in such action shall be as binding and conclusive on the heirs of such person as though they had been known and named; and in all actions, under this sec-

tion, to quiet or remove a cloud from the title to real property, if the defendant be absent or a nonresident of this state, or cannot, after due diligence, be found within the state, or conceals himself to avoid the service of summons, service may be made upon such defendant by publication of summons as provided by law; and the court may appoint a trustee for such absent or nonresident defendant, to make or cancel any deed or conveyance of whatsoever nature, or do any other act to carry into effect the judgment or the decree of the court. [L. '11, p. 383, § 1. Cf. L. '54, p. 205, § 398; L. '79, p. 134, § 1; Cd. '81, § 536; L. '90, p. 72, § 1; 2 H. C., § 529.]

Cited in 9 Wash. 157; 10 Wash. 359, 664; 11 Wash. 537; 12 Wash. 696; 19 Wash. 401; 20 Wash. 31; 21 Wash. 679; 22 Wash. 10; 25 Wash. 570; 26 Wash. 130, 670; 29 Wash. 112; 32 Wash. 456; 34 Wash. 179, 292, 309, 546; 37 Wash. 601; 38 Wash. 532; 42 Wash. 556; 46 Wash. 466; 47 Wash. 20, 617; 57 Wash. 673; 58 Wash. 693; 61 Wash. 694; 71 Wash. 447; 72 Wash. 231; 87 Wash. 188.

§ 786. Limitation for Bringing Actions, Seven Years.—All actions brought for the récovery of any lands, tenements or hereditaments of which any person may be possessed by actual, open and notorious possession for seven successive years, having a connected title in law or equity deducible of record from this state or the United States, or from any public officer, or other person authorized by the laws of this state to sell such land for the nonpayment of taxes, or from any sheriff, marshal or other person authorized to sell such land on execution or under any order, judgment or decree of any court of record, shall be brought within seven years next after possession being taken as aforesaid, but when the possessor shall acquire title after taking such possession, the limitation shall begin to run from the time of acquiring title. [L. '93, p. 20, § 1.]

Cited in 25 Wash. 571, 572; 43 Wash. 672; 49 Wash. 337; 50 Wash. 336, 337; 64 Wash. 663; 65 Wash. 497; 68 Wash. 179; 72 Wash. 229; 74 Wash. 474; 83 Wash. 257; 84 Wash. 44.

§ 787. Rights of Heirs, etc.—The heirs, devisees and assigns of the person having such title and possession shall have the same benefit of the preceding section as the person from whom the possession is derived. [L. '93, p. 20, § 2.]

§ 788. Legal Owner, Defined.—Every person in actual, open and notorious possession of lands, or tenements under claim and color of title, made in good faith, and who shall for seven successive years continue in possession and shall also during said time pay all taxes legally assessed on such lands or tenements, shall be held and adjudged to be the legal owner of said lands or tenements, to the extent and according to the purport of his or her paper title. All persons holding under such possession, by purchase, devise or descent, before said seven years shall have expired, and who shall continue such pas-

session and continue to pay the taxes as aforesaid, so as to complete the possession and payment of taxes for the term aforesaid, shall be entitled to the benefit of this section. [L. '93, p. 20, § 3.]

Cited in 4 Wash. 6; 32 Wash. 461; 34 Wash. 419; 35 Wash. 17; 36 Wash. 215, 216; 38 Wash. 18, 73, 74; 39 Wash. 76; 41 Wash. 612; 44 Wash. 178; 50 Wash. 117–119, 693; 52 Wash. 55, 56; 53 Wash. 650; 61 Wash. 620; 64 Wash. 663; 65 Wash. 494; 83 Wash. 257; 84 Wash. 44.

§ 789. Vacant and Unoccupied Lands.—Every person having color of title made in good faith to vacant and unoccupied land, who shall pay all taxes legally assessed thereon for seven successive years, he or she shall be deemed and adjudged to be the legal owner of said vacant and unoccupied land to the extent and according to the purport of his or her paper title. All persons holding under such taxpayer, by purchase, devise or descent, before said seven years shall have expired, and who shall continue to pay the taxes as aforesaid, so as to complete the payment of said taxes for the term aforesaid, shall be entitled to the benefit of this section: Provided, however, if any person having a better paper title to said vacant and unoccupied land shall, during the said term of seven years, pay the taxes as assessed on said land for any one or more years of said term of seven years, then and in that case such taxpayer, his heirs or assigns, shall not be entitled to the benefit of this section. [L. '93, p. 21, § 4.]

Cited in 53 Wash. 9, 650; 65 Wash. 494; 72 Wash. 229, 230.

§ 790. Public Lands and Adverse Title in Infants, etc.—Except. The two preceding sections shall not extend to lands or tenements owned by the United States or this state, nor to school lands, nor to lands held for any public purpose. Nor shall they extend to lands or tenements when there shall be an adverse title to such lands or tenements, and the holder of such adverse title is an infant or person under legal age, or insane: Provided, such persons as aforesaid shall commence an action to recover such lands or tenements so possessed as aforesaid, within three years after the several disabilities herein enumerated shall cease to exist, and shall prosecute such action to judgment, or in case of vacant and unoccupied land shall, within the time last aforesaid, pay to the person or persons who have paid the same for his or her betterments, and the taxes, with interest on said taxes at the legal rate per annum that have been paid on said vacant and unimproved land. [L. '93, p. 21, § 5.]

Cited in 36 Wash. 216; 41 Wash. 612; 48 Wash. 450, 579.

§ 791. Construction.—The provisions of sections 786, 787, 788, 789 and 790 shall be liberally construed for the purposes set forth therein. [L. '93, p. 21, § 6.]

Cited in 48 Wash. 450.

§ 792. Substitution of Landlord in Action Against Tenant.—A defendant who is in actual possession may, for answer, plead that he is in possession only as a tenant of another, naming him and his place of residence, and thereupon the landlord, if he apply therefor, shall be made defendant in place of the tenant, and the action shall proceed in all respects as if originally commenced against him. If the landlord do not apply to be made defendant within the time the tenant is allowed to answer, thereafter he shall not be allowed to, but he shall be made defendant if the plaintiff require it. If the landlord be made defendant on motion of the plaintiff, he shall be required to appear and answer within ten days from notice of the pendency of the action and the order making him defendant, or such further notice as the court, or judge thereof, may prescribe. [L. '69, p. 128, § 489; Cd. '81, § 537; 2 H. C., § 530.]

Cited in 9 Wash. 157; 59 Wash. 118.

§ 793. Pleadings—Superior Title Prevails.—The plaintiff in such action shall set forth in his complaint the nature of his estate, claim, or title to the property, and the defendant may set up a legal or equitable defense to plaintiff's claims; and the superior title whether legal or equitable, shall prevail. The property shall be described with such certainty as to enable the possession thereof to be delivered if a recovery be had. [Cf. L. '69, p, 128, § 490; L. '79, p. 134, § 2; Cd. '81, § 538; 2 H. C., § 531.]

Cited in 10 Wash. 262, 664; 20 Wash. 31; 26 Wash. 670; 28 Wash. 243; 29 Wash. 112, 634; 34 Wash. 322; 52 Wash. 520; 56 Wash. 219; 57 Wash. 673; 58 Wash. 693; 59 Wash. 118; 63 Wash. 682.

§ 794. Defendant must Plead Title—Judgment Against Landlord. The defendant shall not be allowed to give in evidence any estate in himself or another in the property, or any license or right to the possession thereof, unless the same be pleaded in his answer. If so pleaded, the nature and duration of such estate or license or right to the possession shall be set forth with the certainty and particularity required in a complaint. If the defendant does not defend for the whole of the property, he shall specify for what particular part he does defend. In an action against a tenant, the judgment shall be conclusive against a landlord who has been made defendant in place of the tenant, to the same extent as if the action had been originally commenced against him. [L. '69, p. 129, § 491; Cd. '81, § 539; 2 H. C., § 532.]

Cited in 9 Wash. 160, 447; 29 Wash. 115, 252; 52 Wash. 520; 56 Wash. 219, 221; 59 Wash. 118; 60 Wash. 528; 67 Wash. 108.

§ 795. Verdict.—The jury by their verdict shall find as follows:—

1. If the verdict be for the plaintiff, that he is entitled to the possession of the property described in the complaint, or some part

thereof, or some undivided share or interest in either, and the nature and duration of his estate in such property, part thereof, or undivided share or interest in either, as the case may be;

2. If the verdict be for the defendant, that the plaintiff is not entitled to the possession of the property described in the complaint, or to such part thereof as the defendant defends for, and the estate in such property, or part thereof, or license, or right to the possession of either, established on the trial by the defendant, if any, in effect as the same is required to be pleaded. [L. '69, p. 129; Cd. '81, § 540; 2 H. C., § 533.]

§ 796. **Damages—Limitation—Use of Improvements.**—The plaintiff shall only be entitled to recover damages for withholding the property for the term of six years next preceding the commencement of the action, and for any period that may elapse from such commencement to the time of giving a verdict therein, exclusive of the use of permanent improvements made by the defendant. [L. '69, p. 129, § 493; Cd. '81, § 451; 2 H. C., § 534.]

Cited in 2 Wash. 263; 10 Wash. 519, 665; 13 Wash. 222; 14 Wash. 479; 21 Wash. 389; 34 Wash. 314.

§ 797. **Betterments—Counterclaim for—Taxes and Improvements.** In an action for the recovery of real property upon which permanent improvements have been made or general or special taxes or local assessments have been paid by a defendant, or those under whom he claims, holding in good faith under color or claim of title adversely to the claim of plaintiff, the value of such improvements and the amount of such taxes or assessments with interest thereon from date of payment must be allowed as a counterclaim to the defendant. [L. '03, p. 262, § 1; see historical references to last section.]

Cited in 54 Wash. 365, 399; 55 Wash. 357, 609, 650; 62 Wash. 406; 63 Wash. 561.

§ 798. **Pleading, Issue, and Trial on Counterclaim.**—The counterclaim shall set forth the value of the land apart from the improvements, and the nature and value of the improvements apart from the land and the amount of said taxes and assessment so paid, and the date of payment. Issues shall be joined and tried as in other actions, and the value of the land and the amount of said taxes and assessments apart from the improvements, and the value of the improvements apart from the land must be specifically found by the verdict of the jury, report of the referee, or findings of the court as the case may be. [L. '03, p. 262, § 2.]

§ 799. **Judgment on Counterclaim—Payment.**—If the judgment be in favor of the plaintiff for the recovery of the realty, and of the

defendant upon the counterclaim, the plaintiff shall be entitled to recover such damages as he may be found to have suffered through the withholding of the premises and waste committed thereupon by the defendant or those under whom he claims, but against this recovery shall be offset pro tanto the value of the permanent improvements and the amount of said taxes and assessments with interest found as above provided. Should the value of improvements or taxes or assessments with interest exceed the recovery for damages, the plaintiff shall, within two months, pay to the defendant the difference between the two sums and upon proof, after notice, to the defendant, that this has been done, the court shall make an order declaring that fact, and that title to the improvements is vested in him. Should the plaintiff fail to make such payment, the defendant may at any time within two months after the time limited for such payment to be made, pay to the plaintiff the value of the land apart from the improvements, and the amount of the damages awarded against him, and he thereupon shall be vested with title to the land, and, after notice to the plaintiff, the court shall make an order reciting the fact and adjudging title to be in him. Should neither party make the payment above provided, within the specified time, they shall be deemed to be tenants in common of the premises, including the improvements, each holding an interest proportionate to the value of his property determined in the manner specified in section 798: Provided, that the interest of the owner of the improvements shall be the difference between the value of the improvements and the amount of damages recovered against him by the plaintiff. [L. '03, p. 262, § 3.]

Cited in 62 Wash. 408.

§ 800. Verdict When Right of Possession has Expired.—If the right of the plaintiff to the possession of the property expire after the commencement of the action, and before the trial, the verdict shall be given according to the fact, and judgment shall be given only for the damages. [L. '69, p. 130, § 494; Cd. '81, § 542; 2 H. C., § 535.]

§ 801. Order for Survey.—The court, or judge thereof, on motion, and after notice to the adverse party, may, for cause shown, grant an order allowing the party applying therefor to enter upon the property in controversy and make survey and admeasurement thereof for the purposes of the action. [L. '69, p. 130, § 495; Cd. '81, § 543; 2 H. C., § 536.]

§ 802. Contents, Service, and Effect of Order.—The order shall describe the property, and a copy thereof shall be served upon the defendant, and thereupon the party may enter upon the property and

make such survey and admeasurement; but if any unnecessary injury be done to the premises, he shall be liable therefor. [L. '69, p. 130, § 496; Cd. '81, p. 544; 2 H. C., § 537.]

§ 803. Alienation Pendente Lite.—An action for the recovery of the possession of real property against a person in possession cannot be prejudiced by any alienation made by such person either before or after the commencement of the action; but if such alienation be made after the commencement of the action, and the defendant do not satisfy the judgment recovered for damages for withholding the possession, such damages may be recovered by action against the purchaser. [L. '69, p. 130, § 497; Cd. '81, § 545; 2 H. C., § 538.]

Cited in 41 Wash. 613; 60 Wash. 481.

§ 804. Mortgages cannot Maintain Ejectment.—A mortgage of real property shall not be deemed a conveyance so as to enable the owner of the mortgage to recover possession of the real property, without a foreclosure and sale according to law. [L. '69, p. 130, § 498; Cd. '81, § 546; 2 H. C., § 539.]

Cited in 19 Wash. 278; 40 Wash. 584; 51 Wash. 519.
See infra, § 1116 et seq., foreclosure of mortgages.

§ 805. Actions Between Cotenants.—In an action by a tenant in common or a joint tenant of real property against his cotenant, the plaintiff must show, in addition to his evidence of right, that the defendant either denied the plaintiff's right or did some act amounting to such denial. [L. '69, p. 130, § 499; Cd. '81, § 547; 2 H. C., § 504.]

§ 806. Judgment, Conclusiveness of.—In an action to recover possession of real property, the judgment rendered therein shall be conclusive as to the estate in such property and the right of possession thereof, so far as the same is thereby determined, upon all persons claiming by, through, or under the party against whom the judgment is rendered, by title or interest passing after the commencement of the action, if the party in whose favor the judgment is rendered shall have filed a notice of the pendency of the action as required by section 243, supra. When service of the notice is made by publication, and judgment is given for failure to answer, at any time within two years from the entry thereof, the defendant or his successor in interest as to the whole or any part of the property, shall, upon application to the court or judge thereof, be entitled to an order, vacating the judgment and granting him a new trial, upon the payment of the costs of the action. [L. '09, p. 55, § 1. Cf. L. '69, p. 131, § 501; Cd. '81, § 549; 2 H. C., § 541.]

Cited in 39 Wash. 374, 375; 41 Wash. 613; 44 Wash. 107; 60 Wash. 481; 67 Wash. 492, 493; 68 Wash. 348, 350.

§ 807. Possession not Affected by Vacating Judgment.—If the plaintiff has taken possession of the property before the judgment is set aside and a new trial granted, as provided in the preceding section, such possession shall not be thereby affected in any way; and if judgment be given for defendant in the new trial, he shall be entitled to restitution by execution in the same manner as if he were plaintiff. [L. '69, p. 131, § 502; Cd. '81, § 550; 2 H. C., § 542.]

§ 808. Conflicting Claimants Under Donation Law.—In an action at law for the recovery of the possession of real property, if either party claim the property as a donee of the United States, and under the act of congress approved September twenty-seventh, eighteen hundred and fifty, commonly called the donation law, or the acts amendatory thereof, such party, from the date of his settlement thereon, as provided in said act, shall be deemed to have a legal estate in fee in such property, to continue upon condition that he perform the conditions required by such acts, which estate is unconditional and indefeasible after the performance of such conditions. In such action, if both plaintiff and defendant claim title to the same real property, by virtue of settlement, under such acts, such settlement and performance of the subsequent condition shall be prima facie presumed in favor of the party having or claiming under the elder certificate or patent, as the case may be, unless it appears upon the face of such certificate or patent that the same is absolutely void. [Cf. L. '69, p. 132, § 504; L. '77, p. 116, § 556; Cd. '81, § 551; 2 H. C., § 543.]

Cited in 10 Wash. 360; 25 Wash. 358.

§ 809. Conflicting Claims to Real Property Generally.—Any person in possession, by himself or his tenant, of real property, and any private or municipal corporation in possession, by itself or its tenant, of any real property, or when such real property is not in the actual possession of anyone, any person, or private or municipal corporation, claiming title to any real property under a patent from the United States, or during his or its claim of title to such real property under a patent from the United States for such real estate, may maintain a civil action against any person or persons, corporations or associations, claiming an interest in said real property, or any part thereof, or any right thereto, adverse to him, them, or it, for the purpose of determining such claim, estate, or interest; and where several persons, or private or municipal corporations, are in possession of, or claim as aforesaid, separate parcels of real property, and an adverse interest is claimed, or claim made in or to any such parcels, by any other person, persons, corporations, or associations, arising out of a question, conveyance, statute, grant, or other matter

common to all such parcels of real estate, all or any portion of such persons or corporations so in possession or claiming such parcel of real property may unite as plaintiffs in such suit to determine such adverse claim or interest against all persons, corporations, or associations claiming such adverse interest. [L. '77, p. 116, § 556; Cd. '81, § 551; 2 H. C., § 544.]

Cited in 10 Wash. 359; 12 Wash. 696; 20 Wash. 126; 21 Wash. 679; 24 Wash. 276; 26 Wash. 130; 29 Wash. 112, 203, 675; 32 Wash. 638; 52 Wash. 344; 56 Wash. 164; 61 Wash. 577; 67 Wash. 493; 71 Wash. 447; 77 Wash. 157.

This section is for the most part superseded by § 785, supra.

CHAPTER II.

Forcible Entry and Detainer.

§ 810. Forcible Entry, Defined.—Every person is guilty of a forcible entry who either,—

1. By breaking open windows, doors, or other parts of a house, or by fraud, intimidation, or stealth, or by any kind of violence or circumstances of terror, enters upon or into any real property; or

2. Who, after entering peaceably upon real property, turns out by force, threats, or menacing conduct the party in actual possession. [Cf. L. '90, p. 73, § 1; L. '91, p. 179, § 1; 2 H. C., § 547.]

Cited in 6 Wash. 325; 8 Wash. 358, 535, 539; 12 Wash. 685; 14 Wash. 395; 19 Wash. 561; 28 Wash. 665; 31 Wash. 487; 43 Wash. 369, 371; 45 Wash. 453; 62 Wash. 148.

§ 811. Forcible Detainer, Defined.—Every person is guilty of a forcible detainer who either,—

1. By force, or by menaces and threats of violence, unlawfully holds and keeps the possession of any real property, whether the same was acquired peaceably or otherwise; or

2. Who in the night-time, or during the absence of the occupant of any real property [unlawfully] enters thereon, and who, after demand made for the surrender thereof, refuses for the period of three days to surrender the same to such former occupant. The occupant of real property within the meaning of this subdivision is one who, for the five days next preceding such unlawful entry, was in the peaceable and undisturbed possession of such real property. [Cf. L. '90, p. 73, § 2; L. '91, p. 179, § 2; 2 H. C., § 548.]

Cited in 33 Wash. 336; 42 Wash. 562, 563; 44 Wash. 590, 591; 45 Wash. 453; 85 Wash. 324.

§ 812. Unlawful Detainer, Defined.—A tenant of real property for a term less than life is guilty of unlawful detainer either,—

(1) When he holds over or continues in possession, in person or by subtenant, of the property or any part thereof after the expira-

tion of the term for which it is let to him. In all cases where real property is leased for a specified term or period by express or implied contract, whether written or by parol, the tenancy shall be terminated without notice at the expiration of such specified term or period; or

(2) When he having leased property for an indefinite time, with monthly or other periodic rent reserved continues in possession thereof, in person or by subtenant, after the end of any such month or period, in cases where the landlord, more than twenty days prior to the end of such month or period, shall have served notice (in manner in this act provided), requiring him to quit the premises at the expiration of such month or period.

(3) When he continues in possession in person or by subtenant after a default in the payment of any rent, and after notice in writing requiring in the alternative the payment of the rent or the surrender of the detained premises, served (in manner hereafter in this act provided) in behalf of the person entitled to the rent upon the person owning the same, shall have remained uncomplied with for the period of three days after service thereof. Such notice may be served at any time after the rent becomes due; or

(4) When he continues in possession in person or by subtenant after a neglect or failure to keep or perform any other condition or covenant of the lease or agreement under which the property is held, including any covenant not to assign or sublet, than one for the payment of rent, and after notice in writing requiring . . . in the alternative the performance of such condition or covenant or the surrender of the property, served (in the manner provided in this act) upon him, and if there be a subtenant in actual possession of the premises, also upon such subtenant, shall remain uncomplied with for ten days after service thereof. Within ten days after the service of such notice the tenant, or any subtenant in actual occupation of the premises, or any mortgagee of the term, or other person interested in its continuance, may perform such condition or covenant and thereby save the lease from such forfeiture; or

(5) When he commits or permits waste upon the demised premises, or when he sets up or carries on therein or thereon any unlawful business, or when he erects, suffers, permits or maintains on or about said premises any nuisance, and remains in possession after service (in manner in this act provided) of three days' notice to quit upon him.

(6) Any person who shall, without the permission of the owner and without having any color of title thereto, enter upon the land of another and who shall fail or refuse to remove therefrom after three days' notice, in writing, to be served in the manner provided in

this act. [L. '05, p. 173, § 1. Cf. L. '91, p. 180, § 3; 2 H. C., § 549; see L. '90, p. 73, § 3.]

Cited in 8 Wash. 359, 533; 21 Wash. 282; 22 Wash. 270; 24 Wash. 485; 25 Wash. 491, 665; 26 Wash. 565; 28 Wash. 76, 77; 29 Wash. 265; 30 Wash. 526; 33 Wash. 457, 458; 35 Wash. 673, 674; 44 Wash. 592, 593; 53 Wash. 514; 57 Wash. 469, 557, 558; 59 Wash. 57, 58; 77 Wash. 628; 86 Wash. 135.

§ 813. Tenancy upon Agricultural Lands—Effect of Holding Over. In all cases of tenancy upon agricultural lands, where the tenant has held over and retained possession for more than sixty days after the expiration of his term, without any demand or notice to quit by his landlord or the successor in estate of his landlord, if any there be, he shall be deemed to be holding by permission of his landlord or the successor in estate of his landlord, if any there be, and shall be entitled to hold under the terms of the lease for another full year, and shall not be guilty of an unlawful detainer during said year, and such holding over for the period aforesaid shall be taken and construed as a consent on the part of a tenant to hold for another year. [Cf. L. '90, p. 74, § 3; L. '91, p. 181, § 4; 2 H. C., § 550.]

Cited in 29 Wash. 266; 38 Wash. 672; 51 Wash. 433.

§ 814. Service of Notice.—Any notice provided for in this act shall be served either (1) by delivering a copy personally to the person entitled thereto; or (2) if he be absent from the premises unlawfully held, by leaving there a copy, with some person of suitable age and discretion, and sending a copy through the mail addressed to the person entitled thereto at his place of residence; or (3) if the person to be notified be a tenant, or an unlawful holder of premises, and his place of residence is not known, or if a person of suitable age and discretion there cannot be found then by affixing a copy of the notice in a conspicuous place on the premises unlawfully held, and also delivering a copy to a person there residing, if such a person can be found, and also sending a copy through the mail addressed to the tenant, or unlawful occupant, at the place where the premises unlawfully held are situated. Service upon a subtenant may be made in the same manner: Provided, that in cases where the tenant or unlawful occupant, shall be conducting a hotel, inn, lodging-house, boarding-house, or shall be renting rooms while still retaining control of the premises as a whole, that the guests, lodgers, boarders or persons renting such rooms shall not be considered as subtenants within the meaning of this act, but all such persons may be served by affixing a copy of the notice to be served in two conspicuous places upon the premises unlawfully held; and such persons shall not be necessary parties defendant in an action to

recover possession of said premises. Service of any notice provided for in this act may be had upon a corporation by delivering a copy thereof to any officer, agent or person having charge of the business of such corporation, at the premises unlawfully held, and in case no such officer, agent or person can be found upon such premises, then service may be had by affixing a copy of such notice in a conspicuous place upon said premises and by sending a copy through the mail addressed to such corporation at the place where said premises are situated. Proof of any service under this section may be made by the affidavit of the person making the same in like manner and with like effect as the proof of service of summons in civil actions. When a copy of notice is sent through the mail, as provided in this section, service shall be deemed complete when such copy is deposited in the United States mail in the county in which the property is situated properly addressed with postage prepaid: Provided, however, that when service is made by mail one additional day shall be allowed before the commencement of an action based upon such notice. [L. '11, p. 95, § 1. Cf. L. '05, p. 174, § 2; L. '90, p. 75, § 4; L. '91, p. 181, § 5; 2 H. C., § 551.]

Cited in 57 Wash. 558.

§ 815. Venue.—The superior court of the county in which the property or some part of it is situated shall have jurisdiction of proceedings under this chapter. [L. '90, p. 75, § 5; L. '91, p. 182, § 6; 2 H. C., § 552.]

§ 816. Parties Defendant—Judgment.—No person other than the tenant of the premises, and subtenant, if there be one, in the actual occupation of the premises when the complaint is filed, need be made parties defendant in any proceeding under this chapter, nor shall any proceeding abate, nor the plaintiff be nonsuited, for the nonjoinder of any person who might have been made party defendant; but when it appears that any of the parties served with process, or appearing in the proceeding, are guilty of the offense charged, judgment must be rendered against him. In case a person has become a subtenant of the premises in controversy after the service of any notice in this chapter provided for, the fact that such notice was not served on such subtenant shall constitute no defense to the action. All persons who enter the premises under the tenant, after the commencement of the action hereunder, shall be bound by the judgment the same as if they had been made parties to the action. [L. '90, p. 75, § 6; L. '91, p. 182, § 7; 2 H. C., § 533.]

§ 817. Complaint—When Summons must Issue.—The plaintiff in his complaint, which shall be in writing, must set forth the facts on which he seeks to recover, and describe the premises with reason-

able certainty, and may set forth therein any circumstances of fraud, force, or violence, which may have accompanied the said forcible entry, or forcible or unlawful detainer, and claim damages therefor, or compensation for the occupation of the premises, or both; in case the unlawful detainer charged be after default in the payment of rent, the complaint must state the amount of such rent. Upon filing the complaint a summons must be issued thereon as in other cases, returnable at a day designated therein, which shall not be less than six nor more than twelve days from its date, except in cases where the publication of summons is necessary, in which case the court or judge thereof may order that the summons be made returnable at such time as may be deemed proper, and the summons shall specify the return day so fixed. [Cf. L. '90, p. 76, § 7; L. '91, p. 182, § 8; 2 H. C., § 554.]

Cited in 27 Wash. 247; 31 Wash. 486; 33 Wash. 455; 44 Wash. 592, 593.

§ 818. Summons, Form and Service.—The summons must state the names of the parties to the proceeding, the court in which the same is brought, the nature of the action, in concise terms, and the relief sought, and also the return day; and must notify the defendant to appear and answer within the time designated or that the relief sought will be taken against him. The summons must be directed to the defendant, and in case of summons by publication, be served at least five days before the return day designated therein. The summons must be served and returned in the same manner as summons in other actions is served and returned. Upon the return of any summons issued under this chapter, when the same has not for any reason been served, or has not been served in time, the plaintiff may have a new summons issued the same as if no previous summons had been issued. [Cf. L. '90, p. 76, § 8; L. '91, p. 183, § 9; 2 H. C., § 555.]

Cited in 27 Wash. 249; 86 Wash. 134.

§ 819. Writ of Restitution.—The plaintiff, at the time of commencing an action of forcible entry or forcible detainer or unlawful detainer, or at any time afterward, may apply to the judge of the court in which the action is pending for a writ of restitution restoring to the plaintiff the property in the complaint described, and the judge shall order a writ of restitution to issue. The writ shall be issued by the clerk of the superior court in which the action is pending, and be returnable in twenty days after its date; but before any writ shall issue prior to judgment the plaintiff shall execute to the defendant and file in court a bond in such a sum as the court or judge may order, with two or more sureties, to be approved by the

clerk, conditioned that the plaintiff will prosecute his action without delay, and will pay all costs that may be adjudged to the defendant, and all damages which he may sustain by reason of the writ of restitution having been issued, should the same be wrongfully sued out. [Cf. L. '90, p. 77, § 9; L. '91, p. 183, § 10; 2 H. C., § 556.]

Cited in 18 Wash. 235; 19 Wash. 337; 49 Wash. 205; 86 Wash. 134.

§ 820. **Service of Writ—Bond.**—The sheriff shall, upon receiving the writ of restitution, forthwith serve a copy thereof upon the defendant, his agent or attorney, or a person in possession of the premises, and shall not execute the same for three days thereafter, within which time the defendant, or those in possession of the premises, may execute to the plaintiff a bond to be filed with and approved by the clerk of the court in such sum as may be fixed by the judge, with two or more sureties to be approved by the clerk of said court, conditioned that they will pay to the plaintiff such sum as the plaintiff may recover for the use and occupation of the said premises, or any rent found due, together with all damages the plaintiff may sustain by reason of the defendant occupying or keeping possession of said premises, and also all the costs of the action. The plaintiff, his agent or attorneys, shall have notice of the time and place where the court or judge thereof shall fix the amount of the defendant's bond, and shall have notice and a reasonable opportunity to examine into the qualification and sufficiency of the sureties upon said bond before said bond shall be approved by the clerk. The writ may be served by the sheriff, in the event he shall be unable to find the defendant, an agent or attorney, or a person in possession of the demised premises, by affixing a copy of said writ in a conspicuous place upon the demised premises. [L. '05, p. 175, § 3. Cf. L. '90, p. 77, § 10; L. '91, p. 183, § 11; 2 H. C., § 551.]

Cited in 18 Wash. 235; 44 Wash. 591; 45 Wash. 458; 75 Wash. 609.

§ 821. **Modification of Amount of Bond.**—The plaintiff or defendant at any time, upon two days' notice to the adverse party, may apply to the court or any judge thereof for an order raising or lowering the amount of any bond in this act provided for. Either party may, upon like notice, apply to the court or any judge thereof for an order requiring additional or other surety or sureties upon any such bond. Upon the hearing or [of] any application made under the provisions of this section evidence may be given. The judge after hearing any such application shall make such an order as shall be just in the premises. The bondsmen may be required to be present at such hearing if so required in the notice thereof, and shall answer under oath all questions that may be asked them touching their qualifications as bondsmen, and in the event the bondsmen

shall fail or refuse to appear at such hearing and so answer such questions the bond shall be stricken. In the event the court shall order a new or additional bond to be furnished by defendant, and the same shall not be given within twenty-four hours, the court shall order the sheriff to forthwith execute the writ. In the event the defendant shall file a second or additional bond and it shall also be found insufficient after hearing, as above provided, the right to retain the premises by bond shall be lost and the sheriff shall forthwith put the plaintiff in possession of the premises. [L. '05, p. 176, § 4. Cf. L. '90, p. 78, § 11; L. '91, p. 184, § 12; 2 H. C., § 558.]

Cited in 18 Wash. 238; 25 Wash. 116.

§ 822. Judgment by Default.—If at the time appointed in the summons the defendant do not appear and defend, the court must render judgment in favor of the plaintiff as prayed for in the complaint. [Cf. L. '90, p. 78, § 13; L. '91, p. 184, § 13; 2 H. C., § 559.]

§ 823. Pleading by Defendant.—On or before the day fixed for his appearance the defendant may appear and answer or demur. [L. '90, p. 78, § 14; L. '91, p. 184, § 14; 2 H. C., § 560.]

Cited in 27 Wash. 385.

§ 824. Trial by Jury.—Whenever an issue of fact is presented by the pleadings it must be tried by a jury, unless such a jury be waived as in other cases. The jury shall be formed in the same manner as other trial juries in the court in which the action is pending, and in all cases actions under this chapter shall take precedence of all other civil actions. [Cf. L. '90, p. 78, § 15; L. '91, p. 184, § 15; 2 H. C., § 561.]

Cited in 19 Wash. 340.

§ 825. Proof Required by Plaintiff.—On the trial of any proceeding for any forcible entry or forcible detainer, the plaintiff shall only be required to show, in addition to a forcible entry complained of, that he was peaceably in the actual possession at the time of the forcible entry; or in addition to a forcible detainer complained of, that he was entitled to the possession at the time of the forcible detainer. [Cf. L. '90, p. 78, § 16; L. '91, p. 184, § 16; 2 H. C., § 562.]

Cited in 33 Wash. 337; 85 Wash. 325.

§ 826. Amendment of Complaint—Continuance.—When upon the trial of any proceeding under this chapter it appears from the evidence that the defendant has been guilty of either a forcible entry or a forcible or unlawful detainer, in respect of the premises described in the complaint, and other than the offense charged in the complaint, the judge must order that such complaint be forthwith amended to conform to such proofs; such amendment must be made

without any imposition of terms. No continuance shall be permitted on account of such amendment unless the defendant shows to the satisfaction of the court good cause therefor. [Cf. L. '90, p. 78, § 17; L. '91, p. 185, § 17; 2 H. C., § 653.]

§ 827. Verdict and Judgment.—If upon the trial the verdict of the jury, or if the case be tried without a jury the finding of the court, be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and if the proceeding be for unlawful detainer after neglect or failure to perform any condition or covenant of a lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of the lease, agreement, or tenancy. The jury, or the court if the proceedings be tried without a jury, shall also assess the damages occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer, alleged in the complaint and proved on the trial, and if the alleged unlawful detainer be after default in the payment of rent, find the amount of any rent due, and the judgment shall be rendered against the defendant guilty of the forcible entry, forcible detainer, or unlawful detainer for twice the amount of damages thus assessed and of the rent, if any, found due. When the proceeding is for an unlawful detainer after default in the payment of rent, and the lease or agreement under which the rent is payable has not by its terms expired, execution upon the judgment shall not be issued until the expiration of five days after the entry of the judgment, within which time the tenant or any subtenant, or any mortgagee of the term or other party interested in its continuance, may pay into court for the landlord the amount of the judgment and costs, and thereupon the judgment shall be satisfied and the tenant restored to his estate; but if payment, as herein provided, be not made within five days, the judgment may be enforced for its full amount and for the possession of the premises. In all other cases the judgment may be enforced immediately. If the writ of restitution shall have been executed prior to judgment, no further writ or execution for the premises shall be required. [Cf. L. '90, p. 79, § 18; L. '91, p. 185, § 18; 2 H. C., § 564.]

Cited in 11 Wash. 459; 19 Wash. 564; 28 Wash. 667; 34 Wash. 609; 45 Wash. 430; 57 Wash. 470; 63 Wash. 284; 65 Wash. 643; 75 Wash. 608.

§ 828. Amendments Allowed, When.—Amendments may be allowed by the court at any time before final judgment, upon such terms as to the court may appear just, in the same cases and manner and to the same extent as in civil actions. [Cf. L. '90, p. 80, § 20; L. '91, p. 186, § 19; 2 H. C., § 565.]

§ 829. Practice—General Provisions Applicable.—Except as otherwise provided in this chapter, the provisions of the laws of this state with reference to practice in civil actions are applicable to and constitute the rules of practice in the proceedings mentioned in this chapter; and the provisions of such laws relative to new trials and appeals, except so far as they are inconsistent with the provisions of this chapter, shall be held to apply to the proceedings mentioned in this chapter. [Cf. L. '90, p. 80, § 21; L. '91, p. 186, § 20; 2 H. C., § 566.]

Cited in 27 Wash. 249.

§ 830. Forfeiture, Relief Against.—The court may relieve a tenant against a forfeiture of a lease and restore him to his former estate, as in other cases provided by law, where application for such relief is made within thirty days after the forfeiture is declared by the judgment of the court, as provided in this chapter. The application may be made by a tenant or subtenant, or a mortgagee of the term, or any person interested in the continuance of the term. It must be made upon petition, setting forth the facts upon which the relief is sought, and be verified by the applicant. Notice of the application, with a copy of the petition, must be served on the plaintiff in the judgment, who may appear and contest the application. In no case shall the application be granted except on condition that full payment of rent due, or full performance of conditions of covenants stipulated, so far as the same is practicable, be first made. [Cf. L. '90, p. 80, § 22; L. '91, p. 186, § 21; 2 H. C., § 567.]

§ 831. Appeal—Bond.—If either party feels aggrieved by the judgment he may appeal to the supreme court, as in other civil actions: Provided, that if the defendant appealing desires a stay of proceedings pending such appeal, he shall execute and file a bond, with two or more sufficient sureties to be approved by the judge, conditioned to abide the order of the court on such appeal, and to pay all rents and other damages justly accruing to the plaintiff during the pendency of the appeal. [Cf. L. '90, p. 80, § 23; L. '91, p. 187, § 22; 2 H. C., § 568.]

Cited in 14 Wash. 53; 17 Wash. 99; 21 Wash. 582; 54 Wash. 37.

§ 832. Stay of Proceedings Pending Appeal.—When the defendant shall appeal, and shall file a bond as provided in the preceding section, all further proceedings in the case shall be stayed until the determination of said appeal, and the same has been remanded to the superior court for further proceedings therein. [Cf. L. '90, p. 80, § 24; L. '91, p. 187, § 23; 2 H. C., § 569.]

§ 833. Appeal Suspends Writ of Restitution.—If a writ of restitution has been issued previous to the taking of an appeal by the

defendant, and said defendant shall execute and file a bond as provided in this chapter, the clerk of the court, under the direction of the judge, shall forthwith give the appellant a certificate of the allowance of such appeal; and upon the service of such certificate upon the officer having such writ of restitution the said officer shall forthwith cease all further proceedings by virtue of such writ; and if such writ has been completely executed, the defendant shall be restored to the possession of the premises, and shall remain in possession thereof until the appeal is determined. [Cf. L. '90, p. 81, § 25; L. '91, p. 187, § 24; 2 H. C., § 570.]

Cited in 21 Wash. 582.

§ 834. Unlawful Detainer of Certain Lands—What Constitutes.—Any person who shall, without the permission of the owner and without having any color of title thereto, enter upon the lands of another, and shall refuse to remove therefrom after three days' notice, shall be deemed guilty of unlawful detainer and may be removed from such lands. [L. '91, p. 212, § 1; 2 H. C., § 571.]

Cited in 5 Wash. 790; 26 Wash. 436; 31 Wash. 487; 44 Wash. 591, 593; 48 Wash. 343; 62 Wash. 148.

§ 835. Complaint and Answer.—The complaint in all cases under the provisions of the last section shall be upon oath, and then [there] shall be embodied therein or amended [appended] thereto an abstract of the plaintiffs' title, and the defendant shall, in his answer, state whether he makes any claim of title to the lands described in the complaint, and if he makes no claim to the legal title, but does claim a right to the possession of such lands, he shall state upon what grounds he claims a right to such possession. [L. '91, p. 212, § 2; 2 H. C., § 572.]

Cited in 44 Wash. 592.

§ 836. Proof Required by Plaintiff—Trial.—It shall not be necessary for the plaintiff, in proceedings under sections 834–837, to allege or prove that the said lands were, at any time, actually occupied prior to the defendant's entry thereupon, but it shall be sufficient to allege that he is the legal owner and entitled to the immediate possession thereof: Provided, that if the defendant shall, by his answer, deny such ownership, and shall state facts showing that he has a lawful claim to the possession thereof, the cause shall thereupon be entered for trial upon the docket of the court in all respects as if the action were brought under the provisions of chapter XLVI of the code of eighteen hundred and eighty-one [chapter I, of this title]. [L. '91, p. 212, § 3; 2 H. C., § 573.]

Cited in 44 Wash. 592.

§ 837. Proof—Parties Defendant—Trial of Separate Issues.—All persons in actual possession of any portion of the several subdivisions of any section of land, according to the government surveys thereof, may be made defendants in one action: Provided, that they may, in their discretion, make separate answers to the complaint, and if separate issues are joined thereupon, the same shall nevertheless be tried as one action, but the verdict, if tried by jury, shall find separately upon the issues so joined, and judgment shall be rendered according thereto. [L. '91, p. 213, § 4; 2 H. C., § 574.]

CHAPTER III.

Partition.

§ 838. Who may Bring Actions for.—When several persons hold and are in possession of real property as tenants in common, in which one or more of them have an estate of inheritance, or for life or years, an action may be maintained by one or more of such persons for a partition thereof, according to the respective rights of the persons interested therein, and for sale of such property, or a part of it, if it appear that a partition cannot be made without great prejudice to the owners. [L. '69, p. 133, § 505; Cd. '81, § 552; 2 H. C., § 577.]

Cited in 7 Wash. 36; 78 Wash. 510, 511.

See infra, § 1579, partition of estates of decedents.

§ 839. All Known Interests must be Stated in Complaint.—The interest of all persons in the property shall be set forth in the complaint specifically and particularly, as far as known to the plaintiff, and if one or more of the parties, or the share or quantity of interest of any of the parties be unknown to the plaintiff, or be uncertain or contingent, or the ownership of the inheritance depend upon an executory devise, or the remainder be a contingent remainder, so that such parties cannot be named, that fact shall be set forth in the complaint. [L. '69, p. 133, § 506; Cd. '81, § 553; 2 H. C., § 578.]

Cited in 10 Wash. 640; 11 Wash. 630; 78 Wash. 511.

§ 840. Lien Creditors may be Made Parties—Liens Adjusted.—The plaintiff may, at his option, make creditors having a lien upon the property, or any portion thereof, other than by a judgment or decree, defendants in the suit. When the lien is upon an undivided interest or estate of any of the parties, such lien, if a partition be made, is thenceforth a lien only on the share assigned to such party; but such share shall be first charged with its just proportion of the costs of the partition, in preference to such lien. [L. '69, p. 133, § 507; Cd. '81, § 554; 2 H. C., § 579.]

Cited in 4 Wash. 374,

§ 841. Notice.—The notice shall be directed by name to all the tenants in common who are known, and in the same manner to all lien creditors who are made parties to the suit, and generally to all persons unknown having or claiming an interest or estate in the property. [L. 69, p. 133, § 508; Cd. '81, § 555; 2 H. C., § 581.]

§ 842. Service by Publication.—If a party having a share or interest in or lien upon the property be unknown, or either of the known parties reside out of the state, or cannot be found therein, and such fact be made to appear by affidavit, the notice may be served by publication, as in ordinary cases. When service is made by publication, the notice must contain a brief description of the property which is the subject of the suit. [L. '69, p. 134, § 509; Cd. '81, § 556; 2 H. C., § 580.]

§ 843. Answer, Contents of.—The defendant shall set forth in his answer the nature and extent of his interest in the property, and if he be a lien creditor, how such lien was created, the amount of the debt secured thereby and remaining due, and whether such debt is secured in any other way, and if so, the nature of such other security. [L. '69, p. 134, § 510; Cd. '81, § 557; 2 H. C., § 582.]

Cited in 13 Wash. 218.

§ 844. Issues to be Tried.—The rights of the several parties, plaintiffs as well as defendants, may be put in issue, tried, and determined in such suit, and where a defendant fails to answer, or where a sale of the property is necessary, the title shall be ascertained by proof, to the satisfaction of the court, before the decree for partition or sale is given. [L. '69, p. 134, § 511; Cd. '81, § 558; 2 H. C., § 583.]

Cited in 4 Wash. 555; 7 Wash. 37; 10 Wash. 639, 647; 71 Wash. 450.

§ 845. Order of Sale—Partial Partition.—If it be alleged in the complaint and established by evidence, or if it appear by the evidence without such allegation in the complaint, to the satisfaction of the court, that the property, or any part of it, is so situated that partition cannot be made without great prejudice to the owners, the court may order a sale thereof, and for that purpose may appoint one or more referees. Otherwise, upon the requisite proofs being made, it shall decree a partition according to the respective rights of the parties as ascertained by the court, and appoint three referees therefor, and shall designate the portion to remain undivided for the owners whose interest remain unknown or are not ascertained. [L. '69, p. 134, § 512; Cd. '81, § 559; 2 H. C., § 584.]

Cited in 7 Wash. 37, 39; 9 Wash. 304.

§ 846. Partition, How Made—Referees.—In making the partition, the referees shall divide the property, and allot the several portions

thereof to the respective parties, quality and quantity relatively considered, according to the respective rights of the parties as determined by the court, designating the several portions by proper landmarks, and may employ a surveyor, with the necessary assistants, to aid them therein. The referees shall make a report of their proceedings, specifying therein the manner of executing their trust, describing the property divided and the shares allotted to each party, with a particular description of each share. [L. '69, p. 134, § 513; Cd. '81, § 560; 2 H. C., § 585.]

Cited in 78 Wash. 511.

§ 847. Report of Referees — Confirmation — Decree.—The court may confirm or set aside the report in whole or in part, and if necessary, appoint new referees. Upon the report being confirmed, a decree shall be entered that such partition be effectual forever, which decree shall be binding and conclusive,—

1. On all parties named therein, and their legal representatives, who have at the time any interest in the property divided, or any part thereof, as owners in fee, or as tenants for life or for years, or as entitled to the reversion, remainder, or inheritance of such property, or any part thereof, after the termination of a particular estate therein, or who by any contingency may be entitled to a beneficial interest in the property, or who have an interest in any undivided share thereof, as tenants for years or for life;

2. On all persons interested in the property, to whom notice shall have been given by publication;

3. On all other persons claiming from or through such parties or persons, or either of them. [L. '69, p. 135, § 514; Cd. '81, § 561; 2 H. C., § 586.]

Cited in 78 Wash. 512.

§ 848. Decree, Rights Affected by.—Such decree and partition shall not affect any tenants for years or for life of the whole of the property which is the subject of partition, nor shall such decree and partition preclude any persons, except such as are specified in the last section, from claiming title to the property in question, or from controverting the title of the parties between whom the partition shall have been made. [L. '69, p. 135, § 515; Cd. '81, § 562; 2 H. C., § 587.]

Cited in 78 Wash. 512.

§ 849. Expenses Taxed as Costs.—The expenses of the referees, including those of a surveyor and his assistants, when employed, shall be ascertained and allowed by the court, and the amount thereof, together with the fees allowed by law to the referees, shall be paid

by the plaintiff, and may be allowed as costs. [L. '69, p. 135, § 516; Cd. '81, § 563; 2 H. C., § 588.]

§ 850. Decree of Sale on Referee's Report.—If the referees report to the court that the property of which partition shall have been decreed, or any separate portion thereof, is so situated that a partition thereof cannot be made without great prejudice to the owners, and the court is satisfied that such report is correct, it may thereupon, by an order, direct the referees to sell the property, or separate portion thereof. [L. '69, p. 135, § 517; Cd. '81, § 564; 2 H. C., § 589.]

§ 851. Estate for Life, How Set Off.—When a part of the property only is ordered to be sold, if there be an estate for life or years in an undivided share of the property, the whole of such estate may be set off in any part of the property not ordered sold. [L. '69, p. 136, § 518; Cd. '81, § 565; 2 H. C., § 590.]

Cited in 78 Wash. 512.

§ 852. Lien Creditors not Parties, How Brought in.—Before making an order of sale, if lien creditors, other than those by judgment or decree, have not been made parties, the court, on motion of either party, shall order the plaintiff to file a supplemental complaint, making such creditors defendants. [L. '69, p. 136, § 519; Cd. '81, § 566; 2 H. C., § 591.]

§ 853. Unsatisfied Liens—Reference.—If an order of sale be made before the distribution of the proceeds thereof, the plaintiff shall produce to the court the certificate of the auditor of the county [and county clerk] where the property is situated, showing the liens remaining unsatisfied, if any, by judgment or decree upon the property, or any portion thereof, and unless he do so, the court shall order a reference to ascertain them. [L. '69, p. 136, § 520; Cd. '81, § 567; 2 H. C., § 592.]

See supra, § 444, judgment liens.

§ 854. Ascertainment of Liens and Their Priority.—If it appear by such certificate, or reference in case the certificate is not produced, that any such liens exist, the court shall appoint a referee to ascertain what amount remains due thereon or secured thereby respectively, and the order of priority in which they are entitled to be paid out of the property. [L. '69, p. 136, § 521; Cd. '81, § 568; 2 H. C., § 593.]

§ 855. Notice to Lienholders.—The plaintiff must cause a notice to be served at least twenty days before the time for appearance on each person having such lien by judgment of decree, to appear before the referee at a specified time and place, to make proof, by his own affi-

davit or otherwise, of the true amount due or to become due, contingently or absolutely, on his judgment of decree. [L. '69, p. 136, § 522; Cd. '81, § 569; 2 H. C., § 594.]

§ 856. **Proceedings of Referee on Ascertaining Liens.**—The referee shall receive the evidence, and report the names of the creditors whose liens are established, the amounts due thereon, or secured thereby, and their priority respectively, and whether contingent or absolute. He shall attach to his report the proof of service of the notices and the evidence before him. [L. '69, p. 136, § 523; Cd. '81, § 570; 2 H. C., § 595.]

§ 857. **Report of Referee.**—The report of the referee may be excepted to by either party to the suit, or to the proceedings before the referee, in like manner and with like effect as in ordinary cases. If a lien creditor be absent from the state, or his residence therein be unknown, and that fact appear by affidavit, the court, or judge thereof, may by order direct that service of the notice may be made upon his agent or attorney of record, or by publication thereof, for such time and in such manner as the order may prescribe. [L. '69, p. 137, § 524; Cd. '81, § 571; 2 H. C., § 596.]

§ 858. **Confirmation of Report.**—If the report of the referee be confirmed, the order of confirmation is binding and conclusive upon all parties to the suit, and upon the lien creditors who have been duly served with the notice to appear before the referee, as provided in section 855. [L. '69, p. 137, § 525; Cd. '81, § 572; 2 H. C., § 297.]

§ 859. **Distribution of Proceeds of Sale.**—The proceeds of the sale of the encumbered property shall be distributed by the decree of the court, as follows:—

1. To pay its just proportion of the general costs of the suit;
2. To pay the costs of the reference;
3. To satisfy the several liens in their order of priority, by payment of the sums due and to become due, according to the decree;
4. The residue among the owners of the property sold, according to their respective shares. [L. '69, p. 137, § 526; Cd. '81, § 573; 2 H. C., § 598.]

§ 860. **Other Securities to be First Exhausted.**—Whenever any party to the suit, who holds a lien upon the property, or any part thereof, has other securities for the payment of the amount of such lien, the court may, in its discretion, order such sureties to be exhausted before a distribution of the proceeds of sale, or may order a just deduction to be made from the amount of the lien on the property on account thereof. [L. '69, p. 137, § 527; Cd. '81, § 574; 2 H. C., § 599.]

§ 861. Proceedings to Ascertain and Adjust Liens Do not Delay Sale. The proceedings to ascertain the amount of the liens, and to determine their priority, as above provided, or those hereinafter authorized to determine the right of parties to funds paid into court, shall not delay the sale, nor affect any other party whose rights are not involved in such proceedings. [L. '69, p. 137, § 528; Cd. '81, § 575; 2 H. C., § 600.]

§ 862. Proceeds of Sale, Disposition of.—The proceeds of sale, and the securities taken by the referees, or any part thereof, shall be distributed by them to the persons entitled thereto, whenever the court so directs. But if no such direction be given, all such proceeds and securities shall be paid into court, or deposited as directed by the court. [L. '69, p. 138, § 529; Cd. '81, § 576; 2 H. C., § 601.]

§ 863. Continuance of Action to Determine Rights of Parties.—When the proceeds of sale of any shares or parcel belonging to persons who are parties to the suit, and who are known, are paid into court, the suit may be continued, as between such parties, for the determination of their respective claims thereto, which shall be ascertained and adjudged by the court. Further testimony may be taken in court, or by a referee, at the discretion of the court, and the court may, if necessary, require such parties to present the facts or law in controversy by pleadings, as in an original suit. [L. '69, p. 138, § 530; Cd. '81, § 577; 2 H. C., § 602.]

§ 864. Sales by Referees may be Made by Auction.—All sales of real property made by the referees shall be made by public auction, to the highest bidder, in the manner required for the sale of real property on execution. The notice shall state the terms of sale, and if the property, or any part of it, is to be sold subject to a prior estate, charge, or lien, that shall be stated in the notice. [L. '69, p. 138, § 531; Cd. '81, § 578; 2 H. C., § 603.]

Cited in 9 Wash. 304; 52 Wash. 58; 84 Wash. 300.

§ 865. Terms of Sale may be Directed by Court.—The court shall, in the order of sale, direct the terms of credit which may be allowed for the purchase money of any portion of the premises, of which it may direct a sale on credit; and for that portion of which the purchase money is required by the provisions hereinafter contained, to be invested for the benefit of unknown owners, infants, or parties out of the state. [L. '69, p. 138, § 532; Cd. '81, § 579; 2 H. C., § 604.]

§ 866. Securities to be Taken by Referee.—The referees may take separate mortgages and other securities for the whole or convenient portions of the purchase money of such parts of the property as are directed by the court to be sold on credit, in the name of the clerk

of the court and his successors in office; and for the shares of any known owner of full age, in the name of such owner. [L. '69, p. 138, § 533; Cd. '81, § 580; 2 H. C., § 605.]

§ 867. When Estate of Tenant for Life or for Years may be Sold. When the estate of any tenant for life or years in any undivided part of the property in question shall have been admitted by the parties or ascertained by the court to be existing at the time of the order of sale, and the person entitled to such estate shall have been made a party to the suit, such estate may be first set off out of any part of the property, and a sale made of such parcel, subject to the prior unsold estate of such tenant therein; but if, in the judgment of the court, a due regard to the interest of all the parties require that such estate be also sold, the sale may be so ordered. [L. '69, p. 138, § 534; Cd. '81, § 581; 2 H. C., § 606.]

Cited in 78 Wash. 512, 513.

§ 868. Tenant for Life or Years Entitled to Gross Sum.—Any person entitled to an estate for life or years in any undivided part of the property, whose estate shall have been sold, shall be entitled to receive such sum in gross as may be deemed a reasonable satisfaction for such estate, and which the person so entitled shall consent to accept instead thereof, by an instrument duly acknowledged and filed with the clerk. [L. '69, p. 139, § 535; Cd. '81, § 582; 2 H. C., § 607.]

Cited in 78 Wash. 512.

§ 869. Court to Determine Sum, if Consent not Given.—If such consent be not given, as provided in the last section, before the report of sale, the court shall ascertain and determine what proportion of the proceeds of the sale, after deducting expenses, will be a just and reasonable sum to be invested for the benefit of the person entitled to such estate for life or years, and shall order the same to be deposited in court for that purpose. [L. '69, p. 139, § 536; Cd. '81, § 583; 2 H. C., § 608.]

Cited in 78 Wash. 513.

§ 870. Protection of Unknown Tenant.—If the persons entitled to such estate for life or years be unknown, the court shall provide for the protection of their rights in the same manner, as far as may be, as if they were known and had appeared. [L. '69, p. 139, § 538; Cd. '81, § 584; 2 H. C., § 609.]

§ 871. Inchoate and Contingent Interests.—In all cases of sales in partition, when it appears that any person has a vested or contingent future right or estate therein, the court shall ascertain and settle the proportionate value of such contingent or vested right or

estate, and shall direct such proportion of the proceeds of sale to be invested, secured, or paid over in such manner as to protect the rights and interests of the parties. [L. '69, p. 140, § 539; Cd. '81, § 585; 2 H. C., § 610.]

§ 872. Terms of Sale must be Made Known.—In all cases of sales of property, the terms shall be made known at the time, and if the premises consist of distinct farms or lots, they shall be sold separately, or otherwise, if the court so directs. [L. '69, p. 140, § 540; Cd. '81, § 586; 2 H. C., § 611.]

§ 873. Referees or Guardians not to be Interested in Purchase.—Neither of the referees, nor any person for the benefit of either of them, shall be interested in any purchase, nor shall the guardian of an infant be an interested party in the purchase of any real property being the subject of the suit, except for the benefit of the infant. All sales contrary to the provisions of this section shall be void. [L. '69, p. 140, § 541; Cd. '81, § 587; 2 H. C., § 612.]

§ 874. Report of Sale—Contents of.—After completing the sale, the referees shall report the same to the court, with a description of the different parcels of land sold to each purchaser, the name of the purchaser, the price paid or secured, the terms and conditions of the sale, and the securities, if any, taken. The report shall be filed with the clerk. [L. '69, p. 140, p. 542; Cd. '81, § 588; 2 H. C., § 613.]

§ 875. Exceptions to Report — Confirmation — Conveyance.—The report of sale may be excepted to in writing by any party entitled to a share of the proceeds. If the sale be confirmed, the order of confirmation shall direct the referees to execute conveyances and take securities pursuant to such sale. [L. '69, p. 140, § 543; Cd. '81, § 589; 2 H. C., § 614.]

§ 876. Receipt of Proceeds.—When a party entitled to a share of the property, or an encumbrancer entitled to have his lien paid out of the sale, becomes a purchaser, the referees may take his receipt for so much of the proceeds of the sale as belong to him. [L. '69, p. 140, § 544; Cd. '81, § 590; 2 H. C., § 615.]

§ 877. Investment of Proceeds of Unknown Owner.—When there are proceeds of sale belonging to an unknown owner, or to a person without the state who has no legal representative within it, or when there are proceeds arising from the sale of an estate subject to the prior estate of a tenant for life or years, which are paid into the court or otherwise deposited by order of the court, the same shall be invested in securities on interest for the benefit of the persons entitled thereto. [L. '69, p. 140, § 545; Cd. '81, § 591; 2 H. C., § 616.]

§ 878. Investment in Name of Clerk.—When the security for the proceeds of sale is taken, or when an investment of any such proceeds

is made, it shall be done, except as herein otherwise provided, in the name of the clerk of the court and his successors in office, who shall hold the same for the use and benefit of the parties interested, subject to the order of the court. [L. '69, p. 141, § 546; Cd. '81, § 592; 2 H. C., § 617.]

§ 879. Securities to be Taken in Name of Parties, When.—When security is taken by the referees on a sale, and the parties interested in such security by an instrument in writing under their hands, delivered to the referees, agree upon the share and proportions to which they are respectively entitled, or when shares and proportions have been previously adjudged by the court, such securities shall be taken in the names of and payable to the parties respectively entitled thereto, and shall be delivered to such parties upon their receipt therefor. Such agreement and receipt shall be returned and filed with the clerk. [L. '69, p. 141, § 547; Cd. '81, § 593; 2 H. C., § 618.]

§ 880. Duties of Clerk Making Investments.—The clerk in whose name a security is taken, or by whom an investment is made, and his successors in office, shall receive the interest and principal as it becomes due, and apply and invest the same as the court may direct, and shall file in his office all securities taken, and keep an account in a book provided and kept for that purpose in the clerk's office, free for inspection by all persons, of investments and moneys received by him thereon, and the disposition thereof. [L. '69, p. 141, § 548; Cd. '81, § 594; 2 H. C., § 619.]

§ 881. Unequal Partition—Compensation Adjudged.—When it appears that partition cannot be made equal between the parties according to their respective rights, without prejudice to the rights and interests of some of them, the court may adjudge compensation to be made by one party to another on account of the inequality of partition; but such compensation shall not be required to be made to others by owners unknown, nor by infants, unless in case of an infant it appear that he has personal property sufficient for that purpose, and that his interest will be promoted thereby. [L. '69, p. 141, § 549; Cd. '81, § 595; 2 H. C., § 620.]

§ 882. Share of Infant may be Paid to Guardian.—When the share of an infant is sold, the proceeds of the sale may be paid by the referees making the sale, to his general guardian, or the special guardian appointed for him in the suit, upon giving the security required by law, or directed by order of the court. [L. '69, p. 142, § 550; Cd. '81, § 596; 2 H. C., § 621.]

§ 883. Guardian of Insane, etc., may Receive.—The guardian who may be entitled to the custody and management of the estate of an

insane person, or other person adjudged incapable of conducting his own affairs, whose interest in real property shall have been sold, may receive in behalf of such person his share of the proceeds of such real property from the referees, on executing a bond, with sufficient sureties, approved by the judge of the court, conditioned that he faithfully discharge the trust reposed in him, and will render a true and just account to the person entitled, or to his legal representative. [L. '69, p. 142, § 551; Cd. '81, § 597; 2 H. C., § 622.]

§ 884. Guardian may Consent to Partition.—The general guardian of an infant, and the guardian entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, who is interested in real estate held in common or in any other manner, so as to authorize his being made a party to an action for the partition thereof, may consent to a partition without suit, and agree upon the share to be set off to such infant or other person entitled, and may execute a release in his behalf to the owners of the shares or parts to which they may respectively be entitled, and upon an order of the court. [L. '69, p. 142, § 552; Cd. '81, § 598; 2 H. C., § 623.]

§ 885. Costs, How Apportioned.—The costs of partition, including fees of referees and other disbursements, shall be paid by the parties respectively entitled to share in the lands divided, in proportion to their respective interests therein, and may be included and specified in the decree. In that case there shall be a lien on the several shares, and the decree may be enforced by execution against the parties separately. When, however, a litigation arises between some of the parties only, the court may require the expense of such litigation to be paid by the parties thereto, or any of them. [L. '69, p. 142, § 553; Cd. '81, § 599; 2 H. C., § 624.]

Cited in 34 Wash. 138.

CHAPTER IV.

Actions Against the State.

§ 886. Manner of Collecting Claims Against the State—Bond.—Any person or corporation having any claim against the state of Washington shall have the right to begin an action against the state in the superior court of Thurston county. Such action shall be begun against the state of Washington by filing a complaint in such superior court, setting forth the nature of such claim, and containing a direction to the defendant to appear within twenty days after service of the complaint exclusive of the day of service, and defend the action, and a notice that in case of failure so to do, judgment will be rendered against the state according to the prayer of the complaint.

The plaintiff in such action shall, at the time of filing his complaint, file a bond or undertaking with two or more sureties to be approved by the clerk of the court to the effect that such party will indemnify the state against all costs that may accrue in such action, and will pay to the clerk of said court all costs in case the plaintiff shall fail to prosecute his action or to obtain a judgment against the state. [L. '95, p. 188, § 1.]

Cited in 18 Wash. 74; 27 Wash. 291; 28 Wash. 502; 68 Wash. 332; 86 Wash. 688.

§ 887. Service, How Made.—Service of the complaint shall be made by the sheriff of the county in which such action is brought, or by any of his deputies, by delivering an attested copy thereof to the attorney general, or by leaving such copy in his office, and by delivering another like copy to the secretary of state, or by leaving such copy in his office. [L. '95, p. 188, § 2.]

Cited in 18 Wash. 74.

§ 888. Attorney General Counsel for State—Procedure.—The attorney general or his assistant shall appear and act as counsel for the state. The action shall proceed in all respects as other actions. Appeals may be taken to the supreme court of the state as in other actions or proceedings, but in case an appeal shall be taken on behalf of the state, no bond shall be required of the appellant. [L. '95, p. 188, § 3.]

Cited in 18 Wash. 75; 28 Wash. 502; 42 Wash. 655.

§ 889. Judgment, How Satisfied.—No execution shall issue against the state on any judgment, but whenever a final judgment against the state shall have been obtained in any such action, the clerk shall make and furnish to the auditor of state a duly certified transcript of such judgment; and the auditor of state shall thereupon audit the amount of damages and costs therein awarded, and the same shall be paid out of the state treasury. [L. '95, p. 188, § 4.]

§ 890. Limitations.—All provisions of law relating to the limitations of personal actions shall apply to claims against the state, but the computation of time thereunder shall not begin until this chapter shall have become a law. [L. '95, p. 189, § 5.]

Cited in 18 Wash. 75.

CHAPTER V.

Eminent Domain.

§ 891. Appropriation of Property by the State, Requisites of Petition.—Whenever any officer, board, commission, or other body representing the state is authorized by the legislature to acquire any land,

real estate, premises, or other property, deemed necessary for the public uses of the state, or any department or institution thereof, and the officer, board, commission or other body whose duty it is to acquire such land, real estate, premises, or other property is unable to agree with the owner or owners thereof for its purchase, it shall be the duty of the attorney general to present to the superior court of the county in which said land, real estate, premises, or other property so sought to be acquired or appropriated shall be situated, a petition in which the land, real estate, premises, or other property sought to be appropriated shall be described with reasonable certainty, and setting forth the name of each and every owner, encumbrancer, or other person or party interested in the same, or any part thereof, so far as the same can be ascertained from the public records, the object for which the land is sought to be appropriated, and praying that a jury be impaneled to ascertain and determine the compensation to be made in money to such owner or owners, respectively, and to all tenants, encumbrancers, and others interested, for taking such lands, real estate, premises or other property, or in case a jury be waived, as in other civil cases in courts of record, in the manner prescribed by law, then that the compensation to be made as aforesaid be ascertained and determined by the court or judge thereof. [L. '11, p. 335, § 1. Cf. L. '91, p. 138, § 1; 2 H. C., § 638.]

Cited in 4 Wash. 67; 28 Wash. 501; 38 Wash. 687.

§ 892. Notice—Contents of—Service.—A notice stating briefly the objects of the petition, and containing a description of the land, real estate, premises, or property sought to be acquired and appropriated, and stating the time and place when and where the same will be presented to the court or the judge thereof, shall be served on each and every person named therein as owner, encumbrancer, tenant, or otherwise interested therein at least ten days previous to the time designated in such notice for the presentation of such petition. Such service shall be made by delivering a copy of such notice to each of the persons or parties so named therein, if a resident of the state; or in case of the absence of such person or party from his or her usual place of abode, by leaving a copy of such notice at his or her usual place of abode; or in case of a foreign corporation, at its principal place of business in this state, with some person of more than sixteen years of age. In case of domestic corporations, such service shall be made upon the president, secretary, or other director or trustee of such corporation. In case of minors, or their guardians, or in case no guardian shall have been appointed, then on the person who has the care and custody of such minor; in case of idiots, lunatics, or distracted persons, on their guardians, or in case no guardian shall have been appointed, then on the person in whose care

or charge they are found. In case the land, real estate, premises, or other property sought to be appropriated is school or county land, the notice shall be served on the auditor of the county in which the land, real estate, premises, or other property sought to be acquired and appropriated is situated. In all cases where the owner or person claiming an interest in such real estate or other property is a non-resident of this state, or where the residence of such owner or person is unknown, and an affidavit of the attorney general shall be filed that such owner or person is a nonresident of this state, or that after diligent inquiry his residence is unknown or cannot be ascertained, service may be made by publication thereof in any newspaper published in the county where such lands are situated, once a week for two successive weeks; and in case no newspaper is published in said county, then such publication may be had in a newspaper published in the county nearest the county in which lies the land sought to be acquired and appropriated. And such publication shall be deemed service upon each of such nonresident person or persons whose residence is unknown. Such notice shall be signed by the attorney general of the state of Washington. Such notice may be served by any competent person over twenty-one years of age. Due proof of the service of such notice by affidavit of the person serving the same, or by the printer's affidavit of publication, shall be filed with the clerk of such superior court before or at the time of the presentation of such petition. Want of service of such notice shall render the subsequent proceedings void as to the person not served, but all persons or parties having been served with notice as herein provided, either by publication or otherwise, shall be bound by the subsequent proceedings. In all other cases not otherwise provided for, service of notices, order, and other papers in the proceedings authorized by this act, may be made as the superior court or judge thereof may direct. [L. '91, p. 139, § 2; 2 H. C., § 639.]

"Act" refers to §§ 891–900.

§ 893. Adjournment of Proceedings—Notice.—The court or judge may, upon application of the said attorney general or any owner or party interested, for reasonable cause, adjourn the proceedings from time to time, and may order new or further notice to be given to any party whose interest may be affected. [L. '91, p. 140, § 3; 2 H. C., § 640.]

§ 894. Hearing of Petition—Jury.—At the time and place appointed for hearing said petition, or to which the same may have been adjourned, if the court or judge thereof shall have satisfactory proof that all parties interested in the land, real estate, premises, or other property described in said petition have been duly served with said notice as above prescribed, and shall be further satisfied

by competent proof that the contemplated use for which the land, real estate, premises or other property sought to be appropriated is really necessary for the public use of the state of Washington, the court or judge thereof may make an order, to be recorded in the minutes of said court, directing the sheriff to summon from the citizens of the county in which such land, real estate, premises, or other property sought to be acquired or appropriated shall be situated, as many qualified persons as may be necessary in order to form a jury of twelve persons, unless the parties to the proceedings consent to a less number (such number to be not less than three), and such consent shall be entered by the clerk in the minutes of the trial. If necessary to complete the jury, the sheriff, under the direction of the court or judge thereof, shall summon as many qualified persons as may be required to complete the jury from the bystanders, citizens of the county where the land, real estate, premises, or other property is situated. [L. '91, p. 140, § 4; 2 H. C., § 641.]

§ 895. Trial—Damages—Judgment.—A judge of the superior court shall preside at the trial, which shall be held at such time as the court or judge thereof may direct, at the courthouse in the county where the land, real estate, premises, or other property sought to be appropriated or acquired is situated, and the jurors at such trial shall make in each case a separate assessment of damages which shall result to any person, corporation or company, or to any county, by reason of the appropriation and use of such land, real estate, premises, or other property, and shall ascertain, determine, and award the amount of damage to be paid said owner or owners respectively, and to all tenants, encumbrancers, and others interested for taking such land, real estate, premises, or other property so taken. Upon the trial, witnesses may be examined in behalf of either party to the proceedings as in civil actions; and a witness served with a subpoena in such proceedings shall be punished for failure to appear at such trial, or for perjury, as upon a trial of a civil action. Upon the verdict of the jury, judgment shall be entered for the amount of the damages awarded to such owner or owners, respectively, and to all tenants, encumbrancers, and others interested, for taking such land, real estate, or premises. In case a jury is waived, as in civil cases in courts of record, in the manner prescribed by law, the compensation to be paid for the property sought to be appropriated shall be ascertained and determined by the court or judge thereof, and the proceedings shall be the same as in trials of an issue of fact by the court. [L. '91, p. 141, § 5; 2 H. C., § 642.]

Cited in 38 Wash. 687; 46 Wash. 48.

§ 896. Judgment—Filing and Recording of.—At the time of rendering judgment for damages, whether upon default or trial, the

court or judge thereof shall also enter a judgment or decree of appropriation of the land, real estate, or premises sought to be appropriated, thereby vesting the legal title to the same in the state of Washington. Whenever said judgment or decree of appropriation is made, a certified copy of such judgment or decree of appropriation may be filed for record in the office of the auditor of the county where the said land, real estate, or other premises are situated, and shall be recorded by said auditor like a deed of real estate, and with like effect. [L. '91, p. 142, § 6; 2 H. C., § 643.]

§ 897. Payment of Damages, Effects of—Appeal.—Upon the entry of judgment upon the verdict of the jury or the decision of the court or judge thereof, awarding damages as hereinbefore prescribed, the state of Washington may make payment of the damages assessed to the parties entitled to the same, and of the costs of the proceedings, by depositing the same with the clerk of said superior court, to be paid out under the direction of the court or the judge thereof; and upon making such payment into the court of the damages assessed and allowed, and of the costs to any land, real estate, premises or other property mentioned in said petition, said state of Washington shall be released and discharged from any and all further liability therefor, unless upon appeal the owner or party interested shall recover a greater amount of damages; and in that case only for the amount in excess of the sum paid into said court and the costs of appeal: Provided, that in case of an appeal to the supreme court of the state by any party to the proceedings, the money so paid into the superior court by the state as aforesaid shall remain in the custody of said court until the final determination of the proceedings by the said supreme court. [L. '91, p. 142, § 7; 2 H. C., § 644.]

§ 898. Claimants, How Paid—Conflicting Claims, How Determined.—Any person, corporation, or county claiming to be entitled to any money paid into court, as provided in this act, may apply to the court therefor, and upon furnishing evidence satisfactory to the court that he or it is entitled to the same, the court shall make an order directing the payment to such claimant the portion of such money as he or it shall be found entitled to; but if, upon application, the court or judge thereof should decide that the title to the land, real estate, or premises specified in the application of such claimant was in such condition as to require that an action be commenced to determine the conflicting claims thereto, he shall refuse such order until such action is commenced, and the conflicting claims to such land, real estate, or premises be determined according to law. [L. '91, p. 143, § 8; 2 H. C., § 645.]

Cited in 71 Wash. 358.

"Act" refers to §§ 891–900.

§ 899. Appeal.—Either party may appeal from the judgment for damages entered in the superior court to the supreme court of the state, within thirty days after the entry of judgment as aforesaid, and such appeal shall bring before the supreme court the propriety and justness of the amount of damage in respect to the parties to the appeal: Provided, however, that upon such appeal no bond shall be required: And provided further, that, if the owner of land, the real estate, or premises accepts the sum awarded by the jury, the court, or the judge thereof, he shall be deemed thereby to have waived conclusively an appeal to the supreme court, and final judgment by default may be rendered in the superior court as in other cases: Provided further, that no appeal shall operate so as to prevent the said state of Washington from taking possession of such property pending such appeal, after the amount of said award shall have been paid into court. [L. '91, p. 143, § 9; 2 H. C., § 646.]

§ 900. Payment of Award and Costs.—Whenever the attorney general shall file with the auditor of this state a certificate setting forth the amount of any award found against the state of Washington under the provisions of this act, together with the costs of said proceeding, and a description of the lands and premises sought to be appropriated and acquired, and the title of the action or proceeding in which said award is rendered, it shall be the duty of the state auditor to forthwith issue a warrant upon the state treasury to the order of the attorney general in a sum sufficient to make payment in money of said award and the costs of said proceeding, and thereupon it shall be the duty of said attorney general to forthwith pay to the clerk of said court in money the amount of said award and costs. [L. '91, p. 143, § 10; 2 H. C., § 647.]

"Act" refers to §§ 891–900.

§ 901. Counties may Appropriate Lands for Public Use.—Every county in this state is hereby, for the purposes of this and the four following sections, declared to be a body corporate and is authorized and empowered by and through its board of county commissioners whenever said board shall judge it to be clearly for the general welfare and benefit of the people of the county, and so far as shall be in harmony with the constitution of this state and the provisions of this article, to condemn and appropriate as hereinafter in this act provided and to dispose of for public use such lands, properties, rights and interests as are hereinafter in this act mentioned, whenever the government of the United States or of this state is intending or proposing the construction, operation or maintenance of any public work situated or to be situated wholly or partly within such county, or the expenditure of money or labor for the construction, operation or

maintenance of any such work, and such condemnation or appropriation will enable the county to aid, promote, facilitate or prepare for any such construction, operation, maintenance or expenditure by either or both such governments, or to fulfill or dispose of any condition upon which such construction, operation, maintenance or expenditure is by law or from any cause contingent, and no property shall be exempt from such condemnation, appropriation or disposition by reason of the same having been or being dedicated, appropriated or otherwise reduced or held to public use. [L. '95, p. 3, § 1.]

Cited in 58 Wash. 516.

"Act" refers to §§ 901–905.

§ 902. Tax Levy to Pay Cost of Condemnation.—The board of county commissioners is hereby authorized and empowered in aid of the powers granted or prescribed in the foregoing section to levy, annually, a tax as large as may be necessary, but not exceeding the rate of one mill on the dollar, upon all taxable property in the county, such tax to be assessed, levied and collected at the same time and in the same manner as taxes for general county purposes, but the proceeds of said taxes, when collected, shall constitute and be a special fund, applicable solely to the cost of such condemnation, appropriation or disposition, as is mentioned in the foregoing section, and the expenses incident thereto. [L. '95, p. 4, § 2.]

§ 903. Eminent Domain Extended to Counties.—The right of eminent domain for the purposes intended in this act is hereby extended to all counties in this state and every such county for any purpose of condemnation, appropriation or disposition such as is mentioned in section 901, supra, is hereby authorized and empowered to condemn and appropriate all necessary lands and all rights, properties and interests in or appurtenant to land under the same procedure as is or shall be provided by the laws of this state for the case of any similar condemnation or appropriation by other corporations. [L. '95, p. 4, § 3.]

"Act" refers to §§ 901–905.

§ 904. Indebtedness Contracted, General County Purpose.—Any county purpose mentioned in this act shall be deemed and held to be a general county purpose and any indebtedness contracted or to be contracted therefor shall be deemed and held to be an indebtedness for general county purposes, and all the provisions of law of this state relative to indebtedness for general county purposes or the contracting of such indebtedness or the bonds for funding the same shall be deemed applicable to any indebtedness contracted or to be contracted or any bonds issued by any county under this act, but the accounts of the county with respect to the

receipts and disbursements of all moneys received or disbursed by the county under the provisions of this act shall, for each condemnation, appropriation and disposition, be so kept as to clearly and fully exhibit such accounts separate and apart from the other accounts of the county. [L. '95, p. 5, § 4.]

"Act" refers to §§ 901–905.

§ 905. **County Purpose, Defined.**—Any condemnation, appropriation or disposition intended in this act shall be deemed and held to be for a county purpose and public use within the meaning of this act when it is directly or indirectly, approximately or remotely for the general benefit or welfare of the county or of the inhabitants thereof, or when it is otherwise within the meaning of the phrase "for a county purpose" as occurring in the constitution of this state. [L. '95, p. 5, § 5.]

"Act" refers to §§ 901–905.

§ 906. **School Districts may Appropriate Land.**—Whenever any school district shall select any real estate as a site for a schoolhouse, or as additional grounds to an existing schoolhouse site, within the district, and the board of school directors of such district and the owner or owners of the site or any part thereof, or addition thereto so selected, shall be unable to agree upon the compensation to be paid by such school district to the owner or owners thereof, such school district shall have the right to take and acquire title to such real estate for use as a schoolhouse site or additional site, upon first paying to the owner or owners thereof therefor the value thereof, to be ascertained in the manner hereinafter provided. [L. '03, p. 193, § 1; L. '09, p. 372, § 1.]

§ 907. **Petition to Superior Court.**—The board of directors of the school district shall present to the superior court of the state of Washington in and for the county wherein is situated the real estate desired to be acquired for schoolhouse site purposes, a petition, reciting that the board of directors of such school district have selected certain real estate, describing it, as a schoolhouse site, or as additional grounds to an existing site, for such school district; that the site so selected, or some part thereof, describing it, belongs to a person or persons, naming him or them, that such school district has offered to give the owner or owners thereof therefor —— dollars, and that the owner of such real estate has refused to accept the same therefor; that the board of school directors of such school district and the said owner or owners of such real estate are unable to agree upon the compensation to be paid by such school district to the owner or owners of such real estate therefor, and praying that a jury be impaneled to ascertain and determine the compensation to be

made in money by such school district to such owner or owners for the taking of such real estate for the use as a schoolhouse site for such school district; or in case a jury be waived in the manner provided by law in other civil actions in courts of record, then that the compensation to be made as aforesaid, be ascertained and determined by the court, or judge thereof. [L. '03, p. 194, § 2; L. '09, p. 372, § 2.]

§ 908. Notice of Petition—Service.—A notice, stating the time and place when and where such petition will be presented to the court, or the judge thereof, together with a copy of such petition, shall be served on each and every person named therein as owner, or otherwise interested therein, at least ten days previous to the time designated in such notice for the presentation of such petition. Such notice shall be signed by the prosecuting attorney of the county wherein the real estate sought to be taken is situated, and may be served in the same manner as summons in a civil action in such superior court is authorized by law to be served. [L. '03, p. 104, § 3; L. '09, p. 373, § 3.]

§ 909. Adjournment of Proceedings.—The court may, upon application of the petitioner or of any owner of said real estate, or any person interested therein, for reasonable cause, adjourn the proceedings from time to time, and may order new or further notice to be given to any party whose interests may be affected by such proceedings. [L. '03, p. 194, § 4; L. '09, p. 373, § 4.]

§ 910. Findings of Necessity—Setting Trial.—At the time and place appointed for the hearing of such petition, or to which the same may have been adjourned, if the court shall find that all parties interested in such real estate sought to be taken have been duly served with notice and a copy of the petition as above prescribed, and shall further find that such real estate sought to be taken is required and necessary for the purposes of a schoolhouse site, or as a part of or as an addition to a schoolhouse site, for such school district, the court shall make an order reciting such findings, and shall thereupon set the hearing of such petition down for trial by a jury, as other civil actions are tried, unless a jury is waived in the manner provided by law in other civil actions. [L. '03, p. 195, § 5; L. '09, p. 373, § 5.]

§ 911. Jury Trial.—The jury impaneled to hear the evidence and determine the compensation to be paid to the owner or owners of such real estate desired for such schoolhouse site purpose shall consist of twelve persons unless a less number be agreed upon, and shall be selected, impaneled and sworn in the same manner that juries in other civil actions are selected, impaneled and sworn, provided a juror may be challenged for cause on the ground that he is a tax-

payer of the district seeking the condemnation of any real estate. [L. '03, p. 195, § 6; L. '09, p. 373, § 6.]

§ 912. Trial—View by Jury.—A judge of the superior court shall preside at the trial and witnesses may be examined in behalf of either party to the proceedings, as in other civil actions, and upon the request of the parties interested in such proceedings the court shall cause the jury impaneled to hear the same, to view the premises sought to be taken, and upon the request of any less number of the persons interested in the proceedings, the court may cause the jury to view the premises, pending the hearing of the same. [L. '03, p. 195, § 7; L. '09, p. 374, § 7.]

§ 913. Verdict for Full Value of Property.—Upon the close of the evidence, and the argument of counsel, the court shall instruct the jury as to the matters submitted to them, and the law pertaining thereto, whereupon the jury shall retire and deliberate and determine upon the amount of compensation in money that shall be paid to the owner or owners of the real estate sought to be taken for such schoolhouse site purposes therefor, which shall be the amount found by the jury to be the fair and full value of such premises; and when the jury shall have determined upon their verdict, they shall return the same to the court as in other civil actions. [L. '03, p. 195, § 8; L. '09, p. 374, § 8.]

Cited in 69 Wash. 194, 195.

§ 914. Verdict by Ten Jurors.—When ten of the jurors agree upon a verdict, the verdict so agreed upon shall be signed by the foreman, and the verdict so agreed upon shall be and stand as the verdict of the jury. [L. '03, p. 196, § 9; L. '09, p. 374, § 9.]

§ 915. Waiver of Jury.—In case a jury is waived, the compensation that shall be paid for the premises taken shall be determined by the court and the proceedings shall be the same as in the trial of issues of fact by the court in other civil actions. [L. '03, p. 196, § 10; L. '09, p. 374, § 10.]

§ 916. Judgment—Effect.—Upon the verdict of the jury, or upon the determination by the court of the compensation to be paid for the property sought to be taken as herein provided, judgment shall be entered against such school district in favor of the owner or owners of the real estate sought to be taken, for the amount found as compensation therefor, and upon the payment of such amount by such school district to the clerk of such court for the use of the owner or owners of, and the persons interested in the premises sought to be taken, the court shall enter a decree of appropriation of the real estate sought to be taken, thereby vesting the title to the same in such

school district; and a certified copy of such decree of appropriation may be filed in the office of the county auditor of the county wherein the real estate taken is situated, and shall be recorded by such auditor like a deed of real estate, and with like effect. The money so paid to the clerk of the court shall be by him paid to the person or persons entitled thereto, upon the order of the court. [L. '03, p. 196, § 11; L. '09, p. 374, § 11.]

§ 917. **Costs.**—All the costs of such proceedings in the superior court shall be paid by the school district initiating such proceedings. [L. '03, p. 196, § 12; L. '09, p. 375, § 12.]

§ 918. **Appeal to Supreme Court.**—Either party may appeal from the judgment for compensation awarded for the property taken, entered in the superior court, to the supreme court of the state within sixty days after the entry of the judgment, and such appeal shall bring before the supreme court the justness of the compensation awarded for the property taken, and any error occurring on the hearing of such matter, prejudicial to the party appealing, and no bond shall be required of either party appealing from such judgment: Provided, however, that if the owner or owners of the land taken accepts the sum awarded by the jury or court, he or they shall be deemed thereby to have waived their right of appeal to the supreme court. [L. '03, p. 196, § 13; L. '09, p. 375, § 13.]

§ 919. **Possession of Premises.**—An appeal from such judgment by the owner or owners of the land sought to be taken, shall not have the effect to preclude the school district from taking possession of the premises sought, pending the appeal, provided the amount of the judgment against the school district shall have been paid in to the clerk of the court, as hereinbefore provided. [L. '03, p. 197, § 14; L. '09, p. 375, § 14.]

§ 920. **Parties—Designation—Fees of Clerk.**—In all proceedings under this act the school district seeking to acquire title to real estate for a schoolhouse site, shall be denominated plaintiff, and all other persons interested therein shall be denominated defendants; and in all such proceedings the clerk of the superior court wherein any such proceedings is brought shall charge nothing for his services, except in taking an appeal from the judgment entered in the superior court. [L. '03, p. 197, § 15; L. '09, p. 375, § 15.]

§ 921. **Eminent Domain by Corporations—Petition, Requisites of.** Any corporation authorized by law to appropriate land, real estate, premises, or other property for right of way or any other corporate purposes, may present to the superior court of the county in which any land, real estate, or premises, or other property sought to be

appropriated shall be situated, or to the judge of such superior court in any county where he has jurisdiction or is holding court, a petition in which the land, real estate, premises, or other property sought to be appropriated shall be described with reasonable certainty, and setting forth the name of each and every owner, encumbrancer, or other person or party interested in the same, or any part thereof, so far as the same can be ascertained from the public records, the object for which the land is sought to be appropriated, and praying that a jury be impaneled to ascertain and determine the compensation to be made in money, irrespective of any benefit from any improvement proposed by such corporation, to such owner or owners, respectively, and to all tenants, encumbrancers, and others interested, for the taking or injuriously affecting such lands, real estate, premises, or other property, or in case a jury be waived, as in other civil cases in courts of record in the manner prescribed by law, then that the compensation to be made, as aforesaid, be ascertained and determined by the court, or judge thereof. [Cf. L. '88, p. 58, § 1; L. '90, p. 294, § 1; 2 H. C., § 648.]

Cited in 2 Wash. 378, 380, 501; 4 Wash. 65, 311, 451; 5 Wash. 780; 14 Wash. 145; 19 Wash. 205; 29 Wash. 498; 31 Wash. 463; 45 Wash. 321; 47 Wash. 92; 48 Wash. 281; 52 Wash. 448; 71 Wash. 88; 80 Wash. 419; 84 Wash. 409; 86 Wash. 158.

See infra, § 3677, necessity of subscription to all of capital stock.

See §§ 4091–4179, except §§ 4098–4101, 4152–4155, appropriation of lands for diking and drainage districts.

See infra, § 4974, appropriation by electric light and power companies.

See infra, § 5717, appropriation for toll road.

See §§ 6325–6359, 6362–6391, 6416–6494, appropriation for irrigation purposes.

See infra, § 6359, appropriation for water rights.

See infra, § 7109, appropriation for toll logging roads.

See infra, § 7120, appropriation for boom companies.

See infra, § 7314 et seq., right of eminent domain extended to mining companies.

See infra, § 7767, eminent domain in cities.

See §§ 8736–8740, appropriation by railroad companies.

See infra, § 8740, appropriation of public lands by certain corporations.

See infra, § 9081, appropriation by street and electric railways.

See §§ 9300–9321, appropriation for telegraph and telephone companies.

§ 922. Notice, Contents of and Service.—A notice, stating briefly the objects of the petition, and containing a description of the land, real estate, premises or property sought to be appropriated, and stating the time and place when and where the same will be presented to the court, or the judge thereof, shall be served on each and every person named therein as owner, encumbrancer, tenant, or otherwise interested therein, at least ten days previous to the time designated in such notice for the presentation of such petition. Such service

shall be made by delivering a copy of such notice to each of the persons or parties so named therein, if a resident of the state; or in case of the absence of such person or party from his or her usual place of abode, by leaving a copy of such notice at his or her usual place of abode; or in case of a foreign corporation, at its principal place of business in this state, with some person of more than sixteen years of age. In case of domestic corporations, such service shall be made upon the president, secretary, or other directors or trustee of such corporation. In case of minors or [on] their guardians, or in case no guardian shall have been appointed, then on the person who has the care and custody of such minor. In case of idiots, lunatics, or distracted persons, on their guardian; or in case no guardian shall have been appointed, then on the person in whose care or charge they are found. In case the land, real estate, premises, or other property sought to be appropriated is [state, school,] or county land, the notice shall be served on the auditor of the county in which the land, real estate, premises, or other property sought to be appropriated is situated. In all cases where the owner or person claiming an interest in such real or other property is a nonresident of this state, or where the residence of such owner or person is unknown, and an affidavit of the agent or attorney of the corporation shall be filed that such owner or person is a nonresident of this state, or that, after diligent inquiry, his residence is unknown, or cannot be ascertained by such deponent, service may be made by publication thereof in any newspaper published in the county where such lands are situated, once a week for two successive weeks; and in case no newspaper is published in said county, then such publication may be had in a newspaper published in the county nearest to the county in which lies the land sought to be appropriated. And such publication shall be deemed service upon each of such nonresident person or persons whose residence is unknown. Such notice shall be signed by the president, manager, secretary, or attorney of the corporation; and in case the proceedings provided for in this article are instituted by the owner or any other person or party interested in the land, real estate, or other property sought to be appropriated, then such notice shall be signed by such owner, person, or party interested, or his, her, or its attorney. Such notice may be served by any competent person over twenty-one years of age. Due proof of the service of such notice, by affidavit of the person serving the same, or by the printer's affidavit of publication, shall be filed with the clerk of such superior court before or at the time of the presentation of such petition. Want of service of such notice shall render the subsequent proceedings void as to the person not served; but all persons or parties having been served with notice as herein provided, either by publication or other-

wise, shall be bound by the subsequent proceedings. In all other cases not otherwise provided for, service of notices, order, and other papers in the proceedings authorized by this article may be made as the superior court, or the judge thereof, may direct. [Cf. L. '88, p. 58, § 2; L. '90, p. 295, § 2; 2 H. C., § 649.]

Cited in 5 Wash. 780, 781; 7 Wash. 152; 18 Wash. 381; 31 Wash. 463; 32 Wash. 595; 42 Wash. 174; 43 Wash. 93; 45 Wash. 321; 48 Wash. 518; 50 Wash. 30; 56 Wash. 337; 78 Wash. 486.

Superseded as to service in case of state lands, by the next section.

§ 923. Service Where State is Party Defendant.—In all condemnation proceedings brought for the purpose of appropriating any land owned by the state or in which it has an interest, service of process shall be made upon the commissioner of public lands. [L. '07, p. 507, § 1.]

§ 924. Adjournment of Proceedings.—The court or judge may, upon application of the petitioner or of any owner or party interested, for reasonable cause, adjourn the proceedings from time to time, and may order new or further notice to be given to any party whose interest may be affected. [Cf. L. '88, p. 60, § 3; L. '90, p. 297, § 3; 2 H. C., § 650.]

§ 925. Court to Adjudicate Necessity for Appropriation—Calling Jury.—At the time and place appointed for hearing said petition, or to which the same may have been adjourned, if the court or judge thereof shall have satisfactory proof that all parties interested in the land, real estate, premises or other property described in said petition, have been duly served with said notice as above prescribed, and shall be further satisfied by competent proof that the contemplated use for which the land, real estate, premises or other property sought to be appropriated is really a public use, or is for a private use for a private way of necessity, and that the public interest requires the prosecution of such enterprise, or the private use is for a private way of necessity, and that the land, real estate, premises or other property sought to be appropriated are required and necessary for the purposes of such enterprise, the court or judge thereof may make an order, to be recorded in the minutes of said court, directing the sheriff to summon a jury. [Cf. L. '88, p. 60, § 4; L. '90, p. 297, § 4; 2 H. C., § 651; L. '97, p. 63, § 1.]

Cited in 7 Wash. 167; 20 Wash. 456; 25 Wash. 552; 32 Wash. 594; 38 Wash. 187; 46 Wash. 46, 47, 278; 64 Wash. 193, 198, 199, 601; 71 Wash. 88, 90, 91; 81 Wash. 209; 82 Wash. 470; 84 Wash. 25.

§ 926. Trial, How Conducted.—A judge of the superior court shall preside at the trial, which shall be held at such time as the court, or the judge thereof, may direct, at the courthouse in the county where the land, real estate, premises, or other property sought to be ap-

propriated is situated, and the jurors at such trial shall make in each case a separate assessment of damages which shall result to any person, corporation, or company, or to the state, or to any county, by reason of the appropriation and use of such land, real estate, premises, or other property by such corporation, as aforesaid, for any and all corporate purposes, and shall ascertain, determine, and award the amount of damages to be paid to said owner or owners respectively, and to all tenants, encumbrancers, and others interested, for the taking or injuriously affecting such land, real estate, premises, or other property, for the purpose of such enterprise, irrespective of any benefit from any improvement proposed by such corporation. Upon the trial, witnesses may be examined in behalf of either party to the proceedings, as in civil actions; and a witness served with a subpoena in such proceedings shall be punished for failure to appear at such trial, or for perjury, as upon a trial of a civil action. Upon the verdict of the jury, judgment shall be entered for the amount of the damages awarded to such owner or owners respectively, and to all tenants, encumbrancers, and others interested, for the taking or injuriously affecting such land, real estate, premises, or other property. In case a jury is waived as in civil cases in courts of record in the manner prescribed by law, the compensation to be paid for the property sought to be appropriated shall be ascertained and determined by the court, or the judge thereof, and the proceedings shall be the same as in trials of an issue of fact by the court. [L. '90, p. 297, § 5; 2 H. C., § 652.]

Cited in 18 Wash. 382; 38 Wash. 188; 46 Wash. 278; 69 Wash. 659; 78 Wash. 486; 82 Wash. 470.

§ 927. Judgment and Decree of Appropriation.—At the time of rendering judgment for damages, whether upon default or trial, if the damages awarded be then paid, or upon their payment, if not paid at the time of rendering such judgment, the court, or judge thereof, shall also enter a judgment or decree of appropriation of the land, real estate, premises, right of way, or other property sought to be appropriated, thereby vesting the legal title to the same in the corporation seeking to appropriate such land, real estate, premises, right of way, or other property for corporate purposes. Whenever said judgment or decree of appropriation shall affect lands, real estate, or other premises, a certified copy of such judgment or decree of appropriation may be filed for record in the office of the auditor of the county where the said land, real estate, or other premises are situated, and shall be recorded by said auditor like a deed of real estate, and with like effect. If the title to said land, real estate, premises, or other property attempted to be acquired is found to be defective from any cause, the corporation may again institute pro-

ceedings to acquire the same, as in this article provided. [Cf. L. '90, p. 298, § 6; L. '91, p. 84, § 1; 2 H. C., § 653.]

Cited in 18 Wash. 382; 38 Wash. 188; 46 Wash. 279; 65 Wash. 105, 107, 108; 73 Wash. 191, 194; 82 Wash. 471.

§ 928. Decree Against State Lands—Filing With Commissioner—Effect.—When a decree is entered appropriating lands owned by the state, or in which the state has an interest, before any such decree shall be effective, the plaintiff shall cause to be filed in the office of the commissioner of public lands a certified copy of such decree, together with a plat of the lands appropriated and contiguous thereto, in form and substance as prescribed and required by the board of state land commissioners, showing in detail the lands appropriated, together with the amount of damages fixed and awarded in the decree. Upon receipt of such decree, plat and damages, the commissioner of public lands shall examine the same, and if he shall find that the final decree and proceedings comply with the original petition and notice and any amendment duly authorized, and that no additional interest of the state has been taken or appropriated through error or mistake, he shall cause notations thereof to be made upon the abstracts, records and tract books of his office, and shall issue to the plaintiff his certificate, reciting compliance, in substance, with the requirements of this act, particularly describing the lands appropriated, and thereupon the appropriation shall become effective and the commissioner of public lands shall forthwith transmit the amount received as damages to the state treasurer, as in case of the sale of land, and the subdivision of land through which such right of way is appropriated shall thereafter be sold or leased subject to the right of way. [L. '07, p. 507, § 2; L. '09, p. 625, § 1.]

§ 929. Payment to Petitioner—On Appeal Money to Remain in Court.—Upon the entry of judgment upon the verdict of the jury, or the decision of the court, or judge thereof, awarding damages, as hereinbefore prescribed, the petitioner, or any officer of or other person duly appointed by said corporation, may make payment of the damages assessed to the parties entitled to the same, and of the costs of the proceedings, by depositing the same with the clerk of said superior court, to be paid out under the direction of the court, or judge thereof; and upon making such payment into the court of the damages assessed and allowed, and of the costs to any land, real estate, premises, or other property mentioned in said petition, such corporation shall be released and discharged from any and all further liability therefor, unless upon appeal the owner, or other person or party interested, shall recover a greater amount of damages; and in that case, only for the amount in excess of the sum paid into said court, and the costs of appeal: Provided, that in case of an appeal

to the supreme court of the state by any party to the proceedings, the money so paid into the superior court by such corporation as aforesaid shall remain in the custody of said court until the final determination of the proceedings by the said supreme court. [L. '90, p. 299, § 7; 2 H. C., § 654.]

Cited in 22 Wash. 160; 52 Wash. 52; 66 Wash. 445; 73 Wash. 191, 193; 80 Wash. 420–424.

§ 930. Disposition of Money—Conflicting Claims.—Any person, corporation, state, or county claiming to be entitled to any money paid into court, as provided in this article may apply to the court therefor, and upon furnishing evidence satisfactory to the court that he or it is entitled to the same, the court shall make an order directing the payment to such claimant the portion of such money as he or it shall be found entitled to; but if, upon application, the court, or judge thereof, shall decide that the title to the land, real estate, premises, or other property specified in the application of such claimant was in such condition as to require that an action be commenced to determine the conflicting claims thereto, he shall refuse such order until such action is commenced, and the conflicting claims to such lands, real estate, premises, or other property be determined according to law. [Cf. L. '88, p. 61, § 8; L. '90, p. 299, § 8; 2 H. C., § 655.]

Cited in 18 Wash. 382; 56 Wash. 337; 80 Wash. 420–424.

§ 931. Appeal.—Either party may appeal from the judgment for damages entered in the superior court to the supreme court of the state within thirty days after the entry of judgment as aforesaid, and such appeal shall bring before the supreme court the propriety and justness of the amount of damages in respect to the parties to the appeal: Provided, however, that no bond shall be required of any person interested in the property sought to be appropriated by such corporation, but in case the corporation appropriating such land, real estate, premises, or other property is appellant, it shall give a bond like that prescribed in the next following section, to be executed, filed, and approved in the same manner: And provided further, that if the owner of the land, real estate, premises, or other property accepts the sum awarded by the jury, the court, or the judge thereof, he shall be deemed thereby to have waived conclusively an appeal to the supreme court, and final judgment by default may be rendered in the superior court as in other cases. [Cf. L. '88, p. 61, § 9; L. '90, p. 300, § 9.]

Cited in 4 Wash. 17, 18; 22 Wash. 159; 25 Wash. 550; 28 Wash. 321; 30 Wash. 222; 38 Wash. 189, 190; 42 Wash. 689; 43 Wash. 93, 94, 112; 44 Wash. 556; 46 Wash. 36; 48 Wash. 92; 55 Wash. 393, 395; 56 Wash. 288; 58 Wash. 81; 65 Wash. 405; 73 Wash. 192, 193; 80 Wash. 420–424; 81 Wash. 209; 82 Wash. 471.

§ 932. Prosecution of Work Pending Appeal.—The construction of any railway surface tramway, elevated cable tramway, or canal, or the prosecution of any works or improvements by any corporation as aforesaid shall not be hindered, delayed or prevented by the prosecution of the appeal of any party to the proceedings: Provided, the corporation aforesaid shall execute and file with the clerk of the court in which the appeal is pending a bond to be approved by said clerk, with sufficient sureties, conditioned that the persons executing the same shall pay whatever amount may be required by the judgment of the court therein, and abide any rule or order of the court in relation to the matter in controversy. [Cf. L. '88, p. 62, § 10; L. '90, p. 300, § 10; 2 H. C., § 657; L. '97, p. 64, § 2.]

Cited in 28 Wash. 319; 38 Wash. 186, 189, 190; 73 Wash. 190, 192, 193.

§ 933. Appropriation of Right of Way Through Defiles, etc.—Any railroad company whose right of way passes through any canyon, pass, or defile shall not prevent any other railroad company from the use and occupancy of said canyon, pass, or defile for the purpose of its road in common with the road first located or the crossing of other railroads at grade, and any railroad company authorized by law to appropriate land, real estate, premises, or other property for right of way, or any other corporate purpose, may present a petition in the manner and form hereinbefore provided for the appropriation of a right of way through any canyon, pass, or defile for the purpose of its road, where right of way has already been located, condemned, or occupied by some other railroad company through such canyon, pass, or defile for the purpose of its road, and thereupon like proceedings shall be had upon such petition as herein provided in other cases; and at the time of rendering judgment for damages, whether upon default or trial, the court, or judge thereof, shall enter a judgment or decree authorizing said railroad company to occupy and use said right of way, roadbed, and track, if necessary, in common with the railroad company or companies already occupying or owning the same, and defining the terms and conditions upon which the same shall be so occupied and used in common. [L. '90, p. 301, § 12; 2 H. C., § 658.]

Cited in 7 Wash. 164; 29 Wash. 497; 77 Wash. 318.

§ 934. Appropriation by Electric Power Companies, etc.—The right of eminent domain is hereby extended to all corporations incorporated or that may hereafter be incorporated under the laws of this state or any state or territory of the United States, and doing business in this state, for the purpose of transmitting electric power by wire, cable or by any other means: Provided, however, that said

right of eminent domain shall not be exercised in respect to any residence or business structure or structures. [L. '95, p. 80, § 1.]

§ 935. Right to Enter Lands for Survey, etc.—Every corporation incorporated or that may hereafter be incorporated under the laws of this state or any state or territory of the United States, and doing business in this state, for the purpose of transmitting electric power by wire, cable or any other means, shall have the right to enter upon any land between the termini of the proposed lines for the purpose of examining, locating and surveying such lines, doing no unnecessary damage thereby. [L. '95, p. 80, § 2.]

§ 936. Procedure as in Other Cases.—Every such corporation shall have the right, subject to the proviso contained in the last preceding section, to appropriate real estate or other property for right of way or for any corporate purposes in the same manner and under the same procedure as now is or may be hereafter provided by the law in the case of other corporations authorized by the laws of this state to exercise the right of eminent domain. [L. '95, p. 80, § 3.]

Cited in 84 Wash. 409; 86 Wash. 158.

CHAPTER VI.

Waste, Trespass and Nuisance.

§ 937. Waste Actionable.—Wrongs heretofore remediable by action of waste shall be subjects of actions, as other wrongs. [Cf. L. '54, p. 206, § 403; L. '69, p. 143, § 554; Cd. '81, § 600; 2 H. C., § 659.]

§ 938. Action Against Guardian or Tenant—Damages—Forfeiture—Eviction.—If a guardian, tenant in severalty or in common, for life or for years, of real property, commit waste thereon, any person injured thereby may maintain an action at law for damages therefor against such guardian or tenant; in which action there may be judgment for treble damages, forfeiture of the estate of the party committing or permitting the waste, and of eviction from the property. But judgment of forfeiture and eviction shall only be given in favor of the person entitled to the reversion against the tenant in possession, when the injury to the estate in reversion is determined in the action to be equal to the value of the tenant's estate or unexpired term, or to have been done or suffered in malice. [Cf. L. '54, p. 206, § 403; L. '69, p. 143, § 555; Cd. '81, § 601; 2 H. C., § 660.]

Cited in 2 Wash. 120; 72 Wash. 465.

§ 939. Trespass for Cutting Trees, etc.—Damage.—Whenever any person shall cut down, girdle, or otherwise injure or carry off any tree, timber, or shrub on the land of another person, or in the street or highway in front of any person's house, village, town, or city lot,

or cultivated ground, or on the common or public grounds of any village, town, or city, or on the street or highway in front thereof, without lawful authority, in an action by such person, village, town or city, against the person committing such trespasses, or any of them, if judgment be given for the plaintiff, it shall be given for treble the amount of damages claimed or assessed therefor, as the case may be. [L. '69, p. 143, § 556; Cd. '81, § 602; 2 H. C., § 661.]

Cited in 2 Wash. 120, 122, 123; 27 Wash. 66, 358; 40 Wash. 45, 47; 54 Wash. 451, 452; 60 Wash. 560; 61 Wash. 574; 64 Wash. 96, 97; 65 Wash. 60; 67 Wash. 654.

§ 940. Casual or Involuntary Trespass—Damages.—If upon trial of such action it shall appear that the trespass was casual or involuntary, or that the defendant had probable cause to believe that the land on which such trespass was committed was his own, or that of the person in whose service or by whose direction the act was done, or that such tree or timber was taken from uninclosed woodlands, for the purpose of repairing any public highway or bridge upon the land, or adjoining it, judgment shall only be given for single damages. [L. '69, p. 143, § 557; Cd. '81, § 603; 2 H. C., § 662.]

Cited in 2 Wash. 120; 27 Wash. 66, 358; 40 Wash. 45, 47; 54 Wash. 451, 452; 64 Wash. 96, 97; 65 Wash. 60.

§ 941. Injunction to Prevent Waste.—When any two or more persons are opposing claimants under the laws of the United States to any land in this state, and one is threatening to commit upon such land waste which tends materially to lessen the value of the inheritance, and which cannot be compensated by damages, and there is imminent danger that unless restrained such waste will be committed, the party, on filing his complaint and satisfying the court or judge of the existence of the facts, may have an injunction to restrain the adverse party. In all cases he shall give notice and bond as is provided in other cases where injunction is granted, and the injunction when granted shall be set aside or modified as is provided generally for injunction and restraining orders. [L. '54, p. 206, § 404; Cd. '81, § 604; 2 H. C., § 663.]

Cited in 5 Wash. 153, 155, 156.

§ 942. Action by Occupant of Unsurveyed Land.—Any person now occupying and settled upon, or who may hereafter occupy or settle upon, any of the unsurveyed public lands, not to exceed one hundred and sixty acres, in this state, for the purpose of holding and cultivating the same, may commence and maintain any action, in any court of competent jurisdiction, for interference with or injuries done to his or her possessions of said lands, against any person or persons so interfering with or injuring such lands or possession:

Provided always, that if any of the aforesaid class of settlers are absent from their claims continuously for a period of six months in any one year, the said person or persons shall be deemed to have forfeited all rights under this section. [L. '83, p. 70, § 1; 2 H. C., § 545.]

§ 943. **Actionable Nuisances, Defined.**—The obstruction of any highway, or the closing of the channel of any stream used for boating or rafting logs, lumber, or timber, or whatever is injurious to health, or indecent, or offensive to the senses, or an obstruction to the free use of property, so as to essentially interfere with the comfortable enjoyment of the life and property, is a nuisance, and the subject of an action for damages and other and further relief. [Cf. L. '54, p. 207, § 405; L. '69, p. 144, § 559; Cd. '81, § 605; 2 H. C., § 664.]

Cited in 13 Wash. 618; 56 Wash. 309; 58 Wash. 569; 61 Wash. 290; 76 Wash. 48.

§ 944. **Who may Maintain.**—Such action may be brought by any person whose property is injuriously affected or whose personal enjoyment is lessened by the nuisance. If the judgment be given for the plaintiff in such action, he may, in addition to the execution to enforce the same, on motion, have an order allowing a warrant to issue to the sheriff to abate such nuisance. Such motion shall be allowed, of course, unless it appear on the hearing that the nuisance has ceased, or that such remedy is inadequate to abate or prevent the continuance of the nuisance, in which latter case the plaintiff may have the defendant enjoined. [Cf. L. '54, p. 207, § 406; L. '69, p. 144, § 560; Cd. 81, § 606; L. '91, p. 89, § 1; 2 H. C., § 665.]

Cited in 13 Wash. 618; 56 Wash. 309; 61 Wash. 290; 76 Wash. 48.

§ 945. **Warrant for Abatement of Nuisance.**—If the order be made, the clerk shall thereafter, at any time within six months, when requested by the plaintiff, issue such warrant directed to the sheriff, requiring him forthwith to abate the nuisance at the expense of the defendant, and return the warrant as soon thereafter as may be, with his proceedings indorsed thereon. The expenses of abating the nuisance may be levied by the sheriff on the property of the defendant, and in this respect the warrant is to be deemed an execution against property. [Cf. L. '54, p. 207, § 407; L. '69, p. 145, § 561; Cd. '81, § 607; 2 H. C., § 666.]

§ 946. **Stay of Warrant.**—At any time before the order is made or the warrant issues, the defendant may, on motion to the court, or judge thereof, have an order to stay the issue of such warrant for such period as may be necessary, not exceeding six months, to allow the defendant to abate the nuisance himself, upon his giving bond

to the plaintiff, in a sufficient amount, with one or more sureties, to the satisfaction of the court, or judge thereof, that he will abate it within the time and in the manner specified in such order. The sureties shall justify as bail upon arrest. If the defendant fails to abate such nuisance within the time specified, the warrant for the abatement of the nuisance may issue as if the same had not been stayed. [L. '69, p. 145, § 562; Cd. '81, § 608; 2 H. C., § 667.]

§ 946–1. Houses of Prostitution to be Abated.—Whoever shall erect, establish, maintain, continue, use, own or lease any building or place used for the purpose of lewdness, assignation or prostitution is guilty of a nuisance, and the building or place, or the ground itself, in or upon which lewdness, assignation or prostitution is conducted, permitted or carried on, continued or exists, and the furniture, fixtures, musical instruments, and contents are also declared a nuisance, and shall be enjoined and abated as hereinafter provided. [L. '13, p. 391, § 1.]

Cited in 80 Wash. 262, 270; 81 Wash. 48; 83 Wash. 677.

§ 946–2. Actions—Temporary Injunction.—Whenever a nuisance exists, as defined in this act, the prosecuting attorney or any citizen of the county may maintain an action in equity in the name of the state of Washington upon the relation of such prosecuting attorney or citizen, to perpetually enjoin said nuisance, the person or persons conducting or maintaining the same, and the owner or the agent of the building or ground upon which said nuisance exists. In such action, the court or judge may upon the presentation of a petition therefor alleging that the nuisance complained of exists, allow a temporary injunction if it shall be made to appear to the satisfaction of the court or judge that such nuisance exists. At least three days' notice in writing shall be given the defendant of the hearing of the application. Any violation of the provisions of injunction herein provided shall be a contempt as hereinafter provided. [L. '13, p. 391, § 2.]

Cited in 81 Wash. 49; 83 Wash. 677.

§ 946–3. General Reputation of Place—Dismissal of Action.—In such action evidence of the general reputation of the place shall be admissible for the purpose of proving the existence of said nuisance. If the complaint is filed by a citizen, it shall not be dismissed except upon a sworn statement made by the complainant and his attorney, setting forth the reasons why the action should be dismissed, and the dismissal approved by the prosecuting attorney in writing or in open court. If the court is of the opinion that the action ought not to be dismissed, he may direct the prosecuting attorney to prosecute such action to judgment, and if the action is continued more than

once, upon the application of either party, any citizen of the county or the prosecuting attorney may be substituted for the complaining party and prosecute said action to judgment. If the action is brought by a citizen and the court finds there was no reasonable ground or cause for said action, the costs may be taxed to such citizen who originally brought such action. [L. '13, p. 391, § 3.]

§ 946–4. Contempt—Punishment.—In case of the violation of any injunction granted under the provisions of this act, the court or judge may summarily try and punish the offender. The proceedings shall be commenced by filing with the clerk of the court an information under oath, setting out the alleged facts constituting such violation, upon which the court or judge shall cause an attachment to issue, under which the defendant shall be arrested. The trial may be had upon affidavit, or either party may demand the production and oral examination of the witnesses. A party found guilty of contempt under the provisions of this section shall be punished by a fine of not less than two hundred nor more than one thousand dollars, or by imprisonment in the county jail not less than three nor more than six months, or by both fine and imprisonment. [L. '13, p. 392, § 4.]

§ 946–5. Order of Abatement—Effect.—If the existence of the nuisance be established in an action as provided in this act, or in a criminal proceeding, an order of abatement shall be entered as a part of the judgment in the case, which order shall direct the removal from the building or place of all fixtures, furniture, musical instruments or movable property used in conducting the nuisance, and may direct the sale thereof in the manner provided for the sale of chattels under execution and effectual closing of the building or place against its use for any purpose, and so keeping it closed for a period not exceeding six months. If any person shall break and enter or use a building or place so directed to be closed, he shall be punished as for contempt as provided in the preceding section. For removing and selling all movable property, the officer shall be entitled to charge and receive the same fees as he would for levying upon and selling like property on execution, and for closing the premises and keeping them closed, a reasonable sum shall be allowed by the court. [L. '13, p. 392, § 5.]

§ 946–6. Proceeds of Sales.—The proceeds of the sale of the personal property, as provided in the preceding section, shall be applied in payment of the costs of the action and abatement, and the balance, if any, shall be paid to the person owning such property prior to said sale. [L. '13, p. 396, § 6.]

§ 946–7. Voluntary Abatement—Release.—If the owner appears and pays all costs of the proceedings, and files a bond with sureties

to be approved by the clerk in the full value of the property, to be ascertained by the court conditioned that he will immediately abate said nuisance and prevent the same from being established or kept therein within a period of one year thereafter, the court or judge may, if satisfied of his good faith, order the premises closed under the order of abatement to be delivered to said owner, and said order of abatement canceled so far as the same may relate to said property, and if the proceeding be an action in equity and said bond be given and costs therein paid before judgment and order of abatement, the action shall be thereby abated as to said building only. The release of the property under the provisions of this action [section] shall not release it from any judgment, lien, penalty or liability to which it may be subject by law. [L. '13, p. 393, § 7.]

Cited in 80 Wash. 269.

§ 946–8. Penalty—Tax Lien.—Whenever a permanent injunction issues against any person for maintaining a nuisance as herein defined, or against any owner or agent of the building kept or used for the purposes prohibited by this act, there shall be assessed against said building and the ground upon which the same is located and against the person or persons maintaining said nuisance, and the owner or agent of said premises, a tax of three hundred dollars. The assessment of said tax shall be made by the county assessor of the county in which the nuisance exists and shall be made within three months from the date of the granting of the permanent injunction. In case the assessor fails or neglects to make said assessment the same shall be made by the sheriff of the county, and a return of said assessment shall be made to the county treasurer. Said tax may be enforced and collected in the manner prescribed for the collection of taxes under the general revenue laws and shall be a perpetual lien upon the real property, and personal property not already sold as provided by this act, used for the purpose of maintaining said nuisance, and the payment of said tax shall not relieve the person or building from any penalties provided by law, and when collected shall go into the county general fund. [L. '13, p. 393, § 8.]

Cited in 80 Wash. 270.

CHAPTER VII.

Establishment of Boundaries of Lands.

§ 947. Establishment of Lost or Uncertain Boundary Lines.—Whenever the boundaries of lands between two or more adjoining proprietors shall have been lost, or by time, accident, or any other cause shall have become obscure or uncertain, and the adjoining proprietors cannot agree to establish the same, one or more of said adjoining proprietors may bring his civil action in equity, in the

superior court for the county in which such lands, or part of them, are situated, and such superior court, as a court of equity, may, upon such complaint, order such lost or uncertain boundaries to be erected and established and properly marked. [L. '86, p. 104, § 1; 2 H. C., § 668.]

Cited in 9 Wash. 185; 44 Wash. 101; 47 Wash. 403; 69 Wash. 684; 70 Wash. 441; 82 Wash. 193; 83 Wash. 258.

§ 948. Commissioners Appointed—Duties of.—Said court may, in its discretion, appoint commissioners, not exceeding three competent and disinterested persons, one or more of whom shall be practical surveyors, residents of the state, which commissioners shall be, before entering upon their duties, duly sworn to perform their said duties faithfully, and the said commissioners shall thereupon survey, erect, establish, and properly mark said boundaries, and return to the court a plat of said survey, and the field-notes thereof, together with their report. Said report shall be advisory, and either party may except thereto, in the same manner as to a report of referees. [L. '86, p. 105, § 2; 2 H. C., § 669.]

Cited in 61 Wash. 382; 83 Wash. 258, 259.

§ 949. Proceedings, How Conducted—Decree.—The proceedings shall be conducted as other civil actions, and the court, on final decree, shall apportion the costs of the proceedings equitably, and the costs so apportioned shall be a lien upon the said lands, severally, as against any transfer or encumbrance made of or attaching to said lands, from the time of the filing of the complaint: Provided, a notice of lis pendens is filed in the auditor's office of the proper county, in accordance with law. [L. '86, p. 105, § 3; 2 H. C., § 670.]

Cited in 44 Wash. 101; 69 Wash. 684; 82 Wash. 105; 83 Wash. 258.

CHAPTER VIII.

Actions by and Against Public Corporations.

§ 950. Actions by Public Corporations.—An action at law may be maintained by any county, incorporated town, school district, or other public corporation of like character in this state, in its corporate name, and upon a cause of action accruing to it, in its corporate character, and not otherwise, in either of the following cases:—

1. Upon a contract made with such public corporation;

2. Upon a liability prescribed by law in favor of such public corporation;

3. To recover a penalty or forfeiture given to such public corporation;

4. To recover damages for an injury to the corporate rights or property of such public corporation. [L. '69, p. 154, § 601; Cd. '81, § 661; 2 H. C., § 671.]

Cited in 38 Wash. 106; 48 Wash. 88.

See supra, § 886, actions against the state.
See infra, § 3822, capacity of counties to sue and be sued.
See infra, § 3823, actions to be brought in corporate name.
See infra, § 4483, power and liability of school districts.
See infra, § 7518, power of cities of first class to sue and be sued.

§ 951. Actions Against Public Corporations.—An action may be maintained against a county, or other of the public corporations mentioned or described in the preceding section, either upon a contract made by such county or other public corporation in its corporate character, and within the scope of its authority, or for an injury to the rights of the plaintiff arising from some act or omission of such county or other public corporation. [L. '69, p. 154, § 602; Cd. '81, § 662; 2 H. C., § 672.]

Cited in 4 Wash. 658; 20 Wash. 113; 21 Wash. 648; 48 Wash. 88.

§ 952. Verification of Pleadings by Public Corporations.—In such actions, the pleadings of the public corporation shall be verified by any of the officers representing it in its corporate capacity, in the same manner as if such officer was a defendant in the action, or by the agent or attorney thereof, as in ordinary actions. [L. '69, p. 154, § 603; Cd. '81, § 663; 2 H. C., § 673.]

§ 953. Manner of Enforcing Judgments.—If judgment be given for the recovery of money or damages against such county or other public corporation, no execution shall issue thereon for the collection of such money or damages, but such judgment in such respect shall be satisfied as follows:—

1. The party in whose favor such judgment is given may, at any time thereafter, when execution might issue on a like judgment against a private person, present a certified transcript of the docket thereof to the officer of such county or other public corporation who is authorized to draw orders on the treasury thereof;

2. On the presentation of such transcript, such officer shall draw an order on such treasurer for the amount of the judgment, in favor of the party for whom the same was given. Thereafter such order shall be presented for payment and paid with like effect and in like manner as other orders upon the treasurer of such county or other public corporation;

3. The certified transcript herein provided for shall not be furnished by the clerk, unless at the time an execution might issue on such judgment if the same were against a private person, nor until satisfaction of the same judgment in respect to such money or damages be acknowledged as in ordinary cases. The clerk shall include in the transcript the memorandum of such acknowledgment of satisfaction and the entry thereof. Unless the transcript contain such

memorandum, no order upon the treasurer shall issue thereon. [L. '69, p. 154, § 604; Cd. '81, § 664; 2 H. C., § 674.]

Cited in 9 Wash. 400; 14 Wash. 223; 16 Wash. 458; 18 Wash. 37, 227; 20 Wash. 398; 31 Wash. 539; 34 Wash. 352, 641; 45 Wash. 53; 50 Wash. 103; 63 Wash. 232, 242.

§ 954. Officer Refusing to Satisfy Judgment may be Attached.—Should the proper officer of said corporation fail or refuse to satisfy said judgment, as in the preceding section provided, an attachment may be issued to compel his performance of said duty. [L. '69, p. 155, § 605; Cd. '81, § 665; 2 H. C., § 675.]

Cited in 14 Wash. 223; 31 Wash. 541.

§ 955. Tender Condition Precedent to Action to Enjoin Tax Collection.—Hereafter no action or proceeding shall be commenced or instituted in any court of this state to enjoin the sale of any property for taxes, or to enjoin the collection of any taxes, or for the recovery of any property sold for taxes, unless the person or corporation desiring to commence or institute such action or proceeding shall first pay, or cause to be paid, or shall tender to the officer entitled under the law to receive the same, all taxes, penalties, interest, and costs justly due and unpaid from such person or corporation on the property sought to be sold or recovered. [L. '88, p. 43, § 1; 2 H. C., § 676.]

Cited in 7 Wash. 641; 16 Wash. 535; 19 Wash. 571; 22 Wash. 446, 448; 24 Wash. 374; 29 Wash. 183; 31 Wash. 541; 38 Wash. 497, 500; 43 Wash. 468; 44 Wash. 245; 49 Wash. 425; 53 Wash. 251, 253, 694; 55 Wash. 140; 69 Wash. 606.

§ 956. What Complaint must State.—In all actions to enjoin the sale of any property for taxes, in all actions to enjoin the collection of any tax, and in all actions for the recovery of any property sold for taxes, the complainant must state and set forth specially in his complaint the tax that is justly due, with penalties, interest, and costs, the tax alleged to be illegal, and point out the illegality thereof; that the taxes for that and previous years have been paid; and when the action is for the recovery of lands or other property sold for taxes against the person or corporation in possession thereof, that all taxes, penalties, interest, and costs paid by the purchaser at tax sale, his assignees or grantees, have been fully paid or tendered, and payment refused. [L. '88, p. 44, § 2; 2 H. C., § 677.]

Cited in 19 Wash. 571; 38 Wash. 531; 43 Wash. 468; 47 Wash. 695; 49 Wash. 424, 425; 52 Wash. 515; 53 Wash. 694; 55 Wash. 140.

§ 957. Construction.—The provisions of sections 955 and 956 shall be construed as imposing additional conditions upon the power of the court or judge in granting injunctions to those already imposed, and of imposing additional conditions upon the complainant in

actions for the recovery of property sold for taxes. [L. '88, p. 44, § 3; 2 H. C., § 678.]

Cited in 43 Wash. 468; 49 Wash. 425.

CHAPTER IX.

Actions on Official Bonds, Fines and Forfeitures.

§ 958. Official Bonds, to Whom Deemed Security.—The official bond of a public officer to the state, or to any county, city, town, or other municipal or public corporation of like character therein, shall be deemed a security to the state, or to such county, city, town, or other municipal or public corporation, as the case may be, and also to all persons severally, for the official delinquencies against which it is intended to provide. [L. '69, p. 152, § 592; Cd. '81, § 652; 2 H. C., § 694.]

See infra, § 1159, action on contractor's bond to indemnify public corporations.

See infra, §§ 8326, 8327, actions on official bonds.

§ 959. Injured Party may Maintain Action.—When a public officer by official misconduct or neglect of duty shall forfeit his official bond, or render his sureties therein liable upon such bond, any person injured by such misconduct or neglect, or who is by law entitled to the benefit of the security, may maintain an action at law thereon in his own name against the officer and his sureties to recover the amount to which he may by reason thereof be entitled. [L. '69, p. 152, § 593; Cd. '81, § 653; 2 H. C., § 695.]

Cited in 19 Wash. 75.

§ 960. Leave to Commence Action.—Before an action can be commenced by a plaintiff, other than the state, or the municipal or public corporation named in the bond, leave shall be obtained of the court, or judge thereof, where the action is triable. Such leave shall be granted upon the production of a certified copy of the bond, and an affidavit of the plaintiff, or some person in his behalf, showing the delinquency. But if the matter set forth in his affidavit be such that, if true, the party applying would clearly not be entitled to recover in the action, the leave shall not be granted. If it does not appear from the complaint that the leave herein provided for has been granted, the defendant, on motion, shall be entitled to judgment of nonsuit; if it does, the defendant may controvert the allegation, and if the issue be found in his favor, the judgment shall be given accordingly. [L. '69, p. 152, § 594; Cd. '81, § 654; 2 H. C., § 696.]

Cited in 4 Wash. 633; 19 Wash. 75, 424.

§ 961. Judgment for Delinquency No Bar to Another Action.—A judgment in favor of a party for one delinquency shall not preclude the same or another party from maintaining another action on the same bond for another delinquency. [L. '69, p. 153, § 595; Cd. '81, § 655; 2 H. C., § 697.]

§ 962. Amount of Judgment.—In an action upon an official bond, if judgments have been recovered against the surety therein other than by confession, equal in the aggregate to the penalty, or any part thereof, of such bond, and if such recovery be established on the trial, judgment shall not be given against such surety for an amount exceeding such penalty, or such portion thereof as is not already recovered against him. [L. '69, p. 153, § 596; Cd. '81, § 656; 2 H. C., § 698.]

§ 963. Actions for Fines and Forfeitures.—Fines and forfeitures may be recovered by an action at law in the name of the officer or person to whom they are by law given, or in the name of the officer or person who by law is authorized to prosecute for them. [L. '69, p. 153, § 597; Cd. '81, § 657; 2 H. C., § 699.]

See supra, § 159, limitations of actions for.

§ 964. Amount of Recovery.—When an action shall be commenced for a penalty which by law is not to exceed a certain amount, the action may be commenced for that amount, and if judgment be given for the plaintiff, it may be for such amount or less, in the discretion of the court, in proportion to the offense. [L. '69, p. 153, § 598; Cd. '81, § 658; 2 H. C., § 700.]

§ 965. Collusive Judgment No Bar.—A recovery of a judgment for a penalty or forfeiture by collusion between the plaintiff and defendant, with intent to save the defendant wholly or partially from the consequences contemplated by law, in case when the penalty or forfeiture is given wholly or partly to the person who prosecutes, shall not bar the recovery of the same by another person. [L. '69, p. 153, § 599; Cd. '81, § 659; 2 H. C., § 701.]

§ 966. Disposition of Fines and Forfeitures—Venue.—Fines and forfeitures not specially granted or otherwise appropriated by law, when recovered, shall be paid into the school fund of the proper county. Whenever, by the provisions of law, any property, real or personal, shall be forfeited to the state, or to any officer for its use, the action for the recovery of such property may be commenced in any county where the defendant may be found, or where such property may be. [L. '69, p. 153, § 600; Cd. '81, § 660; 2 H. C., § 702.]

Cited in 23 Wash. 578.

CHAPTER X.

Actions by and Against Executors and Administrators.

§ 967. What Actions Survive.—All other causes of action [than those enumerated in section 183, supra] by one person against another, whether arising on contract or otherwise, survive to the personal representatives of the former and against the personal representatives of the latter. Where the cause of action survives, as herein provided, the executors or administrators may maintain an action at law thereon against the party against whom the cause of action accrued, or after his death, against his personal representatives. [L. '69, p. 165, § 659; Cd. '81, § 718; 2 H. C., § 704.]

Cited in 4 Wash. 787; 5 Wash. 262; 15 Wash. 294; 35 Wash. 501; 69 Wash. 285.

See Laws of 1869, p. 166, § 665; Laws of 1877, p. 147, § 728, omitted from Code of 1881, limitation of actions on claims against estates.

See supra, § 170, suspension of statute of limitation by death of party.

See supra, § 180, executors, etc., as parties.

See supra, § 193, action not to abate by disability if continued by or against representatives.

See supra, § 194, survival of action for personal injury.

See infra, § 1477 et seq., limitations of actions on claims against estates; see, also, on same subject, § 164, supra.

See infra, §§ 1534–1542, actions by and against executors and administrators in certain cases.

See infra, § 1540, limitations of action against fraudulent conveyance.

§ 968. Several Representatives Regarded as One.—In an action against several executors or administrators, they shall all be considered as one person representing their testator or intestate, and judgment may be given and execution issued against all of them who are defendants in the action, although the notice be served only on part of them, in the same manner and with like effect as if served on all, except as provided in the next session. [L. '69, p. 165, § 660; Cd., '81, § 719; 2 H. C., § 705.]

§ 969. Judgment by Default—Not Evidence of Assets, When.—When a judgment is given against an executor or administrator for want of answer, such judgment is not to be deemed evidence of assets in his hands, unless it appear that the complaint alleged assets, and that the notice was served upon him. [L. '69, p. 166, § 661; Cd. '81, § 720; 2 H. C., § 706.]

§ 970. Inventory may be Contradicted, When.—In an action against executors and administrators, in which the fact of their having administered the estate of their testator or intestate, or any part thereof, is put in issue, and the inventory of the property of the deceased returned by them is given in evidence, the same may be contradicted or avoided by evidence,—

1. That any property has been omitted in such inventory, or was not returned therein at its full value, or that since the return thereof such property has increased in value;

2. That such property has perished or been lost without the fault of such executors or administrators, or that it has been fairly and duly sold by them at a less price than the value so returned, or that since the return of the inventory such property has deteriorated in value. In such action the defendants cannot be charged for any things in action specified in their inventory, unless it appear that they have been collected, or with due diligence might have been. [L. '69, p. 166, § 662; Cd. '81, § 721; 2 H. C., § 707.]

§ 971. No Liability as Executor de Son Tort.—No person is liable to an action as executor of his own wrong for having taken, received, or interfered with the property of a deceased person, but is responsible to the executors or administrators of such deceased person for the value of all property so taken and received, and for all injury caused by his interference with the estate of the deceased. [L. '69, p. 166, § 663; Cd. '81, § 722; 2 H. C., § 708.]

Cited in 6 Wash. 203.

§ 972. Executor of Executor—Limit of Powers of.—An executor of an executor has no authority as such to commence or maintain an action or proceeding relating to the estate of the testator of the first executor, or to take any charge or control thereof. [L. '69, p. 166, § 664; Cd. '81, § 723; 2 H. C., § 709.]

§ 973. Provisional Remedies, When Authorized.—In an action against an executor or administrator as such, the remedies of arrest and attachment shall not be allowed on account of the acts of his testator or intestate; but for his own acts as such executor or administrator, such remedies shall be allowed for the same causes in the manner and with like effect as in actions at law generally. [L. '69, p. 167, § 666; Cd. '81, § 724; 2 H. C., § 710.]

CHAPTER XI.

Protection of Sureties.

§ 974. Notice to Creditor to Institute Action.—Any person bound as surety upon any contract in writing for the payment of money or the performance of any act, when the right of action has accrued, may require, by notice in writing, the creditor or obligee forthwith to institute an action upon the contract. [L. '54, p. 210, § 426; Cd. '81, § 644; 2 H. C., § 756.]

Cited in 6 Wash. 304; 10 Wash. 428; 11 Wash. 5; 13 Wash. 332; 16 Wash. 551.

See infra, § 8336 et seq., provisions for the release of sureties on official bonds.

§ 975. Surety Discharged, When.—If the creditor or obligee shall not proceed within a reasonable time to bring his action upon such contract, and prosecute the same to judgment and execution, the surety shall be discharged from all liability thereon. [L. '54, p. 210, § 427; Cd. '81, § 645; 2 H. C., § 757.]

Cited in 13 Wash. 332; 16 Wash. 551.

§ 976. Trial of Suretyship.—When any action is brought against two or more defendants upon a contract, any one or more of the defendants being surety for the others, the surety may, upon a written complaint to the court, cause the question of suretyship to be tried and determined upon the issues made by the parties at the trial of the cause, or at any time before or after the trial, but such proceedings shall not affect the proceedings of the plaintiff. [L. '54, p. 210, § 427; Cd. '81, § 646; 2 H. C., § 758.]

Cited in 13 Wash. 332; 18 Wash. 409; 54 Wash. 68.

§ 977. Order to Exhaust Principal's Property.—If the finding upon such issue be in favor of the surety, the court shall make an order directing the sheriff to levy the execution upon and first exhaust the property of the principal before a levy shall be made upon the property of the surety, and the clerk shall indorse a memorandum of the order upon the execution. [L. '54, p. 211, § 429; Cd. '81, § 647; 2 H. C., § 759.]

Cited in 13 Wash. 332; 54 Wash. 68.

§ 978. Subrogation of Surety.—When any defendant surety in a judgment or special bail or replevin [bail], or surety in a delivery bond or replevin bond, or any person being surety in any bond whatever, has been or shall be compelled to pay any judgment, or any part thereof, or shall make any payment which is applied upon such judgment by reason of such suretyship, or when any sheriff or other officer or other surety upon his official bond shall be compelled to pay any judgment, or any part thereof, by reason of any default of such officer, except for failing to pay over money collected, or for wasting property levied upon, the judgment shall not be discharged by such payment, but shall remain in force for the use of the bail, surety, officer, or other person making such payment, and after the plaintiff is paid, so much of the judgment as remains unsatisfied may be prosecuted to execution for his use. [L. '54, p. 211, § 430; Cd. '81, § 648; 2 H. C., § 760.]

Cited in 5 Wash. 696; 28 Wash. 34; 74 Wash. 547.

§ 979. Contribution Among Sureties.—Any one of several judgment defendants, and any one of several replevin bail having paid and satisfied the plaintiff, shall have the remedy provided in the last sec-

tion against the codefendants and cosureties to collect of them the ratable proportion each is equitably bound to pay. [L. '54, p. 211, § 431; Cd. '81, § 649; 2 H. C., § 761.]

§ 980. Surety Shall not Suffer Judgment, When.—No surety or his representative shall confess judgment or suffer judgment by default in any case where he is notified that there is a valid defense, if the principal will enter himself defendant to the action and tender to the surety or his representatives good security to indemnify him, to be approved by the court. [L. '54, p. 211, § 432; Cd. '81, § 650; 2 H. C., § 762.]

§ 981. Provisions Extended to Heirs of Sureties.—The foregoing provisions of this chapter shall extend to heirs, executors, and administrators of deceased persons, but the provisions of section 975, shall not operate against persons under legal disabilities. [L. '54, p. 211, § 433; Cd. 81, § 651; 2 H. C., § 763.]

CHAPTER XII.

Divorce and Alimony.

§ 982. Grounds for Divorce.—Divorces may be granted by the superior court on application of the party injured, for the following causes:—

1. When the consent to the marriage of the party applying for the divorce was obtained by force or fraud, and there has been no subsequent voluntary cohabitation;

2. For adultery on the part of the wife or of the husband, when unforgiven, and application is made within one year after it shall come to the knowledge of the party applying for divorce;

3. Impotency;

4. Abandonment for one year;

5. Cruel treatment of either party by the other, or personal indignities rendering life burdensome;

6. Habitual drunkenness of either party, or the neglect or refusal of the husband to make suitable provisions for his family;

7. The imprisonment of either party in the penitentiary, if complaint is filed during the term of such imprisonment;

And a divorce may be granted upon application of either party for any other cause deemed by the court sufficient, and the court shall be satisfied that the parties can no longer live together;

8. In case of incurable chronic mania or dementia of either party, having existed for ten years or more, the court may, in its discretion, grant a divorce. [Cf. L. '54, p. 405, § 1; Cd. '81, § 2000; L. '86, p. 120, § 1; L. '91, p. 42, § 1; 2 H. C., § 764.]

Cited in 7 Wash. 534; 15 Wash. 493; 24 Wash. 140, 465; 32 Wash. 403; 38 Wash. 492; 45 Wash. 186; 46 Wash. 672; 57 Wash. 643, 644; 66 Wash. 228; 68 Wash. 422, 423; 74 Wash. 671; 75 Wash. 390.

§ 983. Annulment of Marriage.—When there is any doubt as to the facts rendering a marriage void, either party may apply for, and on proof obtain, a decree of nullity of marriage. [Cf. L. '54, p. 406, § 2; Cd. '81, § 2001; L. '91, p. 42, § 2; 2 H. C., § 765.]

Cited in 50 Wash. 216; 70 Wash. 413.

§ 984. Resident may Apply, When.—Any person who has been a resident of the state for one year may file his or her complaint for a divorce or decree of nullity of marriage, under oath, in the superior court of the county where he or she may reside, and like proceedings shall be had thereon as in civil cases. [L. '54, p. 406, § 3; Cd. '81, § 2002; 2 H. C., § 766.]

Cited in 7 Wash. 534; 14 Wash. 116; 23 Wash. 311; 30 Wash. 640; 46 Wash. 672; 50 Wash. 216; 55 Wash. 349; 69 Wash. 132; 87 Wash. 152.

§ 985. Proof Required.—When the defendant does not answer, or, answering, admits the allegations in the complaint, the court shall require proof before granting a divorce or a decree of nullity. [L. '54, p. 406, § 4; Cd. '81, § 2003; 2 H. C., § 767.]

Cited in 23 Wash. 312; 46 Wash. 672.

§ 986. Defendant may File Cross-complaint.—The defendant may, in addition to his or her answer, file [a] cross-complaint for divorce, and the court may, in such case, grant a divorce, if any, in favor of either party, or as an [on] application of both. [L. '54, p. 406, § 5; Cd. '81, § 2004; 2 H. C., § 768.]

Cited in 23 Wash. 312; 34 Wash. 646.

§ 987. Both Parties Deemed Applying.—Both parties shall be considered as applying for a divorce when the complaints of both are filed in the same action, and when the defendant, by his or her cross-complaint, also applies for divorce. [Cf. L. '54, p. 406, § 6; Cd. '81, § 2005; L. '91, p. 42, § 3; 2 H. C., § 769.]

§ 988. Interlocutory Orders.—Pending the action for divorce the court, or judge thereof, may make, and by attachment enforce, such orders for the disposition of the persons, property and children of the parties as may be deemed right and proper, and such orders relative to the expenses of such action as will insure to the wife an efficient preparation of her case, and a fair and impartial trial thereof; and on decreeing or refusing to decree a divorce, the court may, in its discretion, require the husband to pay all reasonable expenses of the wife in the prosecution or defense of the action, when such divorce has been granted or refused, and give judgment there-

for. [Cf. L. '54, p. 406, § 7; Cd. '81, § 2006; L. '91, p. 43, § 4; 2 H. C., § 770.]

Cited in 4 Wash. 182; 21 Wash. 199; 22 Wash. 261; 42 Wash. 596; 47 Wash. 318; 49 Wash. 499, 501, 505; 55 Wash. 95, 378; 58 Wash. 99; 65 Wash. 311; 67 Wash. 478; 69 Wash. 282; 74 Wash. 285; 83 Wash. 673.

§ 989. Decree—Disposition of Property.—In granting a divorce, the court shall also make such disposition of the property of the parties as shall appear just and equitable, having regard to the respective merits of the parties, and to the condition in which they will be left by such divorce, and to the party through whom the property was acquired, and to the burdens imposed upon it for the benefit of the children, and shall make provision for the guardianship, custody, and support and education of the minor children of such marriage. [Cf. L. '54, p. 406, § 8; Cd. '81, § 2007; L. '91, p. 43, § 6; 2 H. C., § 771.]

Cited in 2 Wash. 419, 443; 21 Wash. 32, 200; 26 Wash. 217; 27 Wash. 371; 34 Wash. 237; 36 Wash. 278; 38 Wash. 606; 43 Wash. 424, 426; 46 Wash. 465; 47 Wash. 201; 49 Wash. 499, 501; 50 Wash. 216, 223, 224, 302; 63 Wash. 127; 67 Wash. 689; 69 Wash. 132, 282; 75 Wash. 190; 77 Wash. 135, 137; 78 Wash. 421; 84 Wash. 4.

§ 990. Divorce Dissolves Marriage as to Both Parties.—Whenever judgment of divorce from the bonds of matrimony is granted by the courts in this state, the court shall order a full and complete dissolution of the marriage as to both parties. [Cf. L. '54, p. 407, § 9; Cd. '81, § 2008; L. '91, p. 43, § 6; 2 H. C., § 772.]

Cited in 4 Wash. 703, 705; 22 Wash. 116.

§ 991. Remarriage Pending Appeal Unlawful.—Whenever a judgment or decree of divorce from the bonds of matrimony is granted by the courts in this state, neither party thereto shall be capable of contracting marriage with a third person until the period in which an appeal may be taken has expired; and in case an appeal is taken then neither party shall intermarry with a third person until the cause has been fully determined; and it shall be unlawful for any divorced person to intermarry with any third person within six months from the date of the entry of the judgment or decree granting the divorce, or in case an appeal is taken it shall be unlawful to contract such marriage until judgment be rendered on said appeal in the supreme court. All marriages contracted in violation of the provisions of this section, whether contracted within or without this state, shall be void. [L. '93, p. 225, § 1.]

Cited in 58 Wash. 623; 63 Wash. 290; 70 Wash. 413; 78 Wash. 648.

§ 992. Decree to Prohibit Remarriage Within Six Months.—Whenever judgment or decree of divorce from the bonds of matrimony is granted by any court in this state, such judgment or decree

shall expressly prohibit the plaintiff and defendant named therein from contracting any marriage with third parties within the period of six months from the date of the entry of such judgment or decree, and in case either party to said decree shall remarry within said period, he or she shall be deemed guilty of contempt of the court granting such judgment or decree, and shall be proceeded against and punished in like manner as in other cases of contempt of court. [L. '93, p. 226, § 2.]

Cited in 63 Wash. 290.

§ 993. Prosecuting Attorney to Prosecute for Contempt.—It shall be the duty of the prosecuting attorney of each county to prosecute for contempt any person violating the provisions of any decree mentioned in the last section rendered by any superior court of his county. [L. '93, p. 226, § 3.]

§ 994. Name of Wife Changed.—In all actions for a divorce, if a divorce be granted, the court may, for just and reasonable cause, change the name of the female, who shall thereafter be known and called by such name as the court shall in its order or decree appoint. [Cf. L. '54, p. 407, § 9; Cd. '81, § 2009; L. '91, p. 43, § 7; 2 H. C., § 773.]

§ 995. Prosecuting Attorney to Resist Undefended Actions.—Whenever a complaint for divorce remains undefended, it shall be the duty of the prosecuting attorney to resist such complaint; but no prosecuting attorney shall be employed in or allowed to conduct any action for a divorce on the part of the plaintiff or applicant in the courts of this state; nor shall any prosecuting attorney be allowed to resist a complaint for divorce in those cases where the defendant does not appear, or appearing admits the allegations of the complaint, if the attorney for the applicant is a partner of such prosecuting attorney in the practice of law, or keeps his office with such prosecuting attorney; but in all such cases the court or judge before whom the case is to be heard shall appoint an attorney to resist the complaint, who shall be entitled to the compensation allowed by law to prosecuting attorneys in such cases. [Cf. L. '54, p. 407, § 10; L. '79, p. 94, § 10; Cd. '81, § 2010; L. '85, p. 62, § 10; L. '91, p. 43, § 8; 2 H. C., § 774.]

§ 996. Trial—Appeal—Proceedings.—In all instances where the superior court shall grant a divorce, it shall be for cause distinctly stated in the complaint, and proved, and found by the court, and the court shall state the facts found upon which the decree is rendered; and when either party shall signify a desire to appeal from any of the orders of the court, in the disposition of the property

or of the children, the court shall certify the evidence adduced on the trial, and the supreme court shall be possessed of the whole case as fully as the superior court was, and may reverse, modify, or affirm said judgment, according to the real merits of the case. [L. '60, p. 320, § 12; Cd. '81, § 2011; 2 H. C., § 775.]

Cited in 23 Wash. 312; 46 Wash. 398; 49 Wash. 500; 54 Wash. 76; 63 Wash. 128, 290; 65 Wash. 311; 69 Wash. 282, 283; 71 Wash. 389; 78 Wash. 647.

§ 997. Practice—Trial Without Jury.—The practice in civil actions shall govern all proceedings in the trial of actions for divorce, except that trial by jury is dispensed with. [L. '60, p. 320, § 13; Cd. '81, § 2012; L. '91, p. 44, § 9; 2 H. C., § 776.]

CHAPTER XIII.

Change of Name.

§ 998. Name may be Changed upon Petition.—Any person desiring a change of his name or that of his child or ward may apply therefor to the superior court of the county in which he resides, by petition setting forth the reasons for such change; thereupon such court, in its discretion, may order a change of the name, and thenceforth the new name shall be in place of the former. [L. '77, p. 132, § 638; Cd. '81, § 635; 2 H. C., § 777.]

Cited in 17 Wash. 47.

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CHAPTER I.

Certiorari, Mandamus and Prohibition.

§ 999. Parties, How Designated.—The party prosecuting a special proceeding may be known as the plaintiff and the adverse party as the defendant. [L. '95, p. 114, § 1.]

Cited in 15 Wash. 92; 16 Wash. 353; 21 Wash. 454; 24 Wash. 546; 50 Wash. 96; 57 Wash. 211; 66 Wash. 386; 70 Wash. 441.

§ 1000. Judgment and Order in a Special Proceeding, Defined.—A judgment in a special proceeding is the final determination of the rights of the parties therein. The definitions of a motion and an order in a civil action are applicable to similar acts in a special proceeding. [L. '95, p. 115, § 2.]

Cited in 21 Wash. 255, 261.

§ 1001. Certiorari, Defined.—The writ of certiorari may be denominated the writ of review. [L. '95, p. 115, § 3.]

Cited in 21 Wash. 149; 28 Wash. 51.

§ 1002. When and by What Courts Granted.—A writ of review shall be granted by any court, except a police or justice court, when an inferior tribunal, board or officer, exercising judicial functions, has exceeded the jurisdiction of such tribunal, board or officer, or one acting illegally, or to correct any erroneous or void proceeding, or a proceeding not according to the course of the common law, and there is no appeal, nor in the judgment of the court, any plain, speedy and adequate remedy at law. [L. '95, p. 115, § 4.]

Cited in 18 Wash. 510; 19 Wash. 315; 26 Wash. 281; 32 Wash. 695; 34 Wash. 249; 35 Wash. 36, 126; 46 Wash. 304; 47 Wash. 509; 50 Wash. 655; 56 Wash. 356, 651; 73 Wash. 35, 36; 75 Wash. 95; 78 Wash. 560; 80 Wash. 190; 81 Wash. 364; 82 Wash. 34, 333.

§ 1003. Application for, How Made.—The application must be made on affidavit by the party beneficially interested, and the court may require a notice of the application to be given to the adverse party, or may grant an order to show cause why it should not be allowed, or may grant the writ without notice. [L. '95, p. 115, § 5.]

Cited in 15 Wash. 578; 23 Wash. 281.

§ 1004. Writ, How Directed.—The writ may be directed to the inferior tribunal, board or officer, to any other person having the custody of the record or proceedings to be certified. When directed to a tribunal the clerk, if there be one, must return the writ with the transcript required. [L. '95, p. 115, § 6.]

Cited in 75 Wash. 95.

§ 1005. Contents of Writ.—The writ of review must command the party to whom it is directed to certify fully to the court issuing the

writ, at a specified time and place, a transcript of the record and proceedings (describing or referring to them with convenient certainty), that the same may be reviewed by the court, and requiring the party, in the meantime, to desist from further proceedings in the matter to be reviewed. [L. '95, p. 115, § 7.]

Cited in 23 Wash. 282; 46 Wash. 171; 75 Wash. 82, 95.

§ 1006. Stay of Proceedings.—If a stay of proceedings be not intended, the words requiring the stay must be omitted from the writ. These words may be inserted or omitted, in the sound discretion of the court, but if omitted the power of the inferior court or office is not suspended or the proceedings stayed. [L. '95, p. 115, § 8.]

Cited in 75 Wash. 82.

§ 1007. Bill of Exceptions—Judgment on.—Questions of fact not apparent of record may be presented by bill of exception, and the court shall review the same, and, in case there is error, shall render such judgment in the case as of right ought to be entered, or reverse and remand the cause for further proceedings. [L. '95, p. 115, § 9.]

Cited in 75 Wash. 95.

§ 1008. Service of Writ.—The writ may be served as follows, except where different directions respecting the mode of service thereof are given by the court granting it:—

1. Where it is directed to a person or persons by name or by his or her official title or titles, or to a municipal corporation, it must be served upon each officer or other person to whom it is directed, or upon the corporation, in the same manner as a summons;

2. Where it is directed to a court, or to the judges of a court, having a clerk appointed pursuant to law, service upon the court or the judges thereof may be made by filing the writ with the clerk. [L. '95, p. 116, § 10.]

§ 1009. Defective Return—How Perfected—Hearing, Judgment. If the return of the writ be defective, the court may order a further return to be made. When a full return has been made, the court must hear the parties, or such of them as may attend for that purpose, and may thereupon give judgment, either affirming or annulling or modifying the proceedings below. [L. '95, p. 116, § 11.]

Cited in 18 Wash. 534; 46 Wash. 171.

§ 1010. Questions Involving Merits—What are.—The questions involving the merits to be determined by the court upon the hearing are:—

1. Whether the body or officer had jurisdiction of the subject matter of the determination under review;

2. Whether the authority, conferred upon the body or officer in relation to that subject matter, has been pursued in the mode required by law, in order to authorize it or him to make the determination;

3. Whether, in making the determination, any rule of law affecting the rights of the parties thereto has been violated to the prejudice of the relator;

4. Whether there was any competent proof of all the facts necessary to be proved, in order to authorize the making of the determination;

5. If there was such proof, whether there was, upon all the evidence, such a preponderance of proof, against the existence thereof, rendered in an action in a court, triable by a jury, [as] would be set aside by the court, as against the weight of evidence. [L. '95, p. 116, § 12.]

Cited in 24 Wash. 543; 60 Wash. 591; 78 Wash. 560; 83 Wash. 75.

§ 1011. Copy of Judgment Transmitted to Inferior Tribunal.—A copy of the judgment signed by the clerk, must be transmitted to the inferior tribunal, board or officer having the custody of the record or proceeding certified up. [L. '95, p. 117, § 13.]

Cited in 65 Wash. 390.

§ 1012. Judgment-roll.—A copy of the judgment signed by the clerk, entered upon or attached to the writ and return, constitute the judgment-roll. [L. '95, p. 117, § 14.]

§ 1013. Mandamus, Defined.—The writ of mandamus may be denominated a writ of mandate. [L. '95, p. 117, § 15.]

§ 1014. When and by What Court Issued.—It may be issued by any court, except a justice's or a police court, to any inferior tribunal, corporation, board or person, to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station, or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by such inferior tribunal, corporation, board or person. [L. '95, p. 117, § 16.]

Cited in 15 Wash. 432; 16 Wash. 277; 19 Wash. 386, 525, 676; 20 Wash. 44, 636; 24 Wash. 543; 28 Wash. 6; 30 Wash. 599; 31 Wash. 541; 32 Wash. 553; 33 Wash. 392; 35 Wash. 45; 36 Wash. 169; 38 Wash. 313; 46 Wash. 477; 50 Wash. 103.

§ 1015. Writ, When and upon What Issued.—The writ must be issued in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law. It must be issued upon affidavit on the application of the party beneficially interested. [L. '95, p. 117, § 17.]

Cited in 20 Wash. 44, 397; 32 Wash. 552; 36 Wash. 168; 39 Wash. 409; 74 Wash. 592.

§ 1016. Writ, Alternative or Peremptory.—The writ may be either alternative or peremptory. The alternative writ must state generally the allegation against the party to whom it is directed, and command such party, immediately after the receipt of the writ, or at some other specified time, to do the act required to be performed, or to show cause before the court at a specified time and place, why he has not done so. The peremptory writ must be in some similar form, except the words requiring the party to show cause why he has not done as commanded must be omitted and a return inserted. [L. '95, p. 117, § 18.]

Cited in 31 Wash. 539; 66 Wash. 80.

§ 1017. Notice.—When the application to the court is made without notice to the party, and the writ be allowed, the alternative must be first issued; and if the application be upon due notice and the writ be allowed, the peremptory writ may be issued in the first instance. The notice of the application, when given, must be at least ten days. The writ cannot be granted by default. The case must be heard by the court, whether the adverse party appear or not. [L. '95, p. 117, § 19.]

Cited in 80 Wash. 654.

§ 1018. Return of Writ—Answer.—On the return of the alternative, or the day on which the application for the writ is noticed, the party on whom the writ or notice has been served may show cause by answer, under oath, made in the same manner as an answer to a complaint in a civil action. [L. '95, p. 118, § 20.]

Cited in 14 Wash. 204; 15 Wash. 677; 19 Wash. 676; 60 Wash. 83; 73 Wash. 557.

§ 1019. Question of Fact, How Determined.—If an answer be made which raises a question as to a matter of fact essential to the determination of the motion, and affecting the substantial rights of the parties, and upon the supposed truth of the allegation of which the application for the writ is based, the court may, in its discretion, order the question to be tried before a jury, and postpone the argument until such trial can be had, and the verdict certified to the court. The question to be tried must be distinctly stated in the order for trial, and the county must be designated in which the same shall be had. The order may also direct the jury to assess any damages which the appellant [applicant] may have sustained, in case they find for him. [L. '95, p. 118, § 21.]

Cited in 14 Wash. 204; 15 Wash. 677; 19 Wash. 676; 25 Wash. 619; 30 Wash. 599.

§ 1020. Applicant may Demur to Answer or Countervail It by Proof.—On the trial the applicant is not precluded by the answer from any valid objections to its sufficiency, and may countervail it by proof, either in direct or denial or by way of avoidance. [L. '95, p. 118, § 22.]

Cited in 25 Wash. 618; 74 Wash. 557.

§ 1021. Motion for New Trial, Where Made.—The motion for new trial must be made in the court in which the issue of fact is tried. [L. '95, p. 118, § 23.]

§ 1022. Certification of Verdict—Hearing.—If no notice of a motion for new trial be given, or if given, the motion be denied, the clerk, within five days after rendition of the verdict or denial of the motion, must transmit to the court in which the application for the writ is pending, a certified copy of the verdict attached to the order of trial, after which either party may bring on the argument of the application, upon reasonable notice to the adverse party. [L. '95, p. 118, § 24.]

§ 1023. Court to Proceed to Hearing, When—Answer.—If no answer be made, the case must be heard on the papers of the applicant. If the answer raises only questions of law, or puts in issue immaterial statements not affecting the substantial rights of the party, the court must proceed to hear or fix a day for hearing the argument of the case. [L. '95, p. 118, § 25.]

Cited in 14 Wash. 205.

§ 1024. Damages Awarded, When — Peremptory Mandate. — If judgment be given for the applicant he may recover the damages which he has sustained, as found by the jury or as may be determined by the court or referee, upon a reference to be ordered, together with costs; and for such damages and costs an execution may issue, and a peremptory mandate must also be awarded without delay. [L. '95, p. 118, § 26.]

Cited in 21 Wash. 321.

§ 1025. Service of Writ.—The writ must be served in the same manner as a summons in a civil action, except when otherwise expressly directed by order of the court. Service upon a majority of the members of any board or body is service upon the board or body, whether at the time of the service the board or body was in session or not. [L. '95, p. 119, § 27.]

Cited in 44 Wash. 544.

§ 1026. Penalty for Disobeying Writ.—When a temporary mandate has been issued and directed to any inferior tribunal, corporation, board or person upon whom the writ has been personally served,

has, without just excuse, refused or neglected to obey the same, the court may, upon motion, impose a fine not exceeding one thousand dollars. In case of persistence in a refusal or disobedience, the court may order the party to be imprisoned until the writ is obeyed, and may make any orders necessary and proper for the complete enforcement of the writ. [L. '95, p. 119, § 28.]

§ 1027. Prohibition, Defined.—The writ of prohibition is the counterpart of the writ of mandate. It arrests the proceedings of any tribunal, corporation, board or person, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person. [L. '95, p. 119, § 29.]

Cited in 15 Wash. 675; 23 Wash. 121; 24 Wash. 543; 31 Wash. 99; 39 Wash. 408; 47 Wash. 157; 54 Wash. 152; 74 Wash. 693; 76 Wash. 379; 78 Wash. 560; 84 Wash. 273; 86 Wash. 497.

§ 1028. Where and When Issued.—It may be issued by any court, except police or justices' courts, to an inferior tribunal, or to a corporation, board or person, in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law. It is issued upon affidavit, on the application of the person beneficially interested. [L. '95, p. 119, § 30.]

Cited in 15 Wash. 675; 47 Wash. 157; 62 Wash. 243; 74 Wash. 693; 76 Wash. 379.

§ 1029. Writ may be Alternative or Peremptory.—The writ must be either alternative of peremptory. The alternative writ must state generally the allegations against the party to whom it is directed, and command such party to desist or refrain from further proceedings in the action or matter specified therein until the further order of the court from which it is issued, and to show cause before such court, at a specified time and place, why such party should not be absolutely restrained from any further proceedings in such action or matter. The peremptory writ must be in a similar form, except that the words requiring the party to show cause why he should not be absolutely restrained, etc., must be omitted and a return day inserted. [L. '95, p. 119, § 31.]

§ 1030. Provisions Relating to Mandate Applicable.—The provisions of sections 1013 to 1026, relating to writ of mandate, apply to this proceeding. [L. '95, p. 120, § 32.]

§ 1031. Writs of Review, Mandate and Prohibition Made Returnable, When.—Writs of review, mandate, and prohibition issued by the supreme court, or by a superior court, may, in the discretion of the court issuing the writ, be made returnable, and a hearing thereon be had at any time. [L. '95, p. 120, § 33.]

§ 1032. Rules of Practice and Proceedings.—Except as otherwise provided in this chapter, the provisions of the Code of Procedure con-

cerning civil actions are applicable to and constitute the rules of practice in the proceedings in this chapter.' [L. '95, p. 120, § 34.]

Cited in 15 Wash. 93; 21 Wash. 454; 25 Wash. 618; 30 Wash. 599.

§ 1033. Appeals.—From a final judgment in the superior court, in any such proceeding an appeal shall lie to the supreme court. [L. '95, p. 120, § 35.]

Cited in 86 Wash. 50.

CHAPTER II.

Information in the Nature of Quo Warranto.

§ 1034. Against Whom Filed.—An information may be filed against any person or corporation in the following cases:—

1. When any person shall usurp, intrude upon [into], or unlawfully hold or exercise any public office or franchise within the state, or any office in any corporation created by the authority of the state;

2. When any public officer shall have done or suffered any act, which, by the provisions of law, shall work a forfeiture of his office;

3. When several persons claim to be entitled to the same office or franchise, one information may be filed against any or all such persons in order to try their respective rights to the office or franchise;

4. When any association or number of persons shall act within this state as a corporation, without being legally incorporated;

5. Or where any corporation do or omit acts which amount to a surrender or a forfeiture of their rights and privileges as a corporation, or where they exercise powers not conferred by law. [Cf. L. '54, p. 216, §§ 468, 477; L. '77, p. 143, § 706; Cd. '81, § 702; 2. H. C., § 679.]

Cited in 2 Wash. 569, 571; 8 Wash. 400, 558; 10 Wash. 350; 14 Wash. 263; 16 Wash. 162; 20 Wash. 632; 28 Wash. 492, 507; 31 Wash. 103; 34 Wash. 164; 48 Wash. 198; 52 Wash. 640; 56 Wash. 658; 67 Wash. 384; 69 Wash. 558, 560.

§ 1035. By Whom Filed.—The information may be filed by the prosecuting attorney in the superior court of the proper county, upon his own relation, whenever he shall deem it his duty to do so, or shall be directed by the court or other competent authority, or by any other person on his own relation, whenever he claims an interest in the office, franchise, or corporation which is the subject of the information. [L. '54, p. 216, § 469; Cd. '81, § 703; 2 H. C., § 680.]

Cited in 2 Wash. 572; 22 Wash. 198; 28 Wash. 494, 503; 42 Wash. 412; 52 Wash. 640.

§ 1036. Information, Contents of.—The information shall consist of a plain statement of the facts which constitute the grounds of the

proceedings, addressed to the court. [L. '54, p. 216, § 470; Cd. '81, § 704; 2 H. C., § 681.]

Cited in 8 Wash. 558.

§ 1037. What Information Shall State.—Whenever an information shall be filed against a person for usurping an office by the prosecuting attorney, he shall also set forth therein the name of the person rightfully entitled to the office, with an averment of his right thereto; and when filed by any other person, he shall show his interest in the matter, and he may claim the damages he has sustained. [L. '54, p. 216, § 471; Cd. '81, § 705; 2 H. C., § 682.]

Cited in 2 Wash. 572; 52 Wash. 640.

§ 1038. Summons, Pleadings, Proceedings.—Whenever an information is filed, a notice signed by the relator shall be served and returned, as in other actions. The defendant shall appear and answer, or suffer default, and subsequent proceedings be had as in other cases. [L. '54, p. 217, § 472; Cd. '81, § 706; 2 H. C., § 683.]

Cited in 2 Wash. 571; 52 Wash. 640.

§ 1039. Judgment and Damages.—In every case wherein the right to an office is contested, judgment shall be rendered upon the rights of the parties, and for the damages the relator may show himself entitled to, if any, at the time of the judgment. [L. '54, p. 217, § 473; Cd. '81, § 707; 2 H. C., § 684.]

Cited in 2 Wash. 573; 43 Wash. 606; 52 Wash. 640.

§ 1040. Judgment for Relator.—If judgment be rendered in favor of the relator, he shall proceed to exercise the functions of the office, after he has been qualified as required by law, and the court shall order the defendant to deliver over all books and papers in his custody or within his power, belonging to the office from which he has been ousted. [L. '54, p. 217, § 474; Cd. '81, § 708; 2 H. C., § 685.]

Cited in 2 Wash. 573; 15 Wash. 346; 22 Wash. 199; 52 Wash. 640.

§ 1041. Order, How Enforced.—If the defendant shall refuse or neglect to deliver over the books and papers pursuant to the order, the court, or judge thereof, shall enforce the order by attachment and imprisonment. [L. '54, p. 217, § 475; Cd. '81, § 709; 2 H. C., § 686.]

Cited in 52 Wash. 640.

§ 1042. Action for Damages—Limitation.—When judgment is rendered in favor of the plaintiff, he may, if he has not claimed his damages in the information, have his action for the damages at any time within one year after the judgment. [L. '54, p. 217, § 476; Cd. '81, § 710; 2 H. C., § 687.]

Cited in 2 Wash. 573; 43 Wash. 606; 52 Wash. 640.

§ 1043. Judgment of Ouster or Forfeiture.—Whenever any defendant shall be found guilty of any usurpation of or intrusion into or unlawfully exercising any office or franchise within this state, or any office in any corporation created by the authority of this state, or when any public officer thus charged shall be found guilty of having done or suffered any act which by the provisions of the law shall work a forfeiture of his office, or when any association or number of persons shall be found guilty of having acted as a corporation without having been legally incorporated, the court shall give judgment of ouster against the defendant or defendants, and exclude him or them from the office, franchise, or corporate rights, and in case of corporations, the same shall be dissolved, and the court shall adjudge costs in favor of the plaintiff. [L. '54, p. 217, § 478; Cd. '81, § 711; 2 H. C., § 688.]

Cited in 15 Wash. 676; 16 Wash. 162; 48 Wash. 198; 49 Wash. 242; 52 Wash. 640.

§ 1044. Judgment Against Corporation.—If judgment be rendered against any corporation, or against any persons claiming to be a corporation, the court may cause the costs to be collected by executions against the persons claiming to be a corporation, or by attachment against the directors or other officers of the corporation, and shall restrain the corporation, appoint a receiver of its property and effects, take an account and make a distribution thereof among the creditors. The prosecuting attorney shall immediately institute proceedings for that purpose. [L. '54, p. 217, § 479; Cd. '81, § 712; 2 H. C., § 689.]

Cited in 15 Wash. 675; 48 Wash. 198; 49 Wash. 242.

§ 1045. Action to Recover Escheated or Forfeited Property.—Whenever any property shall [escheat or] be forfeited to the state for its use, the legal title shall be deemed to be in the state from the time of the [escheat or] forfeiture, and an information may be filed by the prosecuting attorney in the superior court for the recovery of the property, alleging the ground on which the recovery is claimed, and like proceedings and judgment shall be had as in civil action for the recovery of the property. [L. '54, p. 218, § 480; Cd. '81, § 713; 2 H. C., § 690.]

§ 1046. Costs.—When an information is filed by the prosecuting attorney, he shall not be liable for the costs, but when it is filed upon the relation of a private person such person shall be liable for costs unless the same are adjudged against the defendant. [L. '54, p. 218, § 481; Cd. '81, § 714; 2 H. C., § 691.]

§ 1047. Information to Annul Patent, etc.—An information may be prosecuted for the purpose of annulling or vacating any letters

patent, certificate, or deed granted by the proper authorities of this state, when there is reason to believe that the same were obtained by fraud, or through mistake or ignorance of a material fact, or when the patentee or those claiming under him have done or omitted an act in violation of the terms on which the letters, deeds, or certificates were granted, or have by any other means forfeited the interests acquired under the same. [L. '54, p. 218, § 482; Cd. '81, § 715; 2 H. C., § 692.]

§ 1048. Proceedings to Annul.—In such cases, the information may be filed by the prosecuting attorney upon his relation, or by any private person upon his relation, showing his interest in the subject matter; and the subsequent proceedings, judgment of the court, and awarding of costs shall conform to the above provisions, and such letters patent, deed, or certificate shall be annulled or sustained, according to the right of the case. [L. '54, p. 218, § 483; Cd. '81, § 716; 2 H. C., § 693.]

CHAPTER III.

Contempts and Their Punishment.

§ 1049. Contempts, Defined.—The following acts or omissions, in respect to a court of justice or proceedings therein, are deemed to be contempts of court:—

1. Disorderly, contemptuous, or insolent behavior toward the judge while holding the court, tending to impair its authority, or to interrupt the due course of a trial or other judicial proceedings;

2. A breach of the peace, boisterous conduct, or violent disturbance tending to interrupt the due course of a trial or other judicial proceeding;

3. Misbehavior in office, or other willful neglect or violation of duty by an attorney, clerk, sheriff, or other person appointed or selected to perform a judicial or ministerial service;

4. Deceit, abuse of the process, or proceedings of the court by a party to an action, suit, or special proceeding;

5. Disobedience of any lawful judgment, decree, order, or process of the court;

6. Assuming to be an attorney or other officer of the court, and acting as such without authority in a particular instance;

7. Rescuing any person or property in the lawful custody of an officer, held by such officer under an order or process of such court;

8. Unlawfully detaining a witness or party to an action, suit, or proceeding while going to, remaining at, or returning from the court where the same is for trial;

9. Any other unlawful interference with the process or proceedings of a court;

10. Disobedience of a subpoena duly served, or refusing to be sworn or answer as a witness;

11. When summoned as a juror in a court, improperly conversing with a party to an action, suit, or proceeding to be tried at such court, or with any other person in relation to the merits of such action, suit, or proceeding, or receiving a communication from a party or other person in respect to it, without immediately disclosing the same to the court;

12. Disobedience by an inferior tribunal, magistrate, or officer of the lawful judgment, decree, order, or process of a superior court, or proceeding in an action, suit, or proceeding contrary to law, after such action, suit, or proceeding shall have been removed from the jurisdiction of such inferior tribunal, magistrate, or officer. [L. '69, p. 167, § 667; Cd. '81, § 725; 2 H. C., § 778.]

Cited in 19 Wash. 242; 25 Wash. 528; 29 Wash. 577; 40 Wash. 220; 71 Wash. 496; 79 Wash. 555, 556.

See supra, § 630, contempt in proceedings supplemental to execution.
See supra, § 696, contempt for failure of garnishee to deliver property to sheriff.
See supra, §§ 732–734, contempt for violating injunction.
See supra, § 746, contempt for failure to deposit money, etc.
See supra, § 992, contempt for remarrying in violation of decree.
See supra, § 1026, penalty for disobeying writ of mandate.
See infra, § 1220, contempt for failure to obey subpoena.
See infra, § 1891 et seq., contempt and punishment in justice court.
See infra, § 2040, contempt by grand jurors or other officers in disclosing facts.

§ 1050. Punishment for.—Every court of justice and every judicial officer has power to punish contempt by fine or imprisonment, or both. But such fine shall not exceed three hundred dollars, nor the imprisonment six months; and when the contempt is not [one] of those mentioned in subdivisions one and two of the last section, it must appear that the right or remedy of a party to an action, suit, or proceeding was defeated or prejudiced thereby, before the contempt can be punished otherwise than by a fine not exceeding one hundred dollars. [L. '69, p. 168, § 688; Cd. '81, § 726; 2 H. C., § 779.]

Cited in 40 Wash. 220; 66 Wash. 642; 79 Wash. 556.

§ 1051. Contempts in Presence of Court, How Punished.—When a contempt is committed in the immediate view and presence of the court or officer, it may be punished summarily, for which an order must be made reciting the facts as occurring in such immediate view and presence, determining that the person proceeded against is thereby guilty of contempt, and that he be punished as therein prescribed. [L. '69, p. 168, § 669; Cd. '81, § 727; 2 H. C., § 780.]

Cited in 25 Wash. 528; 26 Wash. 70; 39 Wash. 136; 40 Wash. 524, 526; 63 Wash. 28, 29.

§ 1052. Procedure in Other Cases.—In cases other than those mentioned in the preceding section, before any proceedings can be taken therein, the facts constituting the contempt must be shown by an affidavit presented to the court or judicial officer, and thereupon such court or officer may either make an order upon the person charged to show cause why he should not be arrested to answer, or issue a warrant of arrest to bring such person to answer in the first instance. [L. '69, p. 169, § 670; Cd. '81, § 728; 2 H. C., § 781.]

Cited in 25 Wash. 528; 26 Wash. 70; 29 Wash. 577; 40 Wash. 524, 526; 82 Wash. 86.

§ 1053. Defendant may be Produced if in Custody.—If the party charged be in custody of an officer by virtue of a legal order or process, civil or criminal, except upon a sentence for a felony, an order may be made for the production of such person by the officer having him in custody that he may answer, and he shall thereupon be produced and held until an order be made for his disposal. [L. '69, p. 169, § 671; Cd. '81, § 729; 2 H. C., § 782.]

Cited in 67 Wash. 318.

§ 1054. How Prosecuted.—In the proceeding for a contempt, the state is the plaintiff. In all cases of public interest, the proceeding may be prosecuted by the prosecuting attorney on behalf of the state, and in all cases where the proceeding is commenced upon the relation of a private party, such party shall be deemed a coplaintiff with the state. [L. '69, p. 169, § 672; Cd. '81, § 730; 2 H. C., § 783.]

Cited in 15 Wash. 349; 39 Wash. 134; 63 Wash. 599; 67 Wash. 303; 79 Wash. 553.

§ 1055. Warrant, How Executed.—Whenever a warrant of arrest is issued pursuant to this chapter, the court or judicial officer shall direct therein whether the person charged may be let to bail for his appearance upon the warrant, or detained in custody without bail, and if he may be bailed, the amount in which he may be let to bail. Upon executing the warrant of arrest, the sheriff must keep the person in actual custody, bring him before the court or judicial officer, and detain him until an order be made in the premises, unless the person arrested execute and deliver to the sheriff, at any time before the return day of the warrant, a bond, with two sufficient sureties, to the effect that he will appear on such return day and abide the order or judgment of the court or officer thereupon. [L. '69, p. 169, § 673; Cd. '81, § 731; 2 H. C., § 784.]

§ 1056. Return of Warrant—Investigation.—The sheriff shall return the warrant of arrest and the bond, if any, given him by the defendant, by the return day therein specified. When the defendant has been brought up or appeared, the court or judicial officer shall

proceed to investigate the charge by examining such defendant and witnesses for or against him, for which an adjournment may be had from time to time, if necessary. [L. '69, p. 169, § 674; Cd. '81, § 732; 2 H. C., § 785.]

Cited in 40 Wash. 220; 67 Wash. 318.

§ 1057. Judgment and Sentence.—Upon the evidence so taken, the court or judicial officer shall determine whether or not the defendant is guilty of the contempt charged; and if it be determined that he is so guilty, shall sentence him to be punished as provided in this chapter. [L. '69, p. 170, § 675; Cd. '81, § 733; 2 H. C., § 786.]

§ 1058. Indemnity to Injured Party.—If any loss or injury to a party in an action, suit, or proceeding, prejudicial to his rights therein, have been caused by the contempt, the court or judicial officer, in addition to the punishment imposed for the contempt, may give judgment that the party aggrieved recover of the defendant a sum of money sufficient to indemnify him, and to satisfy his costs and disbursements, which judgment, and the acceptance of the amount thereof, is a bar to any action, suit, or proceeding by the aggrieved party for such loss or injury. [L. '69, p. 170, § 676; Cd. '81, § 734; 2 H. C., § 787.]

Cited in 55 Wash. 8, 11, 12, 15.

§ 1059. Imprisonment, When.—When the contempt consists in the omission or refusal to perform an act which is yet in the power of the defendant to perform, he may be imprisoned until he shall have performed it, and in such case the act must be specified in the warrant of commitment. [L. '69, p. 170, § 677; Cd. '81, § 735; 2 H. C., § 788.]

Cited in 21 Wash. 200; 26 Wash. 216; 71 Wash. 191, 497.

§ 1060. Offender Liable to Indictment, When.—Persons proceeded against according to the provisions of this chapter are also liable to indictment [or information] for the same misconduct, if it be an indictable offense, but the court before which a conviction is had on the indictment [or information] in passing sentence shall take into consideration the punishment before inflicted. [L. '69, p. 170, § 678; Cd. '81, § 736; 2 H. C., § 789.]

Cited in 19 Wash. 243.

§ 1061. Alias Warrant—Prosecution of Bond.—When the warrant of arrest has been returned served, if the defendant do not appear on the return day, the court or judicial officer may issue another warrant of arrest, or may order the bond to be prosecuted, or both. If the bond be prosecuted and the aggrieved party join in the action, and the sum specified therein be recovered, so much thereof as will

compensate such party for the loss or injury sustained by reason of the misconduct for which the warrant was issued shall be deemed to be recovered for such party exclusively. [L. '69, p. 170, § 679; Cd. '81, § 737; 2 H. C., § 790.]

§ 1062. Appeal.—Either party to a judgment in a proceeding for a contempt may appeal therefrom in like manner and with like effect as from judgment in an action, but such appeal shall not have the effect to stay the proceedings in any other action, suit, or proceeding, or upon any judgment, decree, or order therein, concerning which or wherein such contempt was committed. Contempts of justices' courts are punishable in the manner specially provided for in the chapter relating to justices of the peace and to their practice and jurisdiction. [L. '69, p. 171, § 680; Cd. '81, § 738; 2 H. C., § 791.]

Cited in 14 Wash. 685; 20 Wash. 182; 28 Wash. 591; 53 Wash. 70; 55 Wash. 5; 73 Wash. 297.

CHAPTER IV.

Habeas Corpus.

§ 1063. Who may Prosecute Writ.—Every person restrained of his liberty, under any pretense whatever, may prosecute a writ of habeas corpus to inquire into the cause of the restraint, and shall be delivered therefrom when illegal. [L. '54, p. 212, § 434; Cd. '81, § 666; 2 H. C., § 711.]

§ 1064. Parents, etc., may have Writ.—Writs of habeas corpus shall be granted in favor of parents, guardians, masters, and husbands, and to enforce the rights and for the protection of infants and insane persons; and the proceedings shall in all cases conform to the provisions of this chapter. [L. '54, p. 214, § 456; Cd. '81, § 688; 2 H. C., § 733.]

§ 1065. Application for, How Made.—Application for the writ shall be made by petition, signed and verified either by the plaintiff or by some person in his behalf, and shall specify,—

1. By whom the petitioner is restrained of his liberty, and the place where (naming the parties if they are known, or describing them if they are not known);

2. The cause or pretense of the restraint, according to the best of the knowledge and belief of the applicant;

3. If the restraint be alleged to be illegal, in what the illegality consists. [L. '54, p. 212, § 422; Cd. '81, § 667; 2 H. C., § 712.]

§ 1066. By Whom Granted.—Writs of habeas corpus may be granted by the supreme court or superior court, or by any judge of either court, and upon application the writ shall be granted without delay. [L. '54, p. 212, § 436; Cd. '81, § 668; 2 H. C., § 713.]

Cited in 37 Wash. 260.

§ 1067. To Whom Directed—Contents of.—The writ shall be directed to the officer or party having the person under restraint, commanding him to have such person before the court or judge at such time and place as the court or judge shall direct to do and receive what shall be ordered concerning him, and have then and there the writ. [L. '54, p. 212, § 437; Cd. '81, § 669; 2 H. C., § 714.]

§ 1068. Delivery of Writ to Sheriff—Service.—If the writ be directed to the sheriff, it shall be delivered by the clerk to him without delay. [L. '54, p. 212, § 438; Cd. '81, § 670; 2 H. C., § 715.]

§ 1069. Service of Writ Directed to Person Other Than Sheriff.—If the writ be directed to any other person, it shall be delivered to the sheriff, and shall be by him served by delivering the same to such person without delay. [L. '54, p. 212, § 439; Cd. '81, § 671; 2 H. C., § 716.]

§ 1070. Service When Person not Found.—If the person to whom such writ is directed cannot be found or shall refuse admittance to the sheriff, the same may be served by leaving it at the residence of the person to whom it is directed, or by posting the same on [in] some conspicuous place, either on his dwelling-house or where the party is confined or under restraint. [L. '54, p. 212, § 440; Cd. '81, § 672; 2 H. C., § 717.]

§ 1071. Return—Attachment for Refusal.—The sheriff or other person to whom the writ is directed shall make immediate return thereof, and if he refuses after due service to make return, the court shall enforce obedience by attachment. [L. '54, p. 213, § 441; Cd. '81, § 673; 2 H. C., § 718.]

§ 1072. Substance and Form of Return.—The return must be signed and verified by the person making it, who shall state,—

1. The authority or cause of the restraint of the party in his custody;

2. If the authority shall be in writing, he shall return a copy and produce the original on the hearing;

3. If he has had the party in his custody, or under his restraint, and has transferred him to another, he shall state to whom, the time, place, and cause of the transfer. He shall produce the party at the hearing, unless prevented by sickness or infirmity, which must be shown in the return. [L. '54, p. 213, § 442; Cd. '81, § 674; 2 H. C., § 719.]

§ 1073. Proceedings—Pleadings.—The court or judge, if satisfied of the truth of the allegation of sickness or infirmity, may proceed to decide on the return, or the hearing may be adjourned until the party can be produced, or for other good cause. The plaintiff may

except to the sufficiency of or controvert the return, or any part thereof, or allege any new matter in evidence. The new matter shall be verified, except in cases of commitment on a criminal charge. The return and pleadings may be amended without causing a [any] delay. [L. '54, p. 213, § 443; Cd. '81, § 675; 2 H. C., § 720.]

§ 1074. Hearing and Determination.—The court or judge shall thereupon proceed in a summary way to hear and determine the cause, and if no legal cause be shown for the restraint or for the continuation thereof, shall discharge the party. [L. '54, p. 213, § 444; Cd. '81, § 676; 2 H. C., § 721.]

§ 1075. Restrictions upon Inquiry.—No court or judge shall inquire into the legality of any judgment or process whereby the party is in custody, or discharge him when the term of commitment has not expired, in either of the cases following:—

1. Upon any process issued on any final judgment of a court of competent jurisdiction;

2. For any contempt of any court, officer or body having authority in the premises to commit; but an order of commitment, as for a contempt upon proceedings to enforce the remedy of a party, is not included in any of the foregoing specifications;

3. Upon a warrant issued from the superior court upon an indictment or information. [L. '54, p. 213, § 445; Cd. '81, § 677; L. '91, p. 82, § 1; 2 H. C., § 722.]

Cited in 6 Wash. 158; 19 Wash. 308; 21 Wash. 198, 398; 25 Wash. 530; 33 Wash. 35; 40 Wash. 246, 247, 249; 56 Wash. 396; 58 Wash. 689; 84 Wash. 62.

§ 1076. Admission to Bail Instead of Discharge.—No person shall be discharged from an order of commitment issued by any judicial or peace officer for want of bail, or in cases not bailable on account of any defect in the charge or process, or for alleged want of probable cause; but in all cases the court or judge shall summon the prosecuting witnesses, investigate the criminal charge, and discharge, admit to bail, or recommit the prisoner, as may be just and legal, and recognize witnesses when proper. [L. '54, p. 213, § 446; Cd. '81, § 678; 2 H. C., § 723.]

Cited in 1 Wash. 384; 43 Wash. 20.

§ 1077. Writ for Purpose of Bail.—The writ may be had for the purpose of admitting a prisoner to bail in civil and criminal actions. When any person has an interest in the detention, [and] the prisoner shall not be discharged until the person having such interest is notified. [L. '54, p. 214, § 447; Cd. '81, § 679; 2 H. C., § 724.]

Cited in 37 Wash. 260; 84 Wash. 63.

§ 1078. Compelling Attendance of Witnesses.—The court or judge shall have power to require and compel the attendance of witnesses, and to do all other acts necessary to determine the case. [L. '54, p. 214, § 448; Cd. '81, § 680; 2 H. C., § 725.]

§ 1079. Officer not Liable, When.—No sheriff or other officer shall be liable to a civil action for obeying any writ of habeas corpus, or order of discharge made thereon. [L. '54, p. 214, § 449; Cd. '81, § 681; 2 H. C., § 726.]

§ 1080. Warrant to Prevent Removal.—Whenever it shall appear by affidavit that anyone is illegally held in custody or restraint, and that there is good reason to believe that such person will be carried out of the jurisdiction of the court or judge before whom the application is made, or will suffer some irreparable injury before compliance with the writ can be enforced, such court or judge may cause a warrant to be issued reciting the facts, and directed to the sheriff or any constable of the county, commanding him to take the person thus held in custody or restraint, and forthwith bring him before the court or judge, to be dealt with according to the law. [L. '54, p. 214, § 450; Cd. '81, § 682; 2 H. C., § 727.]

§ 1081. What Warrant may Include.—The court or judge may also, if the same be deemed necessary, insert in the warrant a command for the apprehension of the person charged with causing the illegal restraint. [L. '54, p. 214, § 451; Cd. '81, § 683; 2 H. C., § 728.]

§ 1082. Warrant, How Executed.—The officer shall execute the writ by bringing the person therein named before the court or judge, and the like return of proceedings shall be required and had as in case of writs of habeas corpus. [L. '54, p. 214, § 452; Cd. '81, § 684; 2 H. C., § 729.]

§ 1083. Temporary Orders.—The court or judge may make any temporary orders in the cause or disposition of the party during the progress of the proceedings that justice may require. The custody of any party restrained may be changed from one person to another, by order of the court or judge. [L. '54, p. 214, § 453; Cd. '81, § 685; 2 H. C., § 730.]

§ 1084. Writ Issued on Sunday, When.—Any writ or process authorized by this chapter may be issued and served, in cases of emergency, on Sunday. [L. '54, p. 214, § 454; Cd. '81, § 686; 2 H. C., § 731.]

§ 1085. Writs—Issuance, Service and Return—Amendments.—All writs and other process authorized by this chapter shall be issued by

the clerk of the court, and sealed with the seal of such court, and shall be served and returned forthwith, unless the court or judge shall specify a particular time for such return. And no writ or other process shall be disregarded for any defect therein, if enough is shown to notify the officer or person of the purport of the process. Amendments may be allowed and temporary commitments, when necessary. [L. '54, p. 214, § 455; Cd. '81, § 687; 2 H. C., § 732.]

Cited in 1 Wash. 385.

CHAPTER V.

Assignments for the Benefit of Creditors.

§ 1086. Must be General—Effect of.—No general assignment of property by an insolvent, or in contemplation of insolvency, for the benefit of creditors, shall be valid unless it be made for the benefit of all his creditors in proportion to the amount of their respective claims; and after the payment of the costs and disbursements thereof, including the attorney fees allowed by law in case of judgment, out of the estate of the insolvent, such claim or claims shall be deemed as presented, and shall share pro rata with other claims as hereinafter provided. [Cf. L. '90, p. 83, § 1; 1 H. C., § 2741; L. '93, p. 247, § 1.]

Cited in 4 Wash. 259, 784; 5 Wash. 340, 345, 668, 669, 670, 672; 6 Wash. 42; 9 Wash. 64, 455; 24 Wash. 97; 44 Wash. 46, 516.

§ 1087. Assent Presumed.—In case of an assignment for the benefit of all the creditors of the assignor, the assent of the creditors shall be presumed. [L. '90, p. 83, § 2; 1 H. C., § 2742.]

§ 1088. How Made, Procedure Thereafter.—The debtor shall annex to such assignment an inventory, under oath, of all his estate, real and personal, according to the best of his knowledge, and also a list of his creditors, with their postoffice address [es], and a list of the amount of their respective demands, but such inventory shall not be conclusive as to the amount of the debtor's estate. Every assignment shall be in writing, and duly acknowledged, in the same manner as conveyances of real estate, and recorded in the record of deeds of the county where the person making the same resides, or where the business in respect to which the same is made has been carried on. Upon the application of two or more creditors of said debtor therefor, by petition to the judge of the superior court of the county in which such assignment is or should be recorded, at any time, within thirty days from the making or recording of such assignment, it shall be the duty of said superior judge to direct the clerk of said superior court to order a meeting of the creditors of said debtor to choose an assignee of the estate of said debtor in lieu of the assignee named

by the debtor in his assignment; and thereupon the clerk of said court shall forthwith give notice to all the creditors of said debtor to meet at his office at a time stated, not to exceed fifteen days from the date of such notice, to select one or more assignees in the place of the assignee named by the debtor in his assignment. Such creditors may appear in person or by proxy, and a majority in number and value of said creditors attending such meeting shall select one or more assignees; and in the event that no one shall receive a majority vote of said creditors, who represent at least one-half in amount of all claims represented at such meeting, (then, and in that event, said clerk shall certify that fact to the judge of the superior court aforesaid, and thereupon said superior judge shall select and appoint an assignee. When such assignee shall have been selected by such creditors, or appointed by the superior judge, as herein provided, then the assignee named in the debtor's assignment shall forthwith make to the assignee elected by the creditors, or appointed by the superior judge, an assignment and conveyance of all the estate, real and personal, that has been assigned or conveyed to him by said debtor; and such assignee so elected by the creditors or appointed by the superior judge, upon giving the bond required of an assignee by this chapter, shall possess all the powers and be subject to all the duties imposed by this chapter, as fully, to all intents and purposes, as though named in the debtor's assignment. From the time of the pending of an application to elect an assignee by the creditors, and until the time shall be terminated by an election or appointment as herein provided, no property of the debtor, except perishable property, shall be sold or disposed of by any assignee; but the same shall be safely and securely kept until the election or appointment of an assignee, as herein provided, No creditor shall be entitled to vote at any such meeting called for the purpose of electing an assignee, until he shall have presented to the clerk of the superior court, who shall preside at such meeting, a verified statement of his claim against the debtor. [L. '90, p. 83, § 3; 1 H. C., § 2743.]

§ 1089. Inventory and Valuation—Bond.—The assignee shall also forthwith file with the clerk of the superior court of the county where such assignment will be recorded a true and full inventory and valuation of said estate, under oath, as far as the same has come to his knowledge, and shall then and there enter into bonds to the state of Washington, for the use of the creditors, in double the amount of the inventory and valuation, with two or more sufficient sureties, to be approved by said clerk, for the faithful performance of said trust; and the assignee may thereupon proceed to perform any duties necessary to carry into effect the intention of said assignment. [L. '90, p. 85, § 4; 1 H. C., § 2744.]

§ 1090. Notice of Assignment.—The assignee shall forthwith give notice of such assignment, by publication in some newspaper in the county, if any, and if none, then in the nearest county thereto, which publication shall be continued at least six weeks; and shall forthwith send a notice by mail to each creditor of whom he shall be informed, directed to their usual place of residence, and notifying the creditors to present their claims, under oath, to him within three months thereafter. [L. '90, p. 85, § 5; 1 H. C., § 2745.]

Cited in 10 Wash. 315.

§ 1091. List of Creditors.—At the expiration of three months from the time of first publishing notice, the assignee shall report and file with the clerk of the court a true and full list, under oath, of all such creditors of the assignor as shall have claims to be such, with a statement of their claims, and also an affidavit of publication of notice, and a list of the creditors, with their places of residence, to whom notice has been sent by mail, and the date of mailing, duly verified. [L. '90, p. 85, § 6; 1 H. C., § 2746.]

§ 1092. Exceptions to Claims.—Any person interested may appear within three months after filing such report, and file with said clerk any exceptions to the claim or demand of any creditor, and the clerk shall forthwith cause notice thereof to be given to the creditor, which shall be served [and returned] as in case of summons; and the court shall proceed to hear the proof and allegation of the parties in the premises, and shall render such judgment therein as shall be just, and may allow a trial by jury thereon. [L. '90, p. 85, § 7; 1 H. C., § 2747.]

Cited in 5 Wash. 338; 10 Wash. 315.

Section altered to conform to present organization of courts.

§ 1093. Dividends, Accounts, Compensation.—If no exception be made to the claim of any creditor, or if the same has been adjudicated, the court shall order the assignee to make from time to time fair and equal dividends among the creditors of the assets in his hands, in proportion to their claims, and as soon as may be to render a final account of said trust to said court, which may allow such commissions to said assignee in the final settlement as may be considered right and just, not exceeding, however, the fees and compensation allowed by law to administrations and executors. [Cf. L. '90, p. 86, § 8; 1 H. C., § 2748; L. '93, p. 39, § 1.]

Cited in 5 Wash. 338, 348.

§ 1094. Assignee Subject to Control of Court.—The assignee shall at all times be subject to the order of the court or judge and the said court or judge may, by citation and attachment, compel the assignee, from time to time, to file reports of his proceedings, and

of the situation and condition of the trust, and to proceed in the faithful execution of the duties required by this chapter. [L. '90, p. 86, § 9; 1 H. C., § 2749.]

Cited in 5 Wash. 339.

§ 1095. Not Void, When—Citation to Debtor.—No assignment shall be declared fraudulent or void for want of any list or inventory as provided in this chapter. The court or judge may, upon application of the assignee, or any creditor, compel the appearance in person of the debtor before such court or judge forthwith, to answer under oath such matters as may then and there be inquired of him; and such debtor may then and there be fully examined under oath as to the amount and situation of his estate, and the names of the creditors, and amounts due to each, with their places of residence, and the court may compel the delivery to the assignee of any property or estate embraced in the assignment. [L. '90, p. 86, § 10; 1 H. C., § 2750.]

Cited in 5 Wash. 671; 39 Wash. 341.

§ 1096. Additional Inventory.—The assignee shall, from time to time, file with the clerk of the court an inventory and valuation of any additional property which may come into his hands, under such assignment, after the filing of the first inventory, and the clerk may thereupon require him to give additional security. [L. '90, p. 86, § 11; 1 H. C., § 2751.]

Cited in 5 Wash. 341.

§ 1097. Claims not Due, Limitation.—Any creditor may claim debts to become due, as well as debts due, but on debts not due, a reasonable abatement shall be made when the same are not drawing interest; and all creditors who shall not exhibit their claims within the term of three months from the publication of notice as aforesaid, shall not participate in the dividends until after payment in full of all claims presented within said term and allowed by the court. [L. '90, p. 86, § 12; 1 H. C., § 2752.]

§ 1098. Authority of Assignee—Sales.—Any assignee as aforesaid shall have as full power and authority to dispose of all estate, real and personal, assigned, as the debtor had at the time of the assignment, and to sue for and recover, in the name of such assignee, everything belonging or appertaining to said estate, and generally to do whatever the debtor might have done in the premises; but no sale of real estate belonging to said trust shall be made without notice published, as in case of sale of real estate on execution, unless the court shall order and direct otherwise. [L. '90, p. 87, § 13; 1 H. C., § 2753.]

Cited in 4 Wash. 786; 5 Wash. 670, 672, 673.

§ 1099. Proceedings upon Death or Failure of Assignee to Act.—In case any assignee shall die before closing of his trust, or in case any assignee shall fail or neglect, for the period of thirty days after the making of any assignment, to file an inventory and valuation and give bonds as required by this chapter, the superior court or judge thereof of the county where such assignment may be recorded, on the application of any person interested, shall appoint some person to execute the trust embraced in such assignment; and such person, on giving the bond with sureties, as required of the assignee, shall possess all the power conferred on such assignee, and shall be subject to all the duties hereby imposed as fully as though named in the assignment; and in case any surety shall be discovered insufficient; or, on complaint before the court or judge, it should be made to appear that any assignee is guilty of wasting or misapplying the trust estate, said court or judge may direct and require additional security, and may remove such assignee, and may appoint others instead; and such person so appointed, on giving bond, shall have full power to execute such duties, and to demand and sue for all estate in the hands of the person removed, and to demand and recover the amount and value of all moneys and property or estate so wasted and misapplied which he may neglect or refuse to make satisfaction for from such person and his sureties. [L. '90, p. 87, § 14; 1 H. C., § 2754.]

Cited in 13 Wash. 614; 54 Wash. 526.

§ 1100. Discharge of Assignor, When.—Whenever it shall appear to the satisfaction of the court or judge thereof when the assignment is pending upon the final reports of the assignee chosen by the creditors or otherwise that the assignor has been guilty of no fraud in making an assignment or concealment or diversion of the property or any part thereof, in order to keep the same beyond the reach of creditors, and has acted justly and fairly in all respects; that the estate has been made to realize the fullest amount possible and that the expenses of the assignment have been paid. The judge of the court having jurisdiction of the matter shall, upon the allowance of the final account of the assignee, make an order discharging the assignor or assignors as the case may be from any further liability on account of any indebtedness existing prior to the making of such assignment, and thereafter such assignor shall be freed from any liability on account of any unsatisfied portion of the indebtedness existing prior to the making of the assignment. [Cf. L. '90, p. 88, § 15; 1 H. C., § 2755; L. '95, p. 378, § 1.]

Cited in 5 Wash. 340; 24 Wash. 97; 35 Wash. 166.

§ 1101. Sheriff not to be Receiver or Assignee.—It shall be unlawful for the judge of any court of record or the creditors of an in-

solvent debtor to appoint the sheriff of the county receiver or assignee in any case of insolvency or assignment. [L. '93, p. 462, § 1.]

Cited in 7 Wash. 77.

§ 1102. Right of Exemption.—Hereafter any person making a general assignment for the benefit of creditors, under any statute of this state, shall have the right to claim, and have set aside to him, as exempt from the operation of such assignment, all real and personal property which is, at the time of such assignment, exempt from levy by execution or attachment, under the laws of this state. [L. '97, p. 6, § 1.]

Cited in 45 Wash. 618.

§ 1103. How Claimed—Objections.—Such assignor shall, if he desires to claim the benefit of the last preceding section, state in such assignment, or in the inventory annexed thereto, what property he claims as exempt, giving a description thereof sufficient for identification. Any creditor of such assignor who believes any of the property so claimed as exempt is not so in fact shall have the right to make objection to such exemption claim at any time prior to the expiration of the time for presentment of claims against such assignor to his assignee. Such objection shall be made by delivering to the assignor and the assignee, and filing with the clerk of the court having jurisdiction of the assignment, a notice in writing, clearly pointing out the part or parts of such exemption claim objected to, and the ground of such objection. When the time above provided for the service and filing of objections has expired, the assignor, upon application to said court, shall have a right to the summary hearing of the said objections, and at such hearing the court shall determine and adjudge to the assignor his lawful exemptions. If any part of the exemptions claimed by the assignor shall be denied, the court shall direct the assignee to pay, out of the funds in his hands, the costs of the hearing, if any, as a part of the expenses of the assignment proceedings. The court may, at its discretion, if it find any claim made for exemption to be fraudulent and made in bad faith, deny such exemption. If no objection to the said exemption claim is served and filed prior to the expiration of the time for presentment of claims to the assignee, the assignor shall be entitled as of course to an order setting aside to him the exemptions claimed by him as aforesaid, and it shall be the duty of the assignee forthwith to deliver the same to him. [L. '97, p. 6, § 2.]

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CHAPTER I.

The Foreclosure of Chattel Mortgages.

§ 1104. Chattel Mortgage—How Foreclosed.—Any mortgage of personal property, when the debt to secure which the mortgage was given is due, may be foreclosed by notice and sale as herein provided; or it may be foreclosed by action in the superior court having jurisdiction in the county in which the property is situated. [Cf. L. '75, p. 46, § 18; L. '79, p. 105, § 6; Cd. '81, § 1991; 1 H. C., § 1650.]

Cited in 16 Wash. 109; 27 Wash. 286; 33 Wash. 640; 48 Wash. 562; 50 Wash. 122; 78 Wash. 137; 87 Wash. 271.

§ 1105. Notice, Contents of.—The notice must contain a full description of the property mortgaged, together with time and place of sale, also a statement of the amount due, and must be signed by the mortgagee or his attorney. [L. '75, p. 46, § 19; L. '79, p. 106, § 7; Cd. '81, § 1992; 1 H. C., § 1651.]

Cited in 21 Wash. 475; 26 Wash. 179; 50 Wash. 120, 122; 87 Wash. 271.

§ 1106. Service of Notice, How Made.—Such notice shall be placed in the hands of the sheriff or other proper officer, and shall be personally served in the same manner as is provided by law for the service of a summons: Provided, that if the mortgagor cannot be found in the county where the mortgage is being foreclosed, it shall [not] be necessary to advertise the notice or affidavit in a newspaper; but the general publication directed in the next section shall be sufficient service upon all the parties interested, and such notice shall be sufficient authority for the officer to take such property into his immediate possession. [Cf. L. '75, p. 47, §§ 20, 21; L. '79, p. 106, § 8; Cd. '81, § 1993; 1 H. C., § 1652.]

Cited in 21 Wash. 475; 26 Wash. 179; 50 Wash. 122; 87 Wash. 272, 273.

§ 1107. Publication — Sale, How Conducted.—After notice has been served upon the mortgagor, it must be published in the same manner and for the same length of time as required in cases of the sale of like property on execution, and the sale shall be conducted in the same manner. [Cf. L. '75, p. 47, § 22; L. '79, p. 106, § 9; Cd. '81, § 1994; 1 H. C., § 1653.]

Cited in 87 Wash. 273.

§ 1108. Purchaser's Title.—The purchaser shall take all interest which the mortgagor had in the said mortgaged property upon which the said mortgage operated. [Cf. L. '75, p. 47, § 23; L. '79, p. 106, § 10; Cd. '81, § 1995; 1 H. C., § 1654.]

§ 1109. Officer's Bill of Sale, Effect of.—The officer conducting the sale shall execute to the purchaser a bill of sale of the property, which bill of sale shall be effectual to carry the whole title and interest purchased, and if any balance of the purchase price remain, it shall be disposed of in the same manner as surplus proceeds of sales are on execution. [Cf. L. '75, p. 47, § 24; L. '79, p. 106, § 11; Cd. '81, § 1996; 1 H. C., § 1665.]

Cited in 78 Wash. 137; 87 Wash. 271.

§ 1110. Foreclosure Contested—Injunction.—The right of the mortgagee to foreclose, as well as the amount claimed to be due, may be contested by any person interested in so doing, and the proceedings may be transferred to the superior court, for which purpose an injunction may issue if necessary. [Cf. L. '75, p. 47, § 28; L. '79, p. 106, § 12; Cd. '81, § 1997; 1 H. C., § 1656.]

Cited in 4 Wash. 259; 13 Wash. 257; 33 Wash. 640, 643; 50 Wash. 121, 122; 78 Wash. 137; 87 Wash. 271.

§ 1111. Action Before Maturity of Debt, When.—Where the debt is not due for which the mortgage is given, and the mortgagee has reasonable cause to believe that the mortgage property will be destroyed, lost, or removed, he shall have the right to an immediate action in the superior court of the county having jurisdiction where the property is situated, for the recovery of his debt, and the court may make any order it may deem fit, in order to secure said property so as to make the same available for the satisfaction of said debt. [L. '79, p. 106, § 13; Cd. '81, § 1998; 1 H. C., § 1657.]

Cited in 47 Wash. 184, 186; 69 Wash. 153; 83 Wash. 356.

§ 1112. Mortgagee may Take Possession, When—Sale.—A mortgage[e] of personal property, where a debt for the security of which the mortgage has been given has become due, or if the debt is not yet due, and the mortgagee has reasonable ground to believe that his debt is insecure, and that by allowing the property longer to

remain in the hands of the mortgagor he would be in danger of losing his debt or security, may have the property taken from the possession of the mortgagor, and sold in the manner provided in this chapter. [L. '79, p. 105, § 4; Cd. '81, § 1989; 1 H. C., § 1658.]

Cited in 47 Wash. 184, 186; 69 Wash. 153; 87 Wash. 271.

§ 1113. Foreclosure of Chattel Mortgages—Application of Chapter II.—The provisions contained in chapter II of this title, so far as the same shall be applicable, shall govern in actions for the foreclosure of chattel mortgages or bills of sale creating liens on personal property. [Cf. L. '69, p. 147, § 572; Cd. '81, § 618; 2 H. C., § 636.]

Cited in 1 Wash. 546; 4 Wash. 249; 47 Wash. 163.

§ 1114. Remedies of Mortgagee—Decree—Sale—Deficiency.—The mortgagee or holder of the lien may proceed upon his mortgage or lien, [or] if there be a separate obligation in writing to pay the same secured by said mortgage or lien, he may bring suit upon such separate promise. When he proceeds on the mortgage, if there be a specific agreement therein contained for the payment of a certain sum, or there is a separate obligation for the said sum, in addition to a decree of sale of mortgaged property, judgment shall be rendered for the amount due upon said mortgage or other instrument, the payment of which is thereby secured. The decree shall direct the sale of the mortgaged property, and if the proceeds of said sale be insufficient under the execution, the sheriff is authorized to levy upon and sell other property of the mortgage debtor, not exempt from execution, for the sum remaining unsatisfied. [Cf. L. '69, p. 147, § 572; Cd. '81, § 619; 2 H. C., § 637.]

Cited in 1 Wash. 546; 12 Wash. 87; 54 Wash. 230, 235.

§ 1115. Sale of Mortgagor's Interest Under Process—Notice.—The interest of the mortgagor, subject, however, to the lien of the mortgagee, may be sold under any process of law issuing out of any superior or justice of the peace court in this state: Provided, however, that if the party who has said mortgage resides in this state, or has an agent herein, and the same is known to the officer executing such process, he shall serve upon him or his agent personally, or by mailing to him or to his agent, if their postoffice is known, a notification of the intended sale at the time such mortgaged property is seized under said process, or within five days thereafter. Said property shall not be sold within less than thirty days after its seizure, and the officer executing such process must post in three public places, near the place where the said property is to be sold, a notice of the time and place of such sale, at the time he seizes

said property under said process. [L. '79, p. 105, § 5; Cd. '81, § 1990; 1 H. C., § 1659.]

Cited in 1 Wash. 547; 12 Wash. 515; 13 Wash. 257.

CHAPTER II.

Foreclosure of Mortgages on Real Estate.

§ 1116. Foreclosure—Venue.—When default is made in the performance of any condition contained in a mortgage, the mortgagee or his assigns may proceed in the superior court of the county where the land, or some part thereof. lies, to foreclose the equity of redemption contained in the mortgage. [L. '54, p. 207, § 408; Cd. '81, § 609; 2 H. C., § 625.]

§ 1117. Remedy Confined to Mortgaged Property, When.—When there is no express agreement in the mortgage, nor any separate instrument given for the payment of the sum secured thereby, the remedy of the mortgagee shall be confined to the property mortgaged. [L. '54, p. 207, § 409; Cd. '81, § 610; 2 H. C., § 626.]

Cited in 14 Wash. 283.

§ 1118. Judgment—Order of Sale—Satisfaction of.—In rendering judgment of foreclosure, the court shall order the mortgaged premises, or so much thereof as may be necessary, to be sold to satisfy the mortgage and costs of the action. The payment of the mortgage debt, with interest and costs, at any time before sale, shall satisfy the judgment. [L. '54, p. 207, § 410; Cd. '81, § 611; 2 H. C., § 627.]

Cited in 11 Wash. 616, 687.

§ 1119. Judgment for Deficiency, When.—When there is an express agreement for the payment of the sum of money secured contained in the mortgage or any separate instrument, the court shall direct in the decree of foreclosure [or order of sale] that the balance due on the mortgage, and costs, which may remain unsatisfied after the sale of the mortgaged premises, shall be satisfied from any property of the mortgage debtor. [L. '54, p. 208, § 211; Cd. '81, § 612; 2 H. C., § 628.]

Cited in 11 Wash. 110, 616; 12 Wash. 106; 54 Wash. 230, 234; 63 Wash. 290.

§ 1120. Judgments for Deficiency, Form of.—Judgments over for any deficiency remaining unsatisfied after application of the proceeds of sale of mortgaged property, either real or personal, shall be similar in all respects to other judgments for the recovery of money, and may be made a lien upon the property of a judgment debtor, as other judgments, and the collections thereof enforced in the same

manner. [Cf. L. '54, p. 208, § 411; L. '69, p. 148, § 575; Cd. '81, § 622; 2 H. C., § 629.]

Cited in 11 Wash. 616.

§ 1121. Execution to Enforce Decree.—A decree of foreclosure of mortgage or other lien may be enforced by execution as an ordinary judgment or decree for the payment of money. The execution shall contain a description of the property described in the decree. The sheriff shall indorse upon the execution the time when he receives it, and he shall thereupon forthwith proceed to sell such property, or so much thereof as may be necessary to satisfy the judgment, interest and costs upon giving the notice prescribed in section 582. [L. '99, p. 85, § 1; L. '54, p. 208, § 412; L. '69, p. 146, § 567; Cd. '81, § 613; 2 H. C., § 630.]

Cited in 11 Wash. 688; 12 Wash. 106; 17 Wash. 622, 643; 18 Wash. 560; 46 Wash. 405; 63 Wash. 290.

§ 1123. Levy upon and Sale of Other Property.—In all actions of foreclosure where there is a decree for the sale of the mortgaged premises or property, and a judgment over for any deficiency remaining unsatisfied after applying the proceeds of the sale of mortgaged property, further levy and sales upon other property of the judgment debtor may be made under the same execution. [Cf. L. '69, p. 148, § 573; L. '73, p. 151, § 571; L. '77, p. 129, § 623; Cd. '81, § 620 in part, last part in following section.]

Cited in 63 Wash. 290.

§ 1124. Publication of Notice.—When sales of other property not embraced in the mortgage or decree of sale are made under the execution to satisfy any deficiency remaining due upon judgment, two weeks' publication of notice of such sale shall be sufficient. Such notice shall be published in a newspaper printed in the county where the property is situated, and if there be no newspaper published therein, then in the most convenient newspaper having a circulation in said county. [Cf. L. '69, p. 148, § 574; Cd. '81, § 621; 2 H. C., § 631.]

§ 1125. Concurrent Actions not Maintainable.—The plaintiff shall not proceed to foreclose his mortgage while he is prosecuting any other action for the same debt or matter which is secured by the mortgage, or while he is seeking to obtain execution of any judgment in such other action; nor shall he prosecute any other action for the same matter while he is foreclosing his mortgage or prosecuting a judgment of foreclosure. [L. '54, p. 208, § 413; Cd. '81, § 614; 2 H. C., § 632.]

Cited in 29 Wash. 203; 32 Wash. 205; 47 Wash. 163–165; 78 Wash. 487.

§ 1126. Installments not Due—Proceedings.—Whenever a complaint is filed for the foreclosure of a mortgage upon which there shall be due any interest or installment of the principal, and there are other installments not due, if the defendant pay into the court the principal and interest due, with costs, at any time before the final judgment, proceedings thereon shall be stayed, subject to be enforced upon a subsequent default in the payment of any installment of the principal or interest thereafter becoming due. In the final judgment, the court shall direct at what time and upon what default any subsequent execution shall issue. [Cf. L. '54, p. 208, § 414; L. '69, p. 147, § 569; Cd. '81, § 615; 2 H. C., § 633.]

Cited in 29 Wash. 238; 60 Wash. 612, 613; 62 Wash. 420; 67 Wash. 581; 82 Wash. 63, 64.

§ 1127. Sale in Parcels—Order.—In such cases, after final judgment, the court shall ascertain whether the property can be sold in parcels, and if it can be done without injury to the interests of the parties, the court shall direct so much only of the premises to be sold as will be sufficient to pay the amount then due on the mortgage, with costs, and the judgment shall remain and be enforced upon any subsequent default, unless the amount due shall be paid before execution of the judgment is perfected. [L. '54, p. 208, § 415; Cd. '81, § 616; 2 H. C., § 634.]

Cited in 11 Wash. 689; 60 Wash. 568; 62 Wash. 420; 67 Wash. 581; 82 Wash. 63, 64.

§ 1128. Sale of Whole—Application of Proceeds.—If the mortgaged premises cannot be sold in parcels, the court shall order the whole to be sold, and the proceeds of the sale shall be applied first to the payment of the principal due, interest, and costs, and then to the residue secured by the mortgage and not due; and if the residue do not bear interest, a deduction shall be made therefrom by discounting the legal interest; and in all cases where the proceeds of the sale shall be more than sufficient to pay the amount due and costs, the surplus shall be paid to the mortgage debtor, his heirs and assigns. [L. '54, p. 208, § 416; Cd. '81, § 617; 2 H. C., § 635.]

Cited in 62 Wash. 419, 420; 67 Wash. 581; 82 Wash. 63, 64.

CHAPTER III.

Liens of Mechanics and Materialmen.

§ 1129. Who may have Lien.—Every person performing labor upon or furnishing material to be used in the construction, alteration or repair of any mining claim, building, wharf, bridge, ditch, dike, flume, tunnel, well, fence, machinery, railroad, street railway, wagon road, aqueduct to create hydraulic power or any other structure or who performs labor in any mine or mining claim or stone

quarry, has a lien upon the same for the labor performed or material furnished by each, respectively, whether performed or furnished at the instance of the owner of the property subject to the lien or his agent; and every contractor, subcontractor, architect, builder or person having charge, of the construction, alteration or repair of any property subject to the lien as aforesaid, shall be held to be the agent of the owner for the purposes of the establishment of the lien created by this chapter: Provided, that whenever any railroad company shall contract with any person for the construction of its road, or any part thereof, such railroad company shall take from the person with whom such contract is made a good and sufficient bond, conditioned that such person shall pay all laborers, mechanics, and materialmen, and persons who supply such contractors with provisions, all just dues to such persons or to any person to whom any part of such work is given, incurred in carrying on such work, which bond shall be filed by such railroad company in the office of the county auditor in each county in which any part of such work is situated. And if any such railroad company shall fail to take such bond, such railroad company shall be liable to the persons herein mentioned to the full extent of all such debts so contracted by such contractor. [L. '93, p. 32, § 1; L. '05, p. 229, § 1.]

Cited in 11 Wash. 311; 13 Wash. 263; 16 Wash. 139; 20 Wash. 410; 21 Wash. 622; 27 Wash. 86, 322, 341; 36 Wash. 339, 536, 537; 42 Wash. 293, 294, 296; 43 Wash. 2; 44 Wash. 386; 45 Wash. 659; 52 Wash. 562; 53 Wash. 232, 236; 59 Wash. 298, 649; 62 Wash. 57; 63 Wash. 389; 66 Wash. 363; 67 Wash. 610, 611; 68 Wash. 55; 71 Wash. 474; 72 Wash. 439; 74 Wash. 94; 75 Wash. 69; 77 Wash. 73, 306, 307; 87 Wash. 367.

For former laws see: L. '54, pp. 392, 393; L. '60, pp. 286, 287; L. '63, pp. 418–420; L. '73, pp. 441–444; L. '77, p. 219; Cd. '81, §§ 1957–1971; L. '88, p. 131; 1 H. C., §§ 1663–1667.

§ 1130. Land, Subject to.—The lot, tract or parcel of land upon which the improvement is made or the property is situated, subject to the lien created by section 1129, supra, or so much thereof as may be necessary to satisfy the lien and the judgment thereon, to be determined by the court on rendering judgment in a foreclosure of the lien, is also subject to the lien to the extent of the interest of the person or company, who in his or its own behalf, or who, through any of the persons designated in section 1129 to be agent of the owner or owners caused the performance of the labor, or the construction, alteration or repair of the property. [L. '93, p. 33, § 2; L. '05, p. 230, § 2.]

Cited in 80 Wash. 302; 87 Wash. 578.

§ 1131. Improvements at Request of Owner.—Any person who, at the request of the owner of any real property, his agent, contractor or subcontractor, clears, grades, fills in or otherwise improves the same, or any street or road in front of, or adjoining the same, has

a lien upon such real property for the labor performed, or the materials furnished for such purposes. [L. '93, p. 33, § 3.]

Cited in 23 Wash. 570; 26 Wash. 15; 29 Wash. 527; 51 Wash. 296; 71 Wash. 475; 79 Wash. 169.

§ 1132. Priority Over Subsequent Encumbrances.—The liens created by this chapter are preferred to any lien, mortgage or other encumbrance which may attach subsequently to the time of the commencement of the performance of the labor, or the furnishing of the materials for which the right of lien is given by this chapter, and are also preferred to any lien, mortgage or other encumbrance which may have attached previously to that time, and which was not filed or recorded so as to create constructive notice of the same prior to that time, and of which the lien claimant had no notice. [L. '93, p. 33, § 4.]

Cited in 17 Wash. 146; 20 Wash. 606; 22 Wash. 466; 27 Wash. 338; 51 Wash. 34; 66 Wash. 517; 84 Wash. 234, 657.

§ 1133. Prerequisites—Notice of Furnishing Materials or Supplies.—Every person, firm or corporation furnishing materials or supplies to be used in the construction, alteration or repair of any mining claim, building, wharf, bridge, ditch, dike, flume, tunnel, well, fence, machinery, railroad, street railway, wagon road, aqueduct to create hydraulic power, or any other building, or any other structure, or mining claim or stone quarry, shall, not later than five (5) days after the date of the first delivery of such materials or supplies to any contractor or agent, deliver or mail to the owner or the reputed owner of the property on, upon or about which such materials or supplies are to be used, a notice in writing, stating in substance and effect that such person, firm or corporation has commenced to deliver materials and supplies for use thereon, with the name of the contractor or agent ordering the same, and that a lien may be claimed for all materials and supplies furnished by such person, firm or corporation for use thereon; and no further notice to the owner shall be necessary. No materialman's lien shall be enforced unless the provisions of this act have been complied with. [L. '11, p. 376, § 1. Cf. L. '09, p. 71, § 1.]

Cited in 59 Wash. 77, 84; 60 Wash. 540, 588; 62 Wash. 343; 63 Wash. 390; 66 Wash. 199, 363, 517, 672; 68 Wash. 54; 69 Wash. 584, 585; 72 Wash. 122; 73 Wash. 461, 647; 74 Wash. 254, 255; 85 Wash. 605; 87 Wash. 367.

Cited in 77 Wash. 74; 85 Wash. 615; 86 Wash. 192; 87 Wash. 368.

§ 1134. Requisites of Claim, Form, Time of Filing.—No lien created by this chapter shall exist, and no action to enforce the same shall be maintained, unless within ninety days from the date of the cessation of the performance of such labor or of the furnishing of such materials, a claim for such lien shall be filed for record as

hereinafter provided, in the office of the county auditor of the county in which the property, or some part thereof to be affected thereby, is situated. Such claim shall state, as nearly as may be, the time of the commencement and cessation of performing the labor, or furnishing the material, the name of the person who performed the labor, or furnished the material, the name of the person by whom the laborer was employed (if known) or to whom the material was furnished, a description of the property to be charged with the lien sufficient for identification, the name of the owner, or reputed owner if known, and if not known, that fact shall be mentioned, the amount for which the lien is claimed, and shall be signed by the claimant, or by some person in his behalf, and be verified by the oath of the claimant, or some person in his behalf, to the effect that the affiant believes the claim to be just; in case the claim shall have been assigned the name of the assignee shall be stated; and such claim of lien may be amended in case of action brought to foreclose the same, by order of the court, as pleadings may be, in so far as the interests of third parties shall not be affected by such amendment. A claim for lien substantially in the following form shall be sufficient:—

——, claimant, vs. ——

Notice is hereby given that on the —— day (date of commencement of performing labor or furnishing material) —— at the request of —— commenced to perform labor (or to furnish material to be used) upon —— (here describe property subject to the lien) of which property the owner, or reputed owner, is —— (or if the owner or reputed owner is not known, insert the word "unknown"), the performance of which labor (or the furnishing of which material) ceased on the —— day of ——; that said labor performed (or material furnished) was of the value of —— dollars, for which labor (or material) the undersigned claims a lien upon the property herein described for the sum of —— dollars. (In case the claim has been assigned, add the words "and —— is assignee of said claim," or claims, if several are united.)

—— —— Claimant.

State of Washington,
County of ——, } ss.

——, being sworn, says: I am the claimant (or attorney of the claimant) above named; I have heard the foregoing claim read and know the contents thereof, and believe the same to be just.

—— ——

Subscribed and sworn to before me this —— day of ——.

—— ——

Any number of claimants may join in the same claim for the purpose of filing the same and enforcing their liens, but in such case the amount claimed by each original lienor, respectively, shall be stated: Provided, it shall not be necessary to insert in the notice of claim of lien provided for by this chapter any itemized statement or bill of particulars of such claim. [L. '93, p. 34, § 5.]

Cited in 13 Wash. 263; 22 Wash. 144, 188; 26 Wash. 22; 27 Wash. 341; 33 Wash. 694; 40 Wash. 201; 42 Wash. 295, 298; 48 Wash. 271; 52 Wash. 512; 58 Wash. 637; 61 Wash. 182; 63 Wash. 389; 68 Wash. 55; 72 Wash. 439; 87 Wash. 360, 371.

§ 1135. Recording Claim.—The county auditor must record the claims mentioned in this chapter in a book to be kept by him for that purpose, which record must be indexed as deeds and other conveyances are required by law to be indexed. [L. '93, p. 35, § 6.]

§ 1136. Assignment of Lien.—Any lien or right of lien created by law and the rights of action to recover therefor, shall be assignable so as to vest in the assignee all rights and remedies of the assignor, subject to all defenses thereto that might be made if such assignment had not been made. [L. '93, p. 35, § 7.]

§ 1137. Segregation of Claims.—In every case in which one claim is filed against two or more separate pieces of property owned by the same person, or owned by two or more persons who jointly contracted for the labor or material for which the lien is claimed, the person filing such claim must designate in the claim the amount due him on each piece of property, otherwise the lien of such claim is postponed to other liens. The lien of such claim does not extend beyond the amount designated as against other creditors having liens upon either of such pieces of property. [L. '93, p. 35, § 8.]

Cited in 27 Wash. 343; 33 Wash. 696.

§ 1138. Limitations of Actions.—No lien created by this chapter binds the property subject to the lien for a longer period than eight calendar months after the claim has been filed unless an action be commenced in the proper court within that time to enforce such lien; or, if credit be given, then eight calendar months after the expiration of such credit; and in case such action be not prosecuted to judgment within two years after the commencement thereof, the court, in its discretion, may dismiss the same for want of prosecution, and the dismissal of such action, or a judgment rendered therein, that no lien exists, shall constitute a cancellation of the lien. [L. '93, p. 35, § 9.]

Cited in 27 Wash. 86, 346; 42 Wash. 453, 454; 58 Wash. 638; 65 Wash. 394.

§ 1139. Extent of Contractor's Liability—Rights of Owner.—The contractor shall be entitled to recover upon the claim filed by him

only such amount as may be due him according to the terms of his contract, after deducting all claims of other parties for labor performed and materials furnished; and in all cases where a claim shall be filed under this chapter for labor performed or materials furnished to any contractor, he shall defend any action brought thereupon at his own expense; and during the pendency of such action, the owner may withhold from the contractor the amount of money for which the claim is filed; and in case of judgment against the owner or his property, upon the lien, the owner shall be entitled to deduct from any amount due or to become due by him to the contractor, the amount of the judgment and costs, and if the amount of such judgment and costs shall exceed the amount due by him to the contractor or if the owner shall have settled with the contractors in full, he shall be entitled to recover back from the contractor the amount, including costs for which the lien is established in excess of any sum that may remain due from him to the contractor. [L. '93, p. 36, § 10.]

Cited in 52 Wash. 562; 77 Wash. 306, 309.

§ 1140. Foreclosure—Parties.—The liens provided by this chapter, for which claims have been filed, may be foreclosed and enforced by a civil action in the court having jurisdiction; in any action brought to foreclose a lien, all persons who, prior to the commencement of such action, have legally filed claims or liens against the same property, or any part thereof shall be joined as parties, either plaintiff or defendant; and no person shall begin an action to foreclose a lien upon any property while a prior action begun to foreclose another lien on the same property is pending, but if not made a party plaintiff or defendant to such prior action, he may apply to the court to be joined as a party thereto, and his lien may be foreclosed in such action; and no action to foreclose a lien shall be dismissed at the instance of a plaintiff therein to the prejudice of another party to the suit who claims a lien. [L. '93, p. 36, § 11.]

Cited in 17 Wash. 147; 24 Wash. 30; 27 Wash. 333; 37 Wash. 599; 65 Wash. 401.

§ 1141. Rank of Liens—Attorney's Fees.—In every case in which different liens are claimed against the same property, the court, in the judgment, must declare the rank of such lien or class of liens, which shall be in the following order:—

1. All persons performing labor;
2. All persons furnishing material;
3. The subcontractors;
4. The original contractor.

And the proceeds of the sale of the property must be applied to each lien or class of liens in the order of its rank; and personal

judgment may be rendered in an action brought to foreclose a lien, against any party personally liable for any debt for which the lien is claimed, and if the lien be established, the judgment shall provide for the enforcement thereof upon the property liable as in case of foreclosure of mortgages; and the amount realized by such enforcement of the lien shall be credited upon the proper personal judgment, and the deficiency, if any remaining unsatisfied, shall stand as a personal judgment, and may be collected by execution against the party liable therefor. The court may allow, as part of the costs of the action, the moneys paid for filing or recording the claim, and a reasonable attorney's fee in the superior and supreme courts. [L. '93, p. 37, § 12.]

Cited in 23 Wash. 570; 27 Wash. 341; 31 Wash. 429; 33 Wash. 684; 40 Wash. 553; 77 Wash. 257, 306, 309.

§ 1142. Personal Action.—Nothing contained in this chapter shall be construed to impair or affect the right of any person to whom any debt may be due for labor performed or material furnished to maintain a personal action to recover such debt against the person liable therefor. [L. '93, p. 37, § 13.]

§ 1143. Lien not Discharged by Taking Note, When.—The taking of a promissory note or other evidence of indebtedness for any labor performed or material furnished for which lien is created by law, shall not discharge the lien therefor, unless expressly received as payment and so specified therein. [L. '93, p. 37, § 14.]

Cited in 65 Wash. 14; 74 Wash. 88.

§ 1144. Material Exempt from Attachment, etc., When.—Whenever material shall have been furnished for use in the construction, alteration or repair of property subject to a lien created by this chapter, such material shall not be subject to attachment, execution, or other legal process, to enforce any debt due by the purchaser of such material, except a debt due for the purchase money thereof, so long as in good faith the said material is about to be applied in the construction, alteration or repair of such property. [L. '93, p. 37, § 15.]

§ 1145. Community Interest, How Subjected.—The claim of lien, when filed as required by this chapter, shall be notice to the husband or wife of the person who appears of record to be the owner of the property sought to be charged with the lien, and shall subject all the community interest of both husband and wife to said lien. [L. '93, p. 38, § 16.]

§ 1146. When Land not Subject to Lien — Power of Court.—When, for any reason the title or interest in the land, upon which

the property subject to the lien is situated cannot be subjected to the lien, the court may order the sale and removal from the land of the property subject to the lien to satisfy the lien. [L. '93, p. 38, § 17.]

Cited in 20 Wash. 605.

§ 1147. Liberal Construction.—The provisions of law relating to liens created by this chapter, and all proceedings thereunder, shall be liberally construed with a view to effect their objects. [L. '93, p. 38, § 18.]

Cited in 27 Wash. 338; 33 Wash. 695; 52 Wash. 278, 512, 562; 58 Wash. 638; 61 Wash. 182; 66 Wash. 363; 77 Wash. 307, 309; 84 Wash. 657; 86 Wash. 193.

§ 1148. Existing Rights Preserved.—All rights acquired under any existing law of this state are hereby preserved, and all actions now pending shall be proceeded with under the law as it exists at the time this act shall take effect. [L. '93, p. 38, § 19.]

Cited in 11 Wash. 311.

CHAPTER IV.

Liens of Employees.

§ 1149. Laborer's Lien on Property, Franchises, etc.—Every person performing labor for any person, company or corporation, in the operation of any railway, canal or transportation company, or any water, mining or manufacturing company, sawmill, lumber or timber company, shall have a prior lien on the franchise, earnings, and on all the real and personal property of said person, company or corporation, which is used in the operation of its business, to the extent of the moneys due him from such person, company or corporation, operating said franchise or business, for labor performed within six months next preceding the filing of his claim therefor, as hereinafter provided; and no mortgage, deed of trust or conveyance shall defeat or take precedence over said lien. [L. '97, p. 55, § 1.]

Cited in 22 Wash. 512; 24 Wash. 32, 592; 41 Wash. 113; 45 Wash. 649, 651; 71 Wash. 229; 77 Wash. 75; 84 Wash. 69, 72, 230, 232, 233, 234.

§ 1150. Notice of Lien.—No person shall be entitled to the lien given by the preceding section, unless he shall, within ninety days after he has ceased to perform labor for such person, company or corporation, filed for record with the county auditor of the county in which said labor was performed, or in which is located the principal office of such person, company or corporation in this state, a notice of claim, containing a statement of his demand, after deducting all just credits and offsets, the name of the person, company or corporation, and the name of the person or persons employing claim-

ant, if known, with the statement of the terms and conditions of his contract, if any, and the time he commenced the employment, and the date of his last service, and shall serve a copy thereof on said person, company or corporation within thirty days after the same is so filed for record. [L. '97, p. 56, § 2.]

Cited in 45 Wash. 650; 71 Wash. 227, 229, 230; 84 Wash. 70, 230, 232.

§ 1151. Service of Notice.—Service of notice, as herein required, may be made in the same manner as summons in civil actions. [L. '97, p. 56, § 3.]

Cited in 71 Wash. 229; 84 Wash. 230, 232.

§ 1152. Foreclosure of Lien.—Any such lien may be enforced within the same time and in the same manner as mechanics' liens are foreclosed. [L. '97, p. 56, § 4.]

Cited in 84 Wash. 230, 232.

§ 1153. How Claims are to be Paid by Receiver or Assignee.—Whenever a receiver or assignee is appointed for any person, company or corporation, the court shall require such receiver or assignee to pay all claims for which a lien could be filed under this chapter, before the payment of any other debts or claims, other than operating expenses. [L. '97, p. 56, § 5.]

Cited in 71 Wash. 229; 84 Wash. 230, 232.

CHAPTER V.

Liens on Chattels.

§ 1154. Lien on Chattels for Labor and Material.—Every person, firm or corporation who has expended labor, skill or material on any chattel, at the request of its owner, or authorized agent of the owner, shall have a lien upon such chattels for the contract price for such expenditure, or in the absence of such contract price, for the reasonable worth of such expenditure, for a period of one year from and after such expenditure, notwithstanding the fact that such chattel be surrendered to the owner thereof: Provided, however, that no such lien shall continue after the delivery of such chattel to its owner as against the rights of third persons who may have acquired an interest in, or the title to, such chattel in good faith, for value, and without actual knowledge of the lien. [L. '05, p. 137, § 1; L. '09, p. 626, § 1.]

Cited in 85 Wash. 238.

§ 1155. Notice of Lien on Chattel.—In order to make such lien effectual the lien claimant shall within ninety days from the date of delivery of such chattel to the owner file in the office of the auditor of the county in which such chattel is kept a lien notice, which

notice shall state the name of the claimant, the name of the owner, a description of the chattel upon which the claimant has expended labor, skill or material, the amount for which a lien is claimed, and the date upon which such expenditure was completed, which notice shall be signed by the claimant, or someone in his behalf, and may be in substantially the following form:

CHATTEL LIEN NOTICE.

—— Claimant,
against
—— Owner.

Notice is hereby given that —— has and claims a lien upon (here insert description of chattel), owned by —— for the sum of —— dollars, for and on account of labor, skill and material expended upon said —— which was completed upon the —— day of ——. 19—.

—— ——,
Claimant.

[L. '05, p. 137, § 2.]

Cited in 55 Wash. 150; 57 Wash. 148; 59 Wash. 261.

§ 1156. Ownership.—Every person who is in possession of a chattel, under an agreement for the purchase thereof, whether the title thereto be in him, or his vendor, shall, for the purposes of this act, be deemed the owner thereof, and the lien of a person expending material, labor or skill thereon shall be superior to and preferred to the rights of the person holding the title thereto, or any lien thereon antedating the time of expenditure of the labor, skill or material thereon by a lien claimant, to the extent that such expenditure has enhanced the value of such chattel. [L. '05, p. 138, § 3.]

Cited in 85 Wash. 238, 239.

§ 1157. Enforcement of Lien.—The lien herein provided for may be enforced against the owner of and all persons having an interest in any such chattel by notice and sale in the same manner that a chattel mortgage is foreclosed, or by decree of any court in this state, exercising original equity jurisdiction in the county wherein such chattel may be, or in action commenced within nine months after the filing of such lien notice and if no such action be commenced within such time such lien shall cease. [L. '05, p. 138, § 4.]

§ 1158. Filing of Notice.—Upon presentation of such lien notice to the auditor of any county, and the payment to him of fifteen cents, he shall file the same, and indorse thereon the time of the reception, the number thereof, and shall enter the same in a suitable book or

file (but need not record the same). Such book or file shall have herewith an alphabetic index, in which the county auditor shall index such notice by noting the name of the owner, name of lien claimant, description of property, date of lien (which shall be the date upon which such expenditure of labor, skill or material was completed), date of filing and when released, the date of release. [L. '05, p. 138, § 5.]

CHAPTER VI.

Security for Labor, etc., on Public Works.

§ 1159. Contractor's Bond—Filing.—Whenever any board, council, commission, trustees or body acting for the state or any county or municipality or any public body shall contract with any person or corporation to do any work for the state, county or municipality, or other public body, city, town or district, such board, council, commission, trustees or body shall require the person or persons with whom such contract is made to make, execute and deliver to such board, council, commission, trustees or body a good and sufficient bond, with two or more sureties, or with a surety company as surety, conditioned that such person or persons shall faithfully perform all the provisions of such contract and pay all laborers, mechanics and subcontractors and materialmen, and all persons who shall supply such person or persons, or subcontractors, with provisions and supplies for the carrying on of such work, which bond shall be filed with the county auditor of the county where such work is performed or improvement made, except in cases of cities and towns, in which cases such bond shall be filed with the clerk or comptroller thereof, and any person or persons performing such services or furnishing material to any subcontractor shall have the same right under the provisions of such bond as if such work, services or material was furnished to the original contractor; Provided, however, that the provisions of this act shall not apply to any money loaned or advanced to any such contractor, subcontractor or other person in the performance of any such work. [L. '15, p. 61, § 1. Cf., L. '09, p 716, § 1; L. '88, p. 15, § 1; 1 H. C., § 2415; L. '97, p. 57, § 1.]

Cited in 5 Wash. 145, 146, 586; 6 Wash. 121; 7 Wash. 272, 280, 281, 283, 485; 8 Wash. 328, 457; 9 Wash. 6, 429; 11 Wash. 162, 476; 12 Wash. 120; 13 Wash. 392, 560, 575; 19 Wash. 592, 627; 21 Wash. 508; 22 Wash. 107; 28 Wash. 93; 29 Wash. 527; 39 Wash. 556; 46 Wash. 435; 55 Wash. 264; 56 Wash. 507; 60 Wash. 587; 63 Wash. 684; 67 Wash. 602, 607, 612; 69 Wash. 352; 71 Wash. 29; 72 Wash. 300, 301, 304, 305, 570; 74 Wash. 92; 79 Wash. 564; 81 Wash. 55, 136, 267; 82 Wash. 276, 279, 283, 447, 448; 84 Wash. 545; 85 Wash. 661, 662; 86 Wash. 181, 490, 491.

§ 1159–1. Notice to Contractor—Condition Precedent to Action.—Every person, firm or corporation furnishing materials, supplies or provisions to be used in the construction, performance, carrying on,

prosecution or doing of any work for the state, or any county, city, town, district, municipality or other public body, shall, not later than ten days after the date of the first delivery of such materials, supplies or provisions to any subcontractor or agent of any person, firm or corporation having a subcontract for the construction, performance, carrying on, prosecution or doing of such work, deliver or mail to the contractor a notice in writing stating in substance and effect that such person, firm or corporation has commenced to deliver materials, supplies or provisions for use thereon, with the name of the subcontractor or agent ordering or to whom the same is furnished and that such contractor and his bond will be held for the payment of the same, and no suit or action shall be maintained in any court against the contractor or his bond to recover for such material, supplies or provisions or any part thereof unless the provisions of this act have been complied with. [L. '15, p. 525, § 1.]

§ 1160. Liability for Failure to Take Bond.—If any board of county commissioners of any county, or mayor and common council of any incorporated city or town, or tribunal transacting the business of any municipal corporation shall fail to take such bond as herein required, such county, incorporated city or town, or other municipal corporation, shall be liable to the persons mentioned in section 1159, to the full extent and for the full amount of all such debts so contracted by such contractor. [L. '88, p. 15, § 2; 1 H. C., § 2416; L. '09, p. 717, § 2.]

Cited in 7 Wash. 280, 282; 9 Wash. 429; 22 Wash. 110; 28 Wash. 93; 55 Wash. 264; 82 Wash. 276, 279, 283, 284, 447.

§ 1161. Conditions of Bond—Action on.—The bond mentioned in section 1159 shall be in an amount equal to the full contract price agreed to be paid for such work or improvement, and shall be to the state of Washington, except in cases of cities and towns, in which cases such municipalities may by general ordinance fix and determine the amount of such bond and to whom such bond shall run: Provided, the same shall not be for a less amount than twenty-five per cent (25%) of the contract price of any such improvement, and may designate that the same shall be payable to such city, and not to the state of Washington, and all such persons mentioned in said section 1159 shall have a right of action in his, her, or their own name or names on such bond for work done by such laborers or mechanics, and for materials furnished or provisions and goods supplied and furnished in the prosecution of such work, or the making of such improvements; Provided, that such persons shall not have any right of action on such bond for any sum whatever, unless within thirty (30) days from and after the completion of the contract with an acceptance of the work by the affirmative action of

the board, council, commission, trustees, officer, or body acting for the state, county or municipality, or other public body, city, town or district, the laborer, mechanic or subcontractor, or materialman, or person claiming to have supplied materials, provisions or goods for the prosecution of such work, or the making of such improvement, shall present to and file with such board, council, commission, trustees or body acting for the state, county or municipality, or other public body, city, town or district, a notice in writing in substance as follows:

To (here insert the name of the state, county or municipality or other public body, city, town or district):

Notice is hereby given that the undersigned (here insert the name of the laborer, mechanic or subcontractor, or materialman, or person claiming to have furnished labor, materials or provisions for or upon such contract or work) has a claim in the sum of —— dollars (here insert the amount) against the bond taken from —— (here insert the name of the principal and surety or sureties upon such bond) for the work of —— (here insert a brief mention or description of the work concerning which said bond was taken).

(Here to be signed) —— ——.

Such notice shall be signed by the person or corporation making the claim or giving the notice, and said notice, after being presented and filed, shall be a public record open to inspection by any person, and in any suit or action brought against such surety or sureties by any such person or corporation to recover for any of the items hereinbefore specified, the claimant shall be entitled to recover in addition to all other costs, attorney's fees in such sum as the ocurt shall adjudge reasonable; Provided, however, that no attorney's fees shall be allowed in any suit or action brought or instituted before the expiration of thirty days following the date of filing of the notice hereinbefore mentioned; Provided further, that any city may avail itself of the provisions of this act, notwithstanding any charter provisions in conflict herewith: And provided further, that any city or town may impose any other or further conditions and obligations in such bond as may be deemed necessary for its proper protection in the fulfillment of the terms of the contract secured thereby, and not in conflict herewith. [L. '15, p. 62, § 2. Cf. L. '09, p. 717, § 3; L. '88, p. 16, § 3; 1 H. C., § 2417; L. '99, p. 172, § 1.]

Cited in 55 Wash. 264; 60 Wash. 588; 66 Wash. 643; 71 Wash. 29, 611; 72 Wash. 570; 78 Wash. 331; 79 Wash. 565; 81 Wash. 55, 274; 82 Wash. 53, 276, 279, 447, 449, 457; 84 Wash. 470, 547; 85 Wash. 661.

§ 1161–1. Retroactive Effect Given Sections 1159 and 1161.—All bonds issued and given prior to June 12, 1915, which embody the terms and provisions prescribed and provided for and which conform

to and comply with the terms and provisions of that certain act entitled, "An act relating to contractors and bonds upon public works, and amending sections 1159 and 1161 of Remington & Ballinger's Annotated Codes and Statutes of Washington," passed the House February 8, 1915, passed the senate February 24, 1915, and passed notwithstanding the governor's veto on March 3, 1915, shall have the same legal force and effect and be construed, and the rights and liabilities of all parties thereto and thereunder shall be the same as though the said act entitled, "An act relating to contractors and bonds upon public works, and amending section 1159 and 1161 of Remington & Ballinger's Annotated Codes and Statutes of Washington" had been in full force and effect at the time any such bond was given, and the courts of this state shall give to such bonds the same force and effect and no other or greater force and effect than would have been given had the said act entitled: "An act relating to contractors and bonds upon public works, and amending sections 1159 and 1161 of Remington & Ballinger's Annotated Codes and Statutes of Washington'' been in force and effect at the time such bond was signed and given. [L. '15, p. 548, § 1.]

CHAPTER VII.

Liens upon Logs and Other Timber.

§ 1162. Who may have Liens.—Every person performing labor upon, or who shall assist in obtaining or securing sawlogs, spars, piles, cordwood, shingle-bolts, or other timber, and the owner or owners of any tugboat, or towboat, which shall tow or assist in towing, from one place to another within this state, any sawlogs, spars, piles, cordwood, shingle-bolts, or other timber, and the owner or owners of any team or any logging engine, which shall haul or assist in hauling from one place to another within this state, any sawlogs, spars, piles, cordwood, shingle-bolts, or other timber, and the owner or owners of any logging or other railroad over which sawlogs, spars, piles, cordwood, shingle-bolts, or other timber shall be transported and delivered, shall have a lien upon the same for the work or labor done upon, or in obtaining or securing, or for services rendered in towing, transporting, hauling, or driving, the particular sawlogs, spars, cordwood, shingle-bolts, or other timber in said claim of lien described, whether such work, labor or services was done, rendered or performed at the instance of the owner of the same or his agent. The cook in a logging camp shall be regarded as a person who assists in obtaining or securing the timber herein mentioned. [L. '07, p. 14, § 1. Cf. L. '60, p. 340, § 1; L. '77, p. 217, § 3; L. '79, p. 100, § 2; Cd. '81, § 1941; 1 H. C., § 1679; L. '93, p. 428, § 1; L. '95, p. 175, § 1.]

Cited in 5 Wash. 430, 431; 6 Wash. 343, 480, 481; 8 Wash. 469, 471; 10 Wash. 86; 11 Wash. 206, 691; 12 Wash. 340; 13 Wash. 161, 375; 14 Wash. 227; 20 Wash. 124, 593; 30 Wash. 460, 461; 45 Wash. 650, 652; 49 Wash. 396, 444; 59 Wash. 261; 64 Wash. 429, 430, 431; 67 Wash. 181.

See infra, § 1190a, this chapter applicable to liens on farm products.

§ 1163. Lien on Lumber—Lumber, Defined.—Every person performing work or labor or assisting in manufacturing sawlogs and other timber into lumber and shingles, has a lien upon such lumber while the same remains at the mill where it was manufactured, or in the possession or under the control of the manufacturer, whether such work or labor was done at the instance of the owner of such logs or his agent or any contractor or subcontractor of such owner. The term lumber, as used in this chapter, shall be held and be construed to mean all logs or other timber sawed or split for use, including beams, joists, planks, boards, shingles, laths, staves, hoops, and every article of whatsoever nature or description manufactured from sawlogs or other timber. [Cf. L. '77, p. 217, § 4; Cd. '81, § 1942; 1 H. C., § 1680; L. '93, p. 19, § 1; L. '93, p. 428, § 2.]

Cited in 11 Wash. 205, 691; 13 Wash. 161, 351, 375; 16 Wash. 696; 18 Wash. 269; 30 Wash. 460, 461; 49 Wash. 444; 64 Wash. 429, 430, 431; 67 Wash. 181.

§ 1164. Lien for Stumpage.—Any person who shall permit another to go upon his timber land and cut thereon sawlogs, spars, piles, or other timber, has a lien upon the same for the price agreed to be paid for such privilege, or for the price such privilege would be reasonably worth in case there was no express agreement fixing the price. [Cf. L. '77, p. 217, § 5; Cd. '81, § 1943; 1 H. C., § 1681; L. '93, p. 429, § 3.]

§ 1165. Preferred Liens.—The liens provided for in this chapter are preferred liens and are prior to any other liens, and no sale or transfer of any sawlogs, spars, piles or other timber or manufactured lumber or shingles shall divest the lien thereon as herein provided, and as between liens provided for in this chapter those for work and labor shall be preferred: Provided, that as between liens for work and labor claimed by several laborers on the same logs or lot of logs the claim or claims for work or labor done or performed on the identical logs proceeded against to the extent that said logs can be identified, shall be preferred as against the general claim of lien for work and labor recognized and provided for in this chapter. [Cf. L. '77, p. 217, § 6; Cd. '81, § 1944; 1 H. C., § 1682; L. '93, p. 429, § 4.]

Cited in 14 Wash. 227; 20 Wash. 593.

§ 1166. Limitation of Filing Lien for Labor.—The person rendering the service of [or] doing the work or labor named in sections

1162 and 1163 of this chapter is only entitled to the liens as provided herein for services, work or labor for the period of eight calendar months, or any part thereof next preceding the filing of the claim, as provided in section 1169 of this chapter. [Cf. L. '77, p. 217, § 7; Cd. '81, § 1945; 1 H. C., § 1683; L. '93, p. 429, § 5.]

"Section 1169" substituted for "section 8" of the act of 1893, while "section 7" [§ 1168, infra] was evidently intended.

§ 1167. Limitation of Filing Lien for Stumpage.—The person granting the privilege mentioned in section 1164 of this chapter is only entitled to the lien as provided therein for sawlogs, spars, piles and other timber cut during the eight months next preceding the filing of the claim, as herein provided in the next succeeding section of this chapter. [Cf. L. '77, p. 217, § 8; Cd. '81, § 1946; 1 H. C., § 1684; L. '93, p. 429, § 6.]

§ 1168. Filing of Claim for Labor, etc.—Every person within thirty days after the close of the rendition of the services, or after the close of the work or labor mentioned in the preceding sections (1162, 1163) claiming the benefit hereof, must file for record with the county auditor of the county in which such sawlogs, spars, piles and other timber were cut, or in which such lumber or shingles were manufactured, a claim containing a statement of his demand and the amount thereof, after deducting as nearly as possible all just credits and offsets, with the name of the person by whom he was employed, with a statement of the terms and conditions of his contract, if any, and in case there is no express contract, the claim shall state what such service, work or labor is reasonably worth; and it shall also contain a description of the property to be charged with the lien sufficient for identification with reasonable certainty, which claim must be verified by the oath of himself or some other person to the effect that the affiant believes the same to be true, which claim shall be substantially in the following form:—

—— Claimant, vs. ——.

Notice is hereby given that —— of —— county, state of Washington, claims a lien upon a —— of ——, being about —— in quantity, which were cut or manufactured in —— county, state of Washington, are marked thus ——, and are now lying in ——, for labor performed upon and assistance rendered in —— said ——; that the name of the owner or reputed owner is ——; that —— employed said —— to perform such labor and render such assistance upon the following terms and conditions, to wit:—

The said —— agreed to pay the said —— for such labor and assistance ——; that said contract has been faithfully performed and fully complied with on the part of said ——, who performed labor

upon and assisted in —— said —— for the period of ——; that said labor and assistance were so performed and rendered upon said ——, between the —— day of —— and the —— day of ——; and the rendition of said service was closed on the —— day of ——, and thirty days have not elapsed since that time; that the amount of claimant's demand for said service is ——; that no part thereof has been paid except ——, and there is now due and remaining unpaid thereon, after deducting all just credits and offsets, the sum of ——, in which amount he claims a lien upon said ——. The said ——, also claims a lien on all said —— now owned by said —— of said county to secure payment for the work and labor performed in obtaining or securing the said logs, spars, piles or other timber, lumber or shingles herein described.

State of Washington,
County of ——, } ss.

—— being first duly sworn, on oath says that he is —— named in the foregoing claim, has heard the same read, knows the contents thereof, and believes the same to be true.

Subscribed and sworn to before me this —— day of ——.

—— ——.

[Cf. L. '77, p. 217, § 9; L. '79, p. 100, § 4; Cd. '81, § 1947; 1 H. C., § 1685; L. '93, p. 429, § 7.]

Cited in 2 Wash. 167, 172; 14 Wash. 228; 20 Wash. 594; 29 Wash. 403; 40 Wash. 200.

§ 1169. Filing of Claim for Stumpage.—Every person mentioned in section 1164 claiming the benefit thereof must file for record with the county auditor of the county in which such sawlogs, spars, piles or other timber were cut, a claim in substance the same as provided in the next preceding section of this chapter and verified as therein provided. [Cf. L. '77, p. 218, § 10; Cd. '81, § 1948; 1 H. C., § 1686; L. '93, p. 431, § 8.]

§ 1170. Recording Claim.—The county auditor must record any claim filed under this act in a book kept by him for that purpose, which record must be indexed, as deeds and other conveyances are required by law to be indexed, and for which he may receive the same fees as are allowed by law for recording deeds and other instruments. [Cf. L. '77, p. 218, § 11; Cd. '81, § 1949; 1 H. C., § 1687; L. '93, p. 431, § 9.]

§ 1171. Limitation of Actions.—No lien provided for in this chapter binds any sawlogs, spars, piles or other timber, or lumber and shingles, for a longer period than eight calendar months after the claim as herein provided has been filed, unless a civil action be com-

menced in a proper court, within that time, to enforce the same: Provided, however, that in case such civil action so commenced should for any cause other than the merits, be nonsuited or dismissed, then the lien shall continue for the term of one calendar month, if the said eight months have expired, to permit the commencement of another action thereon, which shall be as effective in prolonging the lien as if it had been entered during the term of eight months hereinbefore stated. [Cf. L. '77, p. 218, § 12; L. '79, p. 100, § 5; Cd. '81, § 1950; 1 H. C., § 1688; L. '93, p. 431, § 10.]

Cited in 4 Wash. 169.

§ 1172. Jurisdiction—Procedure.—The liens provided for in this chapter shall be enforced by a civil action in the superior court of the county wherein the lien was filed, and shall be governed by the laws regulating the proceedings in civil actions touching the mode and manner of trial, and the proceedings and laws to secure property so as to hold it for the satisfaction of any lien that be against it; except as hereinafter otherwise provided. [Cf. L. '97, p. 218, § 13; Cd. '81, § 1951; 1 H. C., § 1689; L. '93, p. 431, § 11.]

Cited in 6 Wash. 346; 20 Wash. 594; 59 Wash. 261.

§ 1173. Sheriff as Receiver.—The sheriff of the county wherein the lien is filed shall be the receiver when one is appointed, and the superior court, upon a showing made, shall appoint such receiver without notice, who shall be allowed such fees as may seem just to the court, which fees shall be accounted for by such sheriff as other fees collected by him in his official capacity: Provided, that at any time when any property is in the custody of such sheriff under the provisions of this act, and any person claiming any interest therein may deposit with the clerk of the court in which such action is pending, a sum of money in an amount equal to the claim sued upon, together with one hundred ($100) dollars, to cover costs and interest, (unless the court shall make an order fixing a different amount to cover such costs and interest, then such an amount as the court shall fix to secure such costs and interest, which such action is being prosecuted) and shall have the right to demand and receive forthwith from such sheriff the possession and custody of such property: Provided, that in no action brought under the provisions of this act shall costs be allowed to lienholders unless a demand has been made for payment of his lien claim before commencement of suit, unless the court shall find the claimants at time of bringing action had reasonable ground to believe that the owner or the person having control of the property upon which such lien is claimed was attempting to defraud such claimant, or prevent the collection of such lien. [L. '93, p. 432, § 12; L. '99, p. 143, § 1.]

Cited in 8 Wash. 475; 20 Wash. 594; 26 Wash. 660; 51 Wash. 600.

§ 1174. Answer of Defendant—Hearing.—If the defendant or defendants appear in a suit to enforce any lien provided by this chapter he or they shall make their answer on the merits of the complaint, and any motion or demurrer against the said complaint must be filed with the answer; and no motion shall be allowed to make complaint more definite and certain, if it appear to the court that the defendant or defendants have or should have knowledge of the facts, or that it can be made more certain and definite by facts which will appear necessarily in the testimony; but the case, unless the court sustains the demurrer to the complaint, shall be heard on the merits as speedily, as possible, and amendments of the pleadings, if necessary, shall be liberally allowed. [L. '93, p. 432, § 13.]

Cited in 13 Wash. 159; 29 Wash. 404.

§ 1175. Enforcement of Lien Against Whole or Part.—Any person who shall bring a civil action to enforce the lien herein provided for, or any person having a lien as herein provided for, who shall be made a party to any civil action, has the right to demand that such lien be enforced against the whole or any part of the sawlogs, spars, piles or other timber or manufactured lumber or shingles upon which he has performed labor or which he has assisted in securing or obtaining, or which he has cut on his timber land during the eight months next preceding the filing of his lien, for all his labor upon or for all his assistance in obtaining or securing said logs, spars, piles or other timber, or in manufacturing said lumber or shingles during the whole or any part of the eight months mentioned in section 1168, or for timber cut during the whole or any part of the eight months above mentioned. And where proceedings are commenced against any lot of sawlogs, spars, piles or other timber or lumber or shingles as herein provided, and some of the lienors claim liens against the specific logs, spars, piles or other timber or lumber or shingles proceeded against, and others against the same generally, to secure their claims for work and labor, the priority of the liens shall be determined as hereinbefore provided. [Cf. L. '77, p. 218, § 14; Cd. '81, § 1952; 1 H. C., § 1690; L. '93, p. 432, § 14.]

Cited in 6 Wash. 480, 481; 20 Wash. 594; 27 Wash. 110.

"Section 1168" substituted for "section 7" of the act of 1893, while "section 5" [§ 1166, supra] was evidently intended.

§ 1176. Errors not to Invalidate Lien, When.—No mistake or error in the statement of the demand, or of the amount of credits and offsets allowed, or of the balance asserted to be due to claimant, nor in the description of the property against which the claim is filed, shall invalidate the lien, unless the court finds that such mistake or error in the statement of the demand, credits and offsets or of the balance due was made with intent to defraud, or the court

shall find that an innocent third party without notice, direct or constructive, has, since the claim was filed, become the bona fide owner of the property liened upon, and that the notice of claim was so deficient that it did not put the party upon further inquiry, in any manner. [L. '93, p. 433, § 15.]

Cited in 17 Wash. 605; 27 Wash. 107; 29 Wash. 404; 36 Wash. 154; 40 Wash. 201.

§ 1177. Innocent Third Party, Who is.—It shall be conclusively presumed by the court that a party purchasing the property liened upon within thirty days given herein to claimants wherein to file their liens, is not an innocent third party, nor that he has become a bona fide owner of the property liened upon, unless it shall appear that he has paid full value for the said property, and has seen that the purchase money of the said property has been applied to the payment of such bona fide claims as are entitled to liens upon the said property under the provisions of this chapter, according to the priorities herein established. [L. '93, p. 433, § 16.]

Cited in 27 Wash. 107; 40 Wash. 201.

§ 1178. Joinder—Costs.—Any number of persons claiming liens under this chapter may join in the affidavit in section 1168 provided, and may join in the same action, and when separate actions are commenced the court may consolidate them. The court shall also allow as part of the costs the moneys paid for filing, making and recording the claim, and a reasonable attorney's fee for each person claiming a lien. [L. '01, p. 20, § 1. Cf. L. '77, p. 219, § 15; Cd. '81, § 1953; 1 H. C., § 1691; L. '93, p. 433, § 17.]

Cited in 4 Wash. 722; 10 Wash. 174; 16 Wash. 416; 17 Wash. 647.

§ 1179. Judgment, Enforcement of.—In each civil action judgment must be rendered in favor of each person having a lien for the amount due to him, and the court or judge thereof shall order any property subject to the lien herein provided for to be sold by the sheriff of the proper county in the same manner that personal property is sold on execution, and the court or judge shall apportion the proceeds of such sale to the payment of each judgment, according to the priorities established in this act pro rata in its class according to the amount of such judgment. [Cf. L. '77, p. 219, § 16; Cd. '81, § 1954; 1 H. C., § 1692; L. '93, p. 434, § 18.]

Cited in 59 Wash. 261.

§ 1180. Sale as Personalty.—The court or judge may order any property subject to a lien as in this chapter provided to be sold by the sheriff as personal property is sold on execution either before or at the time judgment is rendered, as provided in section next preceding, and the proceeds of such sale must be paid into court, to be

applied as in said section directed. [Cf. L. '77, p. 219, § 17; Cd. '81, § 1955; 1 H. C., § 1693; L. '93, p. 434, § 19.]

§ 1181. Damages for Eloigning or Removing Marks, etc.—Recoverable When.—Any person who shall eloign, injure or destroy, or who shall render difficult, uncertain or impossible of identification any sawlogs, spars, piles, shingles or other timber upon which there is a lien as herein provided, without the express consent of the person entitled to such lien shall be liable to the lienholder for the damages to the amount secured by his lien, and it being shown to the court in the civil action to enforce said lien, it shall be the duty of the court to enter a personal judgment for the amount in such action against the said person, provided he be a party to such action, or the damages may be recovered by a civil action against such person. [Cf. L. '77, p. 219, § 18; Cd. '81, § 1956; 1 H. C., § 1694; L. '93, p. 434, § 20.]

Cited in 5 Wash. 383; 8 Wash. 475, 578; 9 Wash. 505, 506; 12 Wash. 537; 27 Wash. 109; 50 Wash. 416; 67 Wash. 182.

CHAPTER VIII.

Liens on Steamers, Boats, etc.

§ 1182. Vessels, etc., Liable for Liens, When.—All steamers, vessels and boats, their tackle, apparel and furniture, are liable—

1. For service rendered on board at the request of, or under contract with, their respective owners, charterers, masters, agents or consignees.

2. For work done or material furnished in this state for their construction, repair or equipment at the request of their respective owners, charterers, masters, agents, consignees, contractors, subcontractors, or other person or persons having charge in whole or in part of their construction, alteration, repair or equipment; and every contractor, builder or person having charge, either in whole or in part, of the construction, alteration, repair or equipment of any steamer, vessel or boat, shall be held to be the agent of the owner for the purposes of this chapter, and for supplies furnished in this state for their use, at the request of their respective owners, charterers, masters, agents or consignees, and any person having charge, either in whole or in part, of the purchasing of supplies for the use of any such steamer, vessel or boat, shall be held to be the agent of the owner for the purposes of this chapter.

3. For their wharfage and anchorage within this state.

4. For nonperformance or malperformance of any contract for the transportation of persons or property between places within this state, or to or from places within this state, made by their respective owners, masters, agents or consignees.

5. For injuries committed by them to persons or property within this state, or while transporting such persons or property to or from this state. Demands for these several causes constitute liens upon all steamers, vessels and boats, and their tackle, apparel and furniture, and have priority in the order of the subdivisions hereinbefore enumerated, and have preference over all other demands; but such liens continue in force only for a period of three years from the time the cause of action accrued. [L. '01, p. 21, § 1. Cf. L. '58, p. 29, § 1; L. '77, p. 216, § 1; Cd. '81, § 1939; 1 H. C., § 1678.]

Cited in 1 Wash. 612, 615; 3 Wash. 586; 47 Wash. 422; 51 Wash. 87; 56 Wash. 582; 57 Wash. 553; 68 Wash. 54, 55, 57, 58.

§ 1183. Enforcement of Liens.—Such liens may be enforced, in all cases of maritime contracts or service, by a suit in admiralty, in rem, and the law regulating proceedings in admiralty shall govern in all such suits; and in all cases of contracts or service not maritime, by a civil action in any district court of this territory. [L. '77, p. 216, § 2; Cd. '81, § 1940.]

Cited in 47 Wash. 422; 56 Wash. 583; 68 Wash. 54, 58.

§ 1184. Liens for Services of Stevedores.—All steamers, vessels and boats, their tackle, apparel and furniture shall be held liable at all ports and places within this state or within the jurisdiction of the courts of this state or within the jurisdiction of the courts of the United States in said state for services rendered by stevedores, longshoremen or others engaged in the loading, unloading, stowing or dunnaging of cargo in or from any steamer, vessel or boat in any harbor or at any other place within said state, or within the jurisdiction of the courts thereof as above stated, and said steamers, vessels and boats shall further be liable as per their contracts for all services performed upon wharfs or landing places by stevedores, longshoremen or others: Provided, that such services must have been so performed in and about and be connected with the loading, unloading, dunnaging or stowing of said cargo. [L. '01, p. 136, § 1.]

§ 1185. Priority.—Demands for wages and all sums due under contracts or otherwise for the performance of all or any of the services mentioned in the last preceding section shall constitute liens upon all steamers, vessels and boats, their tackle, apparel and furniture, and shall have priority over all other demands save and excepting the demands mentioned in the first three subdivisions of section 1182, supra, to which said demands the lien hereby provided shall be subordinate: Provided, that such liens shall only continue in force for the period of three years from the date when such work was done or the last services performed by such stevedores, longshoremen or others. [L. '01, p. 137, § 2.]

§ 1186. Suits in Rem.—The liens hereby created may be enforced by a suit, in rem, and the law regulating like proceedings shall govern in all such suits. [L. '01, p. 137, § 3.]

§ 1187. Liens for Towage and Dunnage.—Whenever the owner, charterer, or any person or corporation operating, managing or controlling any steamship, vessel or boat shall willfully fail, neglect or refuse to carry out or perform any express contract or portion thereof for the towing, loading, unloading, dunnaging or stevedoring of such steamship, vessel or boat, any person or persons, firm or corporation sustaining thereby any loss or damage which is capable of definite ascertainment shall have a lien upon such steamship, vessel or boat for said loss or damage. The rank and priority of the lien hereby created and the manner of its enforcement shall be fixed, controlled and regulated by the provisions of the existing law pertaining to liens for similar services already performed. [L. '03, p. 286, § 1.]

CHAPTER IX.

Liens on Farm Products.

§ 1188. Farm Laborers' and Landlords' Liens.—Any person who shall do labor upon any farm or land, in tilling the same or in sowing or harvesting or threshing any grain, as laborer, contractor, or otherwise, or laboring upon, or securing or assisting in securing or housing any crop or crops sown, raised, or threshed thereon during the year in which said work or labor was done, such person shall have a lien upon all such crops as shall have been raised upon all or any of such land, for such work or labor, and every landlord shall have a lien upon the crops grown or growing upon the demised lands of any year for the rents accrued or acquiring for such year, whether the same is paid wholly or in part in money or specific articles of property, or products of the premises, or labor, and also for the faithful performance of the lease; and the lien created by the provisions of this section shall be a preferred lien, and shall be prior to all other liens.. [Cf. L. '79, p. 150, § 1; Cd. '81, § 1975; L. '86, p. 114, § 1; L. '91, p. 144, § 1; 1 H. C., § 1695.]

Cited in 10 Wash. 174; 14 Wash. 624, 625; 40 Wash. 201; 59 Wash. 679.

§ 1189. Priority of Liens.—The liens provided for in the last section are preferred liens, and are prior to any other liens or encumbrance upon said crop or crops, except that the interest of any lessor in any portion of the crop raised where the premises are leased in consideration of a share of the crop raised, shall not be subject to such lien. [L. '79, p. 150, § 2; Cd. '81, § 1976; L. '83, p. 45, § 5.]

§ 1190. Claim to be Verified and Filed—How Enforced.—Any person claiming the benefit of this chapter must, within forty days after the close of said work and labor, or after the expiration of the term, or after the expiration of each year of the lease, for which any lands were demised, file for record with the county auditor of the county in which said work and labor was performed, or said demised lands are situated, a claim which shall be in substance in accordance with the provisions of section 1168, so far as the same may be applicable, which said claim shall be verified as in said section provided, and said liens may be enforced in a civil action in the same manner, as near as may be, as provided in section 1172: Provided, that the lien hereby created in favor of landlords shall only apply when the lease has been recorded. [Cf. L. '79, p. 150, § 3; Cd. '81, § 1977; L. '86, p. 115, § 2; L. '88, p. 130, § 1; 1 H. C., § 1696.]

Cited in 11 Wash. 174; 59 Wash. 680.

§ 1190a. Provisions Extended to Farm Laborers.—All rights secured to the holders of liens upon logs, under the provisions of chapter VII, shall inure to the benefit of those holding liens under the provisions of this chapter, and the said lienholders hereunder, shall have the same right to have their liens recorded, the same right of foreclosure, of joinder of parties, of judgment over against the person primarily liable, and against any person who shall injure or impair their lien or any of their rights, as are above secured to the holders of liens upon logs, under said chapter VII. [Cd. '81, § 1978.]

"This chapter" in the Code of 1881 included chapters IX, XIII and XIV of this Title; but this section relates only to chapter IX.

CHAPTER X.

Liens for Storage and Advanced Charges.

§ 1191. When Lien Exists.—Whenever property upon which charges for advances, freight, transportation, wharfage, or storage, due and unpaid, and a lien shall remain and be held in store by the person or persons in whose favor such lien exists uncalled for, it shall be lawful for such person or persons to cause such property to be sold as is herein provided. [Cd. '81, § 1980; 1 H. C., § 1699.]

§ 1192. When Certain Property may be Sold for Charges.—If said property consists of livestock, the maintenance of which at the place where kept is wasteful and expensive in proportion to the value of the animals, or other of the perishable property liable, if kept, to destruction, waste, or great depreciation, the person or persons having such lien may sell the same upon giving ten days' notice. [Cd. '81, § 1981; 1 H. C., § 1700; see L. '63, p. 421, § 2.]

§ 1193. When Other Property may be Sold.—All other property upon which such charges may be unpaid, due, and a lien, after the same shall have remained in store uncalled for for a period of thirty days after such charges shall have become due, may be sold by the person or persons having a lien for the payment of such charges upon giving ten days' notice: Provided, that where the property can be conveniently divided into separate lots or parcels, no more lots or parcels shall be sold than shall be sufficient to pay the charges due on the day of sale, and the expenses of the sale. [Cd. '81, § 1982; 1 H. C., § 1701.]

§ 1194. Application of Proceeds of Sale.—The moneys arising from sales made under the provisions of this chapter shall first be applied to the payment of the costs and expenses of the sale, and then to the payment of the lawful charges of the person or persons having a lien thereon for advances, freight, transportation, wharfage, or storage, for whose benefit the sale shall have been made; the surplus, if any, shall be retained, subject to the future lawful charge of the person or persons for whose benefit the sale was made, upon the property of the same owner still remaining in store uncalled for, if any there be, and to the demand of the owner of the property who shall have paid such charges or otherwise satisfied such lien, and all moneys remaining uncalled for, for the period of three months, shall be paid to the county treasurer, and shall remain in his hands a special fund for the benefit of the lawful claimant thereof. [Cd. '81, § 1983; 1 H. C., § 1702.]

Cited in 30 Wash. 391.

§ 1195. Special Contract not Affected.—Nothing in this chapter contained shall be so construed as to alter or affect the terms of any special contract in writing, made by the parties, as to the advances, affreightment, wharfage, or storage; but when any such special contract shall have been made, its terms shall govern, irrespective of this chapter. [Cd. '81, § 1984; 1 H. C., § 1703.]

§ 1196. Notices, How Given.—All notices required under this chapter shall be given as is or may be by law provided in cases of sales of personal property upon execution. [Cd. '81, § 1985; 1 H. C., § 1704.]

CHAPTER XI.

Liens for Keeping Livestock.

§ 1197. Creation of Lien.—Any farmer, ranchman, herder of cattle, tavern-keeper, livery and boarding stable keeper or any other person, to whom any horses, mules, cattle or sheep shall be intrusted for the purpose of feeding, herding, pasturing, and training, caring

for or ranching, shall have a lien upon said horses, mules, cattle or sheep for such amount that may be due for said feeding, herding, pasturing, training, caring for, and ranching, and shall be authorized to retain possession of said horses, mules or cattle or sheep, until said amount is paid. [L. '09, p. 636, § 1. Cf. L. '91, p. 151, § 1; 1 H. C., § 1705.]

Cited in 10 Wash. 28; 12 Wash. 46; 36 Wash. 129; 59 Wash. 355, 356.

§ 1198. Enforcement.—Any person having a lien under the provisions of the last preceding section may enforce the same by an action in any court of competent jurisdiction; and said property may be sold on execution for the purpose of satisfying the amount of such judgment and costs of sale, together with the proper costs of keeping the same up to the time of said sale. [L. '91, p. 151, § 2; 1 H. C., § 1706.]

Cited in 36 Wash. 129.

The "last preceding section" applies to the act of 1891, page 151, § 1, which expressly excepted "stolen stock" from liens for keeping, and omitted the words "any other person." Otherwise it was the same as § 1197.

§ 1199. Possession to Secure Lien — Sale — Notice.—Any person having a lien under the provisions of section 1197 for feeding, herding, pasturing, training, caring for, or ranching any horses, mules, cattle or sheep, shall retain such animal for a period of ten (10) days, at the expiration of which time, if the owner of such animal does not satisfy such lien, the sheriff or any constable may sell such animal at public auction after giving the owner ten days' notice of the time and place of such sale by delivering a copy of such notice to the owner, or in case personal service cannot be had, by publishing same in a newspaper of general circulation in said county where said feeding, herding, pasturing, training, caring for, and ranching was furnished; if there be no paper of general circulation in said county, then by posting notices of the time and place of such sale in three conspicuous places in said county, and after satisfying the lien and costs that may accrue. any residue remaining shall be paid to the owner of said animal or person who may be lawfully entitled to the same. [L. '09, p. 636, § 2.]

Cited in 59 Wash. 365.

§ 1200. No Waiver by Delivery—Action to Enforce.—Whenever any horses, mules, cattle or sheep shall be intrusted for the purpose of feeding, herding, pasturing, training, caring for, and ranching to any farmer, ranchman, herder of cattle, tavern-keeper, livery or boarding stable keeper, continuously for some time, either definite or indefinite, the voluntary delivery of the same to the owner or his agent shall not waive or defeat the lien provided for in section 1197,

and the person having such lien may enforce his lien against said property in any court of competent jurisdiction at any time within ten (10) days after parting with the possession thereof: Provided, that such lien shall not attach to the interest nor affect the rights of a third person who may have acquired an interest in or title to an animal against which a lien is claimed, for value and without knowledge of the claimed lien, while such animal is not in possession of the claimant. [L. '09, p. 637, § 3.]

CHAPTER XII.

Liens of Innkeepers and Their Liability.

§ 1201. Lien upon Baggage, etc.—Hereafter all hotel-keepers, innkeepers, lodging-house keepers, and boarding-house keepers in this state shall have a lien upon the baggage, property, or other valuables of their guests, lodgers, or boarders brought into such hotel, inn, lodging-house, or boarding-house by such guests, lodgers, or boarders, for the proper charges due from such guests, lodgers, or boarders for their accommodation, board, or lodging, and such other extras as are furnished at their request, and shall have the right to retain in their possession such baggage, property, or other valuables until such charges are fully paid, and to sell such baggage, property, or other valuables for the payment of such charges in the manner provided in the next succeeding section of this chapter. [L. '90, p. 96, § 1; 1 H. C., § 2710.]

Cited in 38 Wash. 412.

§ 1202. Sale to Satisfy Lien—Notice.—Whenever any baggage, property, or other valuables which have been retained by any hotel-keeper, innkeeper, lodging-house keeper, or boarding-house keeper in his possession by virtue of the provision of the next preceding section of this chapter shall remain unredeemed for the period of three months after the same shall have been so retained, then it shall be lawful for such hotel-keeper, innkeeper, lodging-house keeper, or boarding-house keeper to sell such baggage, property, or other valuables at public auction, after giving the owner thereof ten days' notice of the time and place of such sale, through the postoffice, or by advertising in some newspaper published in the county where such sale is made, or by posting notices in three conspicuous places in such county, and out of the proceeds of such sale to pay all legal charges due from the owner of such baggage, property, or other valuables, including proper charges for storage of the same, and the overplus, if any, shall be paid to the owner upon demand. [L. '90, p. 96, § 2; 1 H. C., § 2711.]

§ 1203. Responsibility Limited.—No innkeeper who constantly has in his inn an iron safe or suitable vault in good order, and fit for the safe custody of money, bank notes, jewelry, articles of gold and silver manufacture, precious stones and bullion, and who keeps a copy of this section, printed by itself in large, plain Roman type, and framed, constantly and conspicuously suspended in the office, barroom, saloon, reading, sitting, and parlor room of his inn, and also a copy printed by itself in ordinary-sized plain Roman type, posted upon the inside of the entrance door of every public sleeping-room of his inn, shall be liable for the loss of any such article suffered by any guest, unless such guest has first offered to deliver such property lost by him to such innkeeper for custody in such iron safe or vault, and such innkeeper has refused or neglected to receive and deposit such property in his safe or vault, and to give such guest a receipt therefor: Provided, that all doors to rooms furnished to guests shall be provided with slide-bolts inside of such rooms on all doors; otherwise he shall be liable; but every innkeeper shall be liable for any loss of the above enumerated articles by a guest in his inn, when caused by the theft or negligence of the innkeeper or any of his servants. [L. '90, p. 95, § 1; 1 H. C., § 2712.]

Cited in 53 Wash. 447, 450.

CHAPTER XIII.

Preference Rights of Employees.

§ 1204. Priority of Wages, etc., in Insolvency.—In all assignments of property made by any person to trustees or assignees on account of the inability of the person at the time of the assignment to pay his debts, or in proceedings in insolvency the wages of the miners, mechanics, salesmen, servants, clerks, or laborers employed by such persons to the amount of one hundred dollars each, and for services rendered within sixty days previously, are preferred claims, and must be paid by such trustees or assignees before any other creditor or creditors of the assignor. [L. '77, p. 233, § 34; Cd. '81, § 1972; 1 H. C., § 3122.]

Cited in 17 Wash. 186.

§ 1205. Preference on Death of Employer.—In case of the death of any employer, the wages of each miner, mechanic, salesman, clerk, servant, and laborer for services rendered within sixty days next preceding the death of the employer, not exceeding one hundred dollars, rank in priority next after the funeral expenses, expenses of the last sickness, the charges and expenses of administering upon the estate, and the allowance to the widow and infant children, and must be paid before other claims against the estate of the deceased person. [L. '77, p. 223, § 35; Cd. '81, § 1973; 1 H. C., § 3123.]

§ 1206. Notice and Presentment of Claims.—In cases of executions, attachments, and writs of similar nature issued against any person, except for claims for labor done, any miners, mechanics, salesmen, servants, clerks, and laborers who have claims against the defendant for labor done, may give notice of their claims and the amount thereof, sworn to by the person making the claim to the creditor and the officer executing either of such writs at any time before the actual sale of property levied on, and unless such claim is disputed by the debtor or a creditor, such officer must pay to such person, out of the proceeds of the sale, the amount each is entitled to receive for services rendered within sixty days next preceding the levy of the writ, not exceeding one hundred dollars. If any or all the claims so presented and claiming preference under this chapter are disputed by either the debtor or a creditor, the person presenting the same must commence an action within ten days from [for] the recovery thereof, and must prosecute his action with due diligence, or be forever barred from any claim of priority of payment thereof; and the officer shall retain possession of so much of the proceeds of the sale as may be necessary to satisfy such claim, until the determination of such action; and in case judgment be had for the claim or any part thereof, carrying costs, the costs taxable therein shall likewise be a preferred claim, with the same rank as the original claim. [L. '77, p. 223, § 36; Cd. '81, § 1974; 1 H. C., § 3124.]

Cited in 6 Wash. 621; 16 Wash. 413, 697.

CHAPTER XIV.

The Construction of Statutes Relating to Liens.

§ 1208. Construction of Lien Law.—In construing the provisions of the lien law, words used in the masculine gender include the feminine and neuter, the singular number includes the plural, and the plural the singular; the word "person" includes a corporation as well as a natural person, and the word "writing" includes printing. [L. '77, p. 224, § 37; Cd. '81, § 1979; 1 H. C., § 1707.]

§ 1209. Extent of Lien Law.—This act establishes the law of this state respecting the subject to which it relates, and its provisions and all proceedings under it are to be liberally construed with a view to effect its object. [L. '77, p. 224, § 39; Cd. '81, § 1979; 1 H. C., § 1980.]

"This act" in Laws of 1877, refers to liens of mechanics, loggers, and others, now covered in this title.

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CHAPTER I.

The Competency of Witnesses.

§ 1210. Who may Testify.—Every person of sound mind and suitable age and discretion, except as hereinafter provided, may be a witness in any action or proceeding. [L. '54, p. 186, § 289; Cd. '81, § 388; 2 H. C., § 1645.]

§ 1211. Not Excluded on Ground of Interest, Exception.—No person offered as a witness shall be excluded from giving evidence by reason of his interest in the event of the action, as a party thereto or otherwise; but such interest may be shown to affect his credibility: Provided, however, that in an action or proceeding where the adverse party sues or defends as executor, administrator, or legal representative of any deceased person, or as deriving right or title by, through, or from any deceased person, or as the guardian or conservator of the estate of any insane person, or of any minor under the age of fourteen years, then a party in interest or to the record shall not be admitted to testify in his own behalf as to any transaction had by him with or any statement made to him by any such deceased or insane person, or by any such minor under the age of fourteen years: Provided further, that this exclusion shall not

apply to parties of record who sue or defend in a representative or fiduciary capacity, and who have no other or further interest in the action. [Cf. L. '54, p. 186, § 290; L. '67, p. 88, § 1; L. '73, p. 106, § 382; Cd. '81, § 389; L. '90, p. 91, § 1; 2 H. C., § 1646.]

Cited in 2 Wash. 425; 6 Wash. 85; 12 Wash. 471; 13 Wash. 553; 14 Wash. 136; 17 Wash. 518; 24 Wash. 228, 672; 26 Wash. 49, 57; 27 Wash. 187; 29 Wash. 83; 30 Wash. 193; 31 Wash. 37; 34 Wash. 374; 42 Wash. 113; 43 Wash. 244; 45 Wash. 110, 111; 46 Wash. 251, 310; 47 Wash. 258; 48 Wash. 653; 49 Wash. 344; 50 Wash. 380; 54 Wash. 694; 61 Wash. 635; 64 Wash. 402; 67 Wash. 123; 68 Wash. 682; 69 Wash. 297; 74 Wash. 450; 80 Wash. 501; 84 Wash. 653; 85 Wash. 103.

§ 1212. Conviction of Crime, Effect of.—No person offered as a witness shall be excluded from giving evidence by reason of conviction of crime, but such conviction may be shown to affect his credibility: Provided, that any person who shall have been convicted of the crime of perjury shall not be a competent witness in any case, unless such conviction shall have been reversed, or unless he shall have received a pardon. [L. '91, p. 33, § 1; 2 H. C., § 1647; see L. '54, p. 196, § 292; Cd. '81, § 390.]

Cited in 6 Wash. 569, 570; 15 Wash. 19; 22 Wash. 59; 32 Wash. 187; 33 Wash. 350; 37 Wash. 408–410; 55 Wash. 307.

§ 1213. Who Incompetent.—The following persons shall not be competent to testify:—

1. Those who are of unsound mind, or intoxicated at the time of their production for examination; and

2. Children under ten years of age who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly. [L. '54, p. 186, § 293; L. '63, p. 154, § 330; L. '73, p. 106, § 384; Cd. '81, § 391; 2 H. C., § 1648.]

Cited in 34 Wash. 203; 45 Wash. 439.

§ 1214. Who Disqualified.—The following persons shall not be examined as witnesses:—

1. A husband shall not be examined for or against his wife without the consent of the wife, nor a wife for or against her husband without the consent of the husband; nor shall either, during marriage or afterwards, without the consent of the other, be examined as to any communication made by one to the other during marriage. But this exception shall not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other;

2. An attorney or counselor shall not, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of professional employment;

3. A clergyman or priest shall not, without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs;

4. A regular physician or surgeon shall not, without the consent of his patient, be examined in a civil action as to any information acquired in attending such patient, which was necessary to enable him to prescribe or act for the patient;

5. A public officer shall not be examined as a witness as to communications made to him in official confidence, when the public interest would suffer by the disclosure. [Cf. L. '54, p. 187, § 294; L. '73, p. 107, § 385; L. '79, p. 118, § 1; Cd. '81, § 392; L. '86, p. 73, § 1; 2 H. C., § 1649.]

Cited in 20 Wash. 462; 21 Wash. 662; 24 Wash. 683; 27 Wash. 29, 573; 42 Wash. 600; 44 Wash. 486; 47 Wash. 520; 54 Wash. 3, 4; 56 Wash. 562, 563; 60 Wash. 398; 65 Wash. 442.

CHAPTER II.

The Manner of Compelling the Attendance of Witnesses.

§ 1215. Witnesses, When Compelled to Attend.—No person shall be obliged to attend as a witness before any court of record, judge, justice of the peace, commissioner, referee, or other officer, in any civil action or proceeding out of the county in which he resides, unless his residence be within twenty miles of such court, judge, justice of the peace, commissioner, referee, or other officer; and no person shall be obliged to attend as a witness in any civil action or proceeding in a justice's court, unless his residence be within twenty miles of such court, whether within the county or not. Nor shall any person be compelled to attend as a witness in any civil action or proceeding, unless the fees be paid or tendered to him which are allowed by law for one day's attendance as a witness; and for traveling to and returning from the place where he is required to attend, provided such fees be demanded by him at the time of service of the subpoena. [L. '54, p. 187, § 295; L. '63, p. 156, § 332; L. '69, p. 104, § 388; Cd. '81, § 393; L. '91, p. 33, § 2; 2 H. C., § 1650.]

Cited in 5 Wash. 805; 67 Wash. 372, 373.

See supra, § 497, fees of witnesses.
See supra, § 507, fees of witnesses to be paid in advance.
See supra, § 1049 et seq., contempts and their punishment.
See infra, § 1892, contempt before justice of the peace.

§ 1216. Subpoena Duces Tecum.—The subpoena may require not only the personal attendance of the person to whom it is directed at a particular time and place to testify as a witness, but may also require him to bring with him any books, documents, or things under his control; but no public officer or person having the possession or

control of public records or papers which by law are required to be kept in any particular office or place shall be compelled to produce the same in any court. [L. '54, p. 188, § 296; Cd. '81, § 394; 2 H. C., § 1651.]

Cited in 59 Wash. 656; 84 Wash. 486.

§ 1217. Subpoena Issued When.—The subpoena shall be issued as follows:

1. To require attendance before a court of record or at the trial of an issue therein, such subpoena may be issued in the name of the state of Washington and be under the seal of the court before which the attendance is required or in which the issue is pending: Provided, that such subpoena may be issued with like effect by the attorney of record of the party to the action in whose behalf the witness is required to appear, and the form of such subpoena in each case may be the same as when issued by the court except that it shall only be subscribed by the signature of such attorney;

2. To require attendance out of such court before a judge, justice of the peace, commissioner, referee or other officer authorized to administer oaths or to take testimony in any matter under the laws of this state, it shall be issued by such judge, justice of the peace, commissioner, referee or other officer before whom the attendance is required;

3. To require attendance before a commissioner appointed to take testimony by a court of any other state, territory or county it may be issued by any judge or justice of the peace in places within their respective jurisdiction. [Cf. L. '54, p. 188, § 297; Cd. '81, § 395; 2 H. C., § 1652; L. '95, p. 189, § 1.]

§ 1218. Service, Proof of.—Such subpoena may be served by any suitable person over eighteen years of age, by exhibiting and reading it to the witness, or by giving him a copy thereof, or by leaving such copy at the place of his abode. When service is made by any other person than an officer authorized to serve process, proof of service shall be made by affidavit. [L. '54, p. 188, § 298; L. '53, p. 156, § 334; L. '69, p. 105, § 391; Cd. '81, § 396; 2 H. C., § 1653.]

§ 1219. Person in Court Required to Testify.—A person present in court, or before a judicial officer, may be required to testify in the same manner as if he were in attendance upon a subpoena issued by such court or officer. [L. '54, p. 188, § 299; Cd. '81, § 397; 2 H. C., § 1654.]

§ 1220. Liability and Penalty for Failure to Attend.—If any person duly served with a subpoena, and obliged to attend as a witness, shall fail to do so, without any reasonable excuse, he shall be liable to the aggrieved party for all damages occasioned by such failure,

to be recovered in a civil action. Such failure to attend as required by the subpoena shall also be considered a contempt, and, upon due proof, the witness may be punished by a fine not exceeding fifty dollars, and stand committed until said fine and costs are paid, or until discharged by due course of law. [L. '54, p. 188, §§ 300, 301; Cd. '81, §§ 398, 399; 2 H. C., § 1655.]

Cited in 13 Wash. 487.

§ 1221. **Attachment for Witness.**—The court, judge, justice of the peace, or other officer, in such case, may issue an attachment to bring such witness before them to answer for contempt, and also testify as witness in the cause in which he was subpoenaed. [L. '54, p. 188, § 302; Cd. '81, § 400; 2 H. C., § 1656.]

§ 1222. **To Whom Directed, How Executed.**—Such attachment may be directed to the sheriff or any constable of any county in which the witness may be found, and shall be executed in the same manner as a warrant; and the fees of the officer for issuing and serving the same shall be paid by the person against whom the same was issued, unless he show reasonable cause, to the satisfaction of the justice, for his omission to attend; in which case the party requiring such attachment shall pay all such costs. [L. '91, p. 33, § 3; 2 H. C., § 1657.]

§ 1223. **Testimony of Prisoner, How Obtained.**—If the witness be a prisoner confined in a jail or prison within this state, an order for his examination in prison, upon deposition, or for his temporary removal and production before a court or officer, for the purpose of being orally examined, may be issued. [L. '54, p. 189, § 303; Cd. '81, § 401; 2 H. C., § 1658.]

§ 1224. **Affidavit to Procure Order.**—Such order can only be made upon affidavit, showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality. [L. '54, p. 189, § 304; Cd. '81, § 402; 2 H. C., § 1659.]

CHAPTER III.

The Examination of Parties.

§ 1225. **Examination of Adverse Party as Witness.**—A party to an action or proceeding may be examined as a witness, at the instance of the adverse party, or of one of several adverse parties, and for that purpose may be compelled in the same manner and subject to the same rules of examination as any other witness to testify at the trial, or he may be examined on a commission. [L. '54, p. 189, § 305; Cd. '81, § 403; 2 H. C., § 1660.]

Cited in 10 Wash. 428; 11 Wash. 651; 20 Wash. 239; 21 Wash. 335.

§ 1226. Interrogatories to Adversary.—Instead of the examination being had at the trial, as provided by the last section, the plaintiff, at the time of filing his complaint or afterward, and the defendant, at the time of filing his answer or afterward, may file in the clerk's office interrogatories for the discovery of facts and documents material to the support or defense of the action, to be answered on oath by the adverse party. [L. '54, p. 189, § 306; Cd. '81, § 402; 2 H. C., § 1661.]

Cited in 14 Wash. 135; 17 Wash. 391; 35 Wash. 245–247; 44 Wash. 31, 37; 80 Wash. 215; 81 Wash. 31.

§ 1227. Answers to Interrogatories.—Such interrogatories shall be served in the manner provided by law for the service of summons, or by service upon the attorney of the party to be interrogated, and the answers thereto shall be served and filed within twenty days after such service unless for cause shown a further time be allowed by the court. A private corporation may be interrogated in the same manner as individuals, and it shall not be excused for a failure to answer any proper interrogatory unless it shall show that no one in its employ or connected with, or interested in it, can give the desired answer or information. [Cf. L. '54, p. 189, § 307; Cd. '81, § 405; 2 H. C., § 1662; L. '97, p. 288, § 1.]

Cited in 81 Wash. 31.

§ 1228. Examination on Trial Notwithstanding Interrogatories.—A party to an action or proceeding, having filed interrogatories to be answered by the adverse party, as prescribed by the last two sections, shall not thereby be precluded from examining such adverse party as a witness at the trial, nor from taking his deposition to be read at the trial. [Cf. L. '54, p. 189, § 308; Cd. '81, § 406; L. '91, p. 34, § 4; 2 H. C., § 1663.]

§ 1229. Testimony not Conclusive.—The testimony of a party, upon examination at the trial, or by deposition, or upon interrogatories filed, may be rebutted by adverse testimony. [Cf. L. '54, p. 189, § 309; Cd. '81, § 407; L. '91, p. 34, § 5; 2 H. C., § 1664.]

Cited in 14 Wash. 135; 30 Wash. 354; 75 Wash. 388.

§ 1230. Penalty for Refusal to Answer or Give Testimony.—If a party refuse to attend and testify at the trial, or to give his deposition, or to answer any interrogatories filed, his complaint, answer or reply may be stricken out, and judgment taken against him, and he may also, in the discretion of the court, be proceeded against as in other cases for a contempt: Provided, that the preceding sections shall not be construed so as to compel any person to answer any question where such answer may tend to criminate himself. [Cf. L. '54, p. 190, § 310; Cd. '81, § 408; L. '91, p. 34, § 6; 2 H. C., § 1665.]

Cited in 4 Wash. 326; 6 Wash. 553; 44 Wash. 31, 32, 42.

§ 1230–1. Physical Examination in Personal Injury Cases.—On or before the trial of any action brought to recover damages for injury to the person, the court before whom such action is pending may from time to time, on application of any party therein, order and direct an examination of the person injured as to the injury complained of by a competent physician or physicians, surgeon or surgeons, in order to qualify the person or persons making such examination to testify in the said cause as to the nature, extent and probable duration of the injury complained of; and the court may in such order direct and determine the time and place of such examination: Provided, this section shall not be construed to prevent any other person or physician from being called and examined as a witness as heretofore. [L. '15, p. 236, § 1.]

CHAPTER IV.

Depositions.

§ 1231. Cases in Which may be Taken.—The testimony of a witness may be taken by deposition, to be read in evidence in an action, suit, or proceeding commenced and pending in any court in this state, in the following cases:—

1. When the witness resides out of the county, and more than twenty miles from the place of trial;

2. When the witness is about to leave the county, and go more than twenty miles from the place of trial, and there is a probability that he will continue absent when the testimony is required;

3. When the witness is sick, infirm, or aged, so as to make it probable that he will not be able to attend at the trial;

4. When the witness resides out of the state. [L. '54, p. 190, § 313; L. '69, p. 108, § 404; L. '77, p. 89, § 411; Cd. '81, § 409; 2 H. C., § 1666.]

Cited in 14 Wash. 458; 54 Wash. 21; 85 Wash. 184.

§ 1232. When may be Taken.—Either party may commence taking testimony by depositions at any time after service of summons upon the defendants. [L. '77, p. 90, § 412; Cd. '81, § 410; 2 H. C., § 1667.]

§ 1233. Before Whom Taken Within States — Notice.—Either party may have the deposition of a witness taken in this state before any judge of the superior court, justice of the peace, clerk of the supreme or superior court[s], mayor of a city or notary public, by serving on the adverse party or his attorney previous notice of the time and place of examination. The notice shall be served such time before the time when the deposition is to be taken as to allow the adverse party sufficient time by the usual route of travel to

attend, and three days for preparation, exclusive of the day of service, and the examination may, if so stated in the notice, be adjourned from day to day. The notice shall specify the action or proceeding, the name of the court or tribunal in which the deposition is to be used, and the time and place of taking the deposition. It shall be served upon the adverse party, his agent, or attorney of record, or be left at his usual place of abode. [L. '54, p. 190, § 314; Cd. '81, § 411; L. '88, p. 29, § 1; L. '91, p. 34, § 7; 2 H. C., § 1668.]

Cited in 54 Wash. 20.

§ 1234. Time for Notice may be Limited.—The court, or a judge thereof, or in an action or proceedings before a justice of the peace, the justice, may, upon sufficient cause being shown by affidavit, prescribe a shorter time for notice than that specified in the last preceding section. A copy of the order shortening the time must be served with the notice. [L. '91, p. 35, § 8; 2 H. C., § 1669.]

§ 1235. Witnesses Subpoenaed and Compelled to Attend.—Any witness may be subpoenaed and compelled, by any officer authorized to take depositions, to appear and give his deposition at any place within twenty miles of the abode of such witness, in like manner as he may be subpoenaed and compelled to attend as a witness in any court, and he shall suffer the same penalties for a failure to attend as are prescribed in section 1220. [Cf. L. '54, p. 192, § 321; Cd. '81, § 422; L. '91, p. 35, § 9; 2 H. C., § 1670.]

Cited in 59 Wash. 657.

§ 1236. Superior Court may Compel Attendance.—The superior court shall have power to compel the attendance of witnesses, within this state, before notaries public, justices of the peace or any other person authorized by the laws of this state to take depositions in causes pending in any court of the state, or in any court of any other state, or in any court of the United States, or in any court of a foreign country. [L. '01, p. 23, § 1.]

Cited in 59 Wash. 657.

§ 1237. Application for Order.—The officer before whom the deposition is to be taken in case of the refusal of any witness to attend or testify shall report to the superior court in and for the county in which the witness resides, or is found, by petition, that due notice has been given of the time and place of taking the depositions and that the witness has been summoned in the same manner that witnesses are now summoned to appear and testify in the superior court of this state; and the fees and mileage of the witness has been paid, or tendered to the witness, for his attendance and testimony, and that the witness has failed and refused to attend or testify before such officer, in the cause mentioned in the notice and the subpoena;

and ask an order of the court compelling the witness to attend and testify before such officer. [L. '01, p. 23, § 2.]

Cited in 59 Wash. 657.

§ 1238. Citation—Contempt.—The court upon the petition of the officers, and the payment of the regular docket fee of four dollars ($4) shall enter an order directing the witness to appear before the officer making the report, at a time and place to be fixed by the court in such order, and then and there give his testimony in such case. A copy of which order shall be served upon the witness in the same manner that summons and complaints are now served; and on failure or refusal of the witness to obey such order such witness shall be dealt with as for contempt. [L. '01, p. 24, § 3.]

§ 1239. Before Whom Taken Out of the State.—Depositions may be taken out of the state by a judge, justice, or chancellor or clerk of any court of record, a justice of the peace, notary public, mayor, or chief magistrate of any city or town, or any person authorized by a special commission from any court [of record] of this state. [Cf. L. '54, p. 193, § 322; L. '77, p. 90, § 414; Cd. '81, § 412; 2 H. C., § 1671.]

§ 1240. Commission to Take—How Issued.—Any superior court in this state, or any judge thereof, is authorized to grant a commission to take depositions within or without this state. The commission must be issued to a person or persons therein named, by the clerk, under the seal of the court granting the same, and depositions under it may be taken upon written interrogatories or upon oral questions or partly upon oral and partly upon written interrogatories. Before any such commission shall be granted, the person intending to apply therefor shall serve upon the adverse party a notice of his intention to make such application, stating the time when and the place where such application will be made, which notice shall be served in the same manner and for the same time as provided in section 1233, unless the court or judge, for sufficient cause shown by affidavit, prescribe a shorter time. At the time the application is presented, the court or judge shall settle the interrogatories, if any have been served and the parties have not settled the same. The clerk, upon issuing the commission, shall attach the interrogatories thereto, if any have been agreed upon or settled by the court, and immediately forward the same to the commissioner. At least five days' notice must be given to the party or witness to be examined out of the state, in case such examination shall be had upon oral interrogatories, and the person before whom the deposition of the witness shall be taken shall have the same power to compel the attendance of such parties or witnesses as any person authorized to

take such deposition within this state. [Cf. L. '54, p. 193, § 323; L. '73, p. 114, §§ 412, 413; L. '77, p. 90, § 415; Cd. '81, §§ 413, 414; L. '91, p. 35, § 10; 2 H. C., § 1672; L. '97, p. 206, § 1.]

§ 1241. Notice to Nonresident Party.—When the party against whom the deposition is to be read is absent from or a nonresident of the state, and has no agent or attorney of record therein, he may be notified of the taking of the deposition [or] of the application for a commission, by publication. The publication must be made three consecutive weeks, in some newspaper printed in the county where the action or proceeding is pending, if there be any printed in such county, and if not, in some newspaper printed in this state, of general circulation in that county. The publication must contain all that is required in the written or printed notice, and may be proved in the manner prescribed in case of the publication of summons. [Cf. Cd. '81, § 415; L. '91, p. 35, § 11; 2 H. C., § 1673.]

§ 1242. How Taken and Certified.—The deposition shall be written by the officer taking the same, or by the witness, or by some disinterested person, in the presence and under the direction of such officer. When completed, it shall be carefully read to or by the witness, corrected if desired, and subscribed by him. If taken upon notice, it shall be certified by the officer substantially as follows:—

State of Washington,
County of ——, } ss.

I, A B, justice of the peace in and for said county (or judge, clerk, etc., as the case may be), do hereby certify that the above deposition was taken before me, and reduced to writing by myself (or witness, as the case may be), at ——, in said county, on the —— day of ——, 18—, at —— o'clock, in pursuance of notice hereto annexed; that the above-named witness, before examination, was sworn (or affirmed) to testify the truth, the whole truth, and nothing but the truth, and that the said deposition was carefully read to (or by) said witness, and then subscribed by him.

A B, Justice of the Peace.

Dated at —— the —— day of ——, 18—.

If the deposition be taken upon a commission, the commission[er] shall testify [certify] it in substantially the same manner, and annex to it the commission and interrogatories. [Cf. L. '54, p. 191, § 315; Cd. '81, § 416; L. '91, p. 36, § 12; 2 H. C., § 1674.]

Cited in 70 Wash. 691; 75 Wash. 481.

§ 1243. How Returned.—The deposition, whether taken upon notice or upon a commission, shall be inclosed in a sealed envelope, by the officer taking the same, and directed to the clerk of the court,

arbitrators, referee, or justice of the peace before whom the action is pending, or to such persons as the parties, in writing, may agree upon, and either delivered to the clerk of the court or other person, or transmitted through the mail or by some private person. [Cf. L. '54, p. 191, § 316; Cd. '81, § 417; L. '91, p. 36, § 13; 2 H. C., § 1675.]

Cited in 70 Wash. 691.

§ 1244. Use of on Trial — Objections.—Such deposition may be used by either party upon the trial, or other proceeding, against any party giving or receiving the notice, subject to all legal exceptions to the competency or credibility of the witness, or the manner of taking the deposition. But if the parties attend at the examination, no objection to the form of an interrogatory shall be made at the trial, unless the same was taken at the time of the examination. It shall be the duty of the person taking the deposition to propound to the witness every question proposed by either party, and to note all objections to the form of any interrogatory, and when any interrogatory is objected to on account of form, unless the form is amended and the objection waived, he shall write after the question, and before the answer, the words "objected to"; and when any witness declines to answer a question on the ground that it will [tend to] criminate himself, that fact shall also be noted after the question, if written down. The deposition may be taken in the form of a narrative, or by question and answer, or partly in either form, as either party present at the examination shall require. When taken by question and answer, the officer shall first write down the question and then the answer, as nearly as may be, in the language of the witness; but when the deposition is read to the witness previous to signing it, he shall be permitted to amend his answer to any question, or any part of his deposition; such amendment, however, unless both parties shall otherwise agree, shall not be made by way of interlining or erasing, but shall be added at the end of the deposition under the title "amendment by the witness," and such amendment shall intelligibly refer to the part so amended. [L. '54, p. 191, § 317; Cd. '81, § 418; 2 H. C., § 1676.]

§ 1245. Shall not be Used, When.—If it appear at the trial that the reason for taking the deposition no longer exist, the deposition shall not be read in evidence, unless the party offering it show that another of the causes specified by section 1231 then exists, or that the witness is dead, or cannot safely attend at the trial on account of sickness, age, or other bodily infirmity. [Cf. L. '54, p. 192, § 318; Cd. '81, § 419; L. '91, p. 36, § 14; 2 H. C., § 1677.]

Cited in 8 Wash. 93; 49 Wash. 648.

§ 1246. Depositions Taken in One Cause may be Used in Another, When.—When the plaintiff in any action shall discontinue it, or

when it shall be dismissed for any cause, and another action shall afterward be commenced for the same cause between the same parties, or their respective representatives, all depositions lawfully taken in the first action may be used in the other, in the same manner and subject to the same conditions and objections as if originally taken for such other action: Provided, that the deposition shall have been duly filed in the court where the first action was pending, and shall have remained in the custody of the court from the termination of the first action until the commencement of the other. [L. '54, p. 192, § 319; Cd. '81, § 420; H. C., § 1678.]

§ 1247. Certified Testimony of Deceased or Absent Witness.—The testimony of any witness, deceased, or out of the state, or for any other sufficient cause unable to appear and testify, given in a former action or proceeding, or in a former trial of the same cause or proceeding when reported by a stenographer, or reduced to writing, and certified by the trial judge, upon three days' notice to the opposite party or parties, together with service of a copy of the testimony proposed to be used may be given in evidence in the trial of any civil action or proceeding, where it is between the same parties and relates to the same matter. [L. '05, p. 50, § 1.]

Cited in 54 Wash. 260; 72 Wash. 291; 87 Wash. 135.

§ 1248. When may be Used on Appeal.—When any action shall have been appealed from one court to another, and is to be tried anew in the appellate court, all depositions lawfully taken to be used in the court from which the appeal was taken may be used in the appellate court in the same manner and subject to such exceptions for informality or irregularity, and none other, as were taken in writing to such depositions in the court below; and when an action is removed from one court to another by change of venue, all depositions previously taken in the action must be certified to the court to which the action is removed, and may be used in that court in the same manner and subject to the same exceptions as if originally taken for use therein. [Cf. L. '54, p. 192, § 320; Cd. '81, § 421; L. '91, p. 37, § 15; 2 H. C., § 1679.]

CHAPTER V.

Perpetuation of Testimony.

§ 1249. Application for Order to Examine Witnesses.—When any person shall be desirous to perpetuate the testimony of any witness he shall make a statement in writing, setting forth briefly and substantially his title, claim or interest in or to the subject concerning which he desires to perpetuate the evidence, and the names of all the persons interested or supposed to be interested therein, and also

the name of the witness proposed to be examined, which statement shall be under oath, and filed in the superior court. If the subject of the proposed deposition relate to real property within this state, the statement shall be filed in the county where the lands, or any part thereof, lie; in other cases, in the county where the parties interested, or some of them, reside. Upon such statement, an application may be made to such court, or judge thereof, to allow the examination of such witness. [Cf. L. '54, p. 193, § 327; L. '77, p. 93, § 425; Cd. '81, § 423; L. '91, p. 37, § 17; 2 H. C., § 1688.]

Cited in 37 Wash. 84.

§ 1250. Hearing of Application — Notice.—The court or judge shall appoint a time and place for hearing such application, and shall order notice thereof and of the statement to be served on all persons mentioned therein as adversely interested in the matter; the notice shall be served personally on all those living in the state at least twenty days before the time of hearing the application; upon those who are not residents of the state, it shall be served by publication or otherwise, in the same manner as a notice is served upon a non-resident. [L. '54, p. 194, § 328; L. '77, p. 93, § 426; Cd. '81, § 424; 2 H. C., § 1689.]

§ 1251. Order for Examination — Commission.—If upon hearing of the parties, or of the applicant alone, should no adverse party appear, the court or judge shall be satisfied that there is sufficient cause for taking the deposition, an order shall be made allowing the examination of the witness; and such court or judge may direct a commission to issue therefor in like manner as a commission to take the testimony of witnesses in actions or proceedings pending in such court. [Cf. L. '54, p. 194, § 329; Cd. '81, § 425; L. '91, p. 37, § 18; 2 H. C., § 1690.]

§ 1252. How Taken and Returned.—The deposition of such witness, whether residing in this state or not, shall be taken upon written interrogatories filed by the applicant and cross-interrogatories filed by any party adversely interested, if he shall think fit, and it shall be taken and returned substantially in the same manner as if taken upon commission to be used in any cause pending in the same court. [L. '54, p. 194, § 330; Cd. '81, § 426; 2 H. C., § 1691.]

§ 1253. Return and Filing—How Used—Objections.—The deposition, when returned, shall be filed in the office of the clerk of the court by whom the commission was issued; and if a trial be had between the person at whose request the deposition was taken and the person named in the statement, or any of them, or their successors in interest, upon proof of the death or insanity of the witness, or his inability to attend the trial by reason of age, sickness,

or settled infirmity, the deposition, or a certified copy thereof, may be used by either party, subject to all legal objections. But if the parties attend at the examination, no objections to the form of the interrogatory shall be made at the trial, unless the same were taken at the time of the examination. [L. '54, p. 194, § 331; Cd. '81, § 427; 2 H. C., § 1692.]

CHAPTER VI.

Documentary Evidence.

§ 1254. Court Records, etc., as Evidence.—The records and proceedings of any court of the United States, or any state or territory, shall be admissible in evidence in all cases in this state when duly authenticated by the attestation of the clerk, prothonotary, or other officer having charge of the records of such court, with the seal of such court annexed. [L. '54, p. 195, § 334; Cd. '81, § 430; 2 H. C., § 1680.]

Cited in 2 Wash. 518; 3 Wash. 169; 44 Wash. 487; 84 Wash. 162.

§ 1255. Faith Given to Judgments of Other States.—Judgment for debt rendered in any other state or any territory against any person or persons residents of this state at the time of the rendition of such judgment shall not be of any higher character as evidence of indebtedness than the original claim or demand upon which such judgment is rendered, unless such judgment shall be rendered upon personal services of summons, notice, or other due process against the defendant therein. [Cf. L. '66, p. 88, § 1; Cd. '81, § 739; L. '91, p. 70, § 1; 2 H. C., § 804.]

§ 1256. Defenses to Suits on Foreign Judgments.—The same defense to suits on judgment rendered without such personal service may be made by the judgment debtor which might have been set up in the original proceeding. [L. '66, p. 88, § 2; Cd. '81, § 740; 2 H. C., § 805.]

§ 1257. Public Records as Evidence.—Copies of all records and documents on record or on file in the offices of the various departments of the United States and of this state, when duly certified by the respective officers having by law the custody thereof, under their respective seals, where such officers have official seals, shall be admitted in evidence in the courts of this state. [Cf. L. '54, p. 195, § 336; Cd. '81, § 432; L. '91, p. 37, § 16; 2 H. C., § 1681.]

Cited in 38 Wash. 634.

§ 1258. Seal of Public Officer, How Affixed.—A seal of court or public office, when required to any writ, process, or proceeding to authenticate a copy of any record or document, may be affixed by

making an impression directly on the paper, which shall be as valid as if made upon a wafer or on wax. [L. '54, p. 196, § 338; Cd. '81, § 434; 2 H. C., § 1683.]

Cited in 40 Wash. 631.

§ 1259. Foreign Statutes Admissible in Evidence, When.—Printed copies of the statute laws of any state, territory, or foreign government, if purporting to have been published under the authority of the respective governments, or if commonly admitted and read as evidence in their courts, shall be admitted in all courts in this state, and on all other occasions, as presumptive evidence of such laws. [L. '54, p. 196, § 339; Cd. '81, § 435; 2 H. C., § 1684.]

See infra, § 7830, charters and ordinances of cities, how proven.

§ 1260. Certified Copies of Recorded Instruments as Evidence.—Whenever any deed, conveyance, bond, mortgage, or other writing shall have been recorded or filed in pursuance of law, copies of record of such deed, conveyance, bond, or other writing, duly certified by the officer having the lawful custody thereof, with the seal of the office annexed, if there be such seal, if there be no such seal, then with the official certificate of such officer, shall be received in evidence to all intents and purposes as the originals themselves. [Cf. L. '54, p. 195, § 335; L. '77, p. 95, § 433; Cd. '81, § 431; 2 H. C., § 1685.]

Cited in 8 Wash. 5; 16 Wash. 374; 26 Wash. 438.

See infra, § 1304, copies of wills as evidence.
See infra, § 1386, copies of letters of administration as evidence.
See infra, § 3682, articles of incorporation as evidence.
See infra, § 9309, instruments transmitted by telegraph, effect of.
See infra, § 9311 et seq., telegraphic copies as evidence.

§ 1260½. Ordinances as Evidence.—All ordinances passed by any city council or board of trustees or other municipal corporation within the state of Washington shall be recorded in a book to be kept for that purpose by the city clerk, or clerk of such board of trustees or municipal corporation of such city, and when so recorded the record thereof so made shall be received in any court of this state as prima facie evidence of the due passage of such ordinances as recorded, and this chapter shall apply as well to all ordinances heretofore as hereafter so passed and recorded. And when the ordinances of any city or town are printed by authority of such municipal corporation, the printed copies thereof shall be received as prima facie evidence that such ordinances as printed and published were duly passed. [Cd. '81, § 2062; 1 H. C., § 766.]

§ 1261. Certified Copy of Tax Deeds.—Whenever it shall be necessary in any action in any court of law or equity, wherein the title to any real estate is in controversy, to prove the conveyance to any

county of such real estate in pursuance of a foreclosure of a tax certificate and sale thereunder, a copy of the tax deed issued to the county containing a description of such real estate, exclusive of the description of all other real estate therein described, certified by the county auditor of the county wherein the real estate is situated, to be such, shall be admitted in evidence by the court, and shall be proof of the conveyance of the real estate in controversy to such county, to the same extent as would a certified copy of the entire record of such tax deed. [L. '05, p. 266, § 1.]

§ 1262. Order for Inspection and to Take Copy of Writings, etc. Any court, or judge thereof, in which an action is pending may, upon notice, order either party to give to the other, within a specified time, an inspection and copy, or permission to take a copy, of any book, document, or paper in his possession, or under his control, containing evidence relating to the merits of the action or defense therein. If compliance with the order be refused, the court may exclude the book, document, or paper from being given in evidence, or if wanted as evidence by the party applying, may direct the jury to presume it to be such as he alleges it to be, and the court may also punish the party refusing as for contempt. This section shall not be construed to prevent a party from compelling another to produce books, papers, or documents where he is examined as a witness. [L. '54, p. 195, § 332; Cd. '81, § 428; 2 H. C., § 1686.]

Cited in 35 Wash. 246, 247; 44 Wash. 36, 37; 56 Wash. 650, 651.

§ 1263. When Writing may be Read in Evidence, etc.—If either party, at any time before trial, allow the other an inspection of any writing material to the action, whether mentioned in the pleadings or not, and deliver to him a copy thereof, with notice that he intends to read the same in evidence on the trial of the cause, it may be so read without proof of its genuineness or execution, unless denied by affidavit before commencement of the trial. If such denial be made of any writing not mentioned in the pleadings, the court may give time to either party to procure evidence, when necessary for the furtherance of justice. [L. '54, p. 195, § 333; Cd. '81, § 429; 2 H. C., § 1687.]

Cited in 35 Wash. 619.

CHAPTER VII.

Oaths and Affirmations.

§ 1264. Who Authorized to Take and Administer Oaths.—Every court, judge, clerk of a court, justice of the peace, or notary public is authorized to take testimony in any action, suit, or proceeding, and such other persons in particular cases as authorized by law.

Every such court or officer is authorized to administer oaths and affirmations generally, and every such other persons in such particular case as authorized. [L. '69, p. 378, § 1; 2 H. C., § 1693.]

§ 1265. Oath, How Administered.—An oath may be administered as follows: The person who swears holds up his hand, while the person administering the oath thus addresses him: "You do solemnly swear that the evidence you shall give in the issue (or matter) now pending between —— and —— shall be the truth, the whole truth, and nothing but the truth, so help you God." If the oath be administered to any other than a witness giving testimony, the form may be changed to: "You do solemnly swear you will true answers make to such questions as you may be asked," etc. [L. '69, p. 378, § 2; 2 H. C., § 1694.]

§ 1266. Form Varied to Suit Witnesses' Opinion.—Whenever the court or officer before which a person is offered as a witness is satisfied that he has a peculiar mode of swearing connected with or in addition to the usual form of administration, which, in witness' opinion, is more solemn or obligatory, the court or officer may, in its discretion, adopt that mode. [L. '69, p. 379, § 3; 2 H. C., § 1695.]

§ 1267. Form Adapted to Suit Religious Belief.—When a person is sworn who believes in any other than the Christian religion, he may be sworn according to the [peculiar] ceremonies of his religion, if there be any such. [L. '69, p. 379, § 4; 2 H. C., § 1696.]

§ 1268. Affirmation, Form of.—Any person who has conscientious scruples against taking an oath may make his solemn affirmation, by assenting, when addressed, in the following manner: "You do solemnly affirm that," etc., as in section 1265. [L. '69, p. 379, § 5; 2 H. C., § 1697.]

§ 1269. Affirmation Equivalent to Oath—Perjury.—Whenever an oath is required, an affirmation as prescribed in the last section is to be deemed equivalent thereto, and a false affirmation is to be deemed perjury equally with a false oath. [L. '69, p. 379, § 6; 2 H. C., § 1698.]

CHAPTER VIII.

The Restoration of Lost Records.

§ 1270. Substitution of Copy.—Whenever a pleading, process, return, verdict, bill of exceptions, order, entry, stipulation, or other act, file, or proceeding in any action or proceeding pending in any court of this state shall have been lost or destroyed by fire or otherwise, or is withheld by any person, such court may, upon the application of any party to such action or proceeding, order a copy or sub-

stantial copy thereof to be substituted. [L. '90, p. 337, § 1; 2 H. C., § 1699.]

Cited in 87 Wash. 592.

§ 1271. Court Records Lost or Destroyed — How Replaced.— Whenever the record required by law of the proceedings, judgment, or decree in any action or other proceeding of any court in this state in which a final judgment has been rendered, or any part thereof, is lost or destroyed by fire or otherwise, such court may, upon the application of any party interested therein, grant an order authorizing such record or parts thereof to be supplied or replaced,—

1. By a certified copy of such original record or part thereof, when the same can be obtained;

2. By a duly certified copy of the record in the supreme court of such original record of any action or proceeding that may have been removed to the supreme court, and remain recorded or filed in said supreme court;

3. By the original pleadings, entries, papers, and files in such action or proceeding, when the same can be obtained;

4. By an agreement in writing, signed by all the parties to such action or proceeding, their representatives or attorneys, that a substituted copy of such original record is substantially correct. [L. '90, p. 338, § 2; 2 H. C., § 1700.]

§ 1272. Action to Restore — Proceedings.—Whenever the record required by law, or any part thereof, of the proceeding or judgment or decree in any action or other proceeding of any court in this state in which the final judgment has been rendered is lost or destroyed by fire or otherwise, and such loss cannot be supplied or replaced as provided in the last preceding section, any person or party interested therein may make a written application to the court to which said record belongs, setting forth the substance of the record so lost or destroyed, which application shall be verified in the manner provided for the verification of pleadings in a civil action, and thereupon summons shall issue, and actual service, or service by publication, shall be made upon all persons interested in or affected by said original judgment or final entry, in the manner provided by law for the commencement of civil actions, provided the parties may waive the issuing or service of summons, and enter their appearance to such application; and upon the hearing of such application, without further pleadings, if the court finds that such record has been lost or destroyed, and that it is enabled, by the evidence produced, to find the substance, or effect thereof, material to the preservation of the rights of the parties thereto, it shall make an order allowing a record, which record shall recite the substance and

effect of said lost or destroyed record, or part thereof, and the same shall thereupon be recorded in said court, and shall have the same effect as the original record would have if the same had not been lost or destroyed, so far as it concerns the rights of the parties so making the application, or persons or parties so served with summons, or entering their appearance, or persons claiming under them by a title acquired subsequently to the filing of the application. [L. '90, p. 338, § 3; 2 H. C., § 1701.]

§ 1273. Hearing on Application—Evidence.—Upon the hearing of the application provided in the last preceding section, the court may admit in evidence oral testimony, and any complete or partial abstract of such record, docket entries, or indices, and any other written evidence of the contents or effect of such records and published reports concerning such actions or proceedings, when the court is of opinion that such abstracts, writings, and publications were fairly and honestly made before the loss of such records occurred. [L. '90, p. 339, § 4; 2 H. C., § 1702.]

§ 1274. Lost Records — Time Extended for Appeal, When.—Whenever a lost or destroyed judgment or order is one to which either party has a right to a proceeding in error or of appeal, the time intervening between the filing of the application mentioned in section 1272 and the final order of the court thereon shall be excluded in computing the time within which such proceeding or appeal may be taken as provided by law. [L. '90, p. 339, § 5; 2 H. C., § 1703.]

§ 1275. Costs.—The costs to be taxed upon an application to restore a lost or destroyed record shall be the same as are provided for like service in civil actions, and may be adjudged against either or any party to such proceeding or application, or may, in the discretion of the court, be apportioned between such parties. [L. '90, p. 339, § 6; 2 H. C., § 1704.]

§ 1276. Restoration of Lost or Destroyed Probate Records.—In case of the loss or destruction by fire or otherwise of the records, or any part thereof, of any probate court, or superior court having probate jurisdiction, the superior court may proceed, upon its own motion, or upon application in writing of any party in interest, to restore the records, papers, and proceedings of either of said courts relating to the estates of deceased persons, including recorded wills, wills probated or filed for probate in such courts, all marriage records, and all other records and proceedings, and for the purpose of restoring said records, wills, papers, or proceedings, or any part thereof, may cause citations or other process to be issued to any and all parties to be designated by him, and may compel the attendance in court of any and all witnesses whose testimony may be neces-

sary to the establishment of any such record or part thereof and the production of any and all written or documentary evidence which may be by him deemed necessary in determining the true import and effect of the original record, will, paper, or other document belonging to the files of said court; and may make such orders and decrees establishing such original record, will, paper, document, or proceeding, or the substance thereof, as to him shall seem just and proper. [L. '90, p. 340, § 7; 2 H. C., § 1705.]

§ 1277. Costs, by Whom Paid.—The costs incurred in the superior courts in proceedings under this chapter shall be paid by the party or parties interested in such proceedings, or in whose behalf such proceedings are instituted. [L. '90, p. 340, § 8; 2 H. C., § 1706.]

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CHAPTER I.

Jurisdiction and Powers of the Court.

§ 1278. Powers of Court.—The superior courts, in the exercise of their jurisdiction of matters of probate, shall have power,—

1. To take proof of wills, and to grant letters testamentary and of administration, and to bind apprentices as by law provided;

2. To settle the estates of deceased persons, and the accounts of executors, administrators, and guardians;

3. To allow or reject claims against the estates of deceased persons as hereinafter provided;

4. To hear and determine all controversies between masters and their apprentices;

5. To award process, and cause to come before them all persons whom they may deem it necessary to examine, whether parties or witnesses, or who, as executors, administrators, or guardians, or otherwise, shall be intrusted with or in any way accountable for any property belonging to a minor, orphan, or person of unsound mind, or estate of any deceased person;

6. To order and cause to be issued all writs which may be necessary to the exercise of their jurisdiction. [Cf. L. '54, p. 309, § 3; L. '73, p. 253, § 3; Cd. '81, § 1299; L. '91, p. 380, § 1; 2 H. C., § 845.]

Cited in 17 Wash. 489; 28 Wash. 70; 76 Wash. 298; 86 Wash. 176.
See Const., Art. IV, § 6.

§ 1279. Records to be Kept.—There shall be kept in the office of the clerk of the superior court the following books of record of probate matters:—

1. A journal, in which shall be entered all orders, decrees and judgments made by the court, or the judge thereof, and the minutes of the court, in probate proceedings;

2. A record of wills, in which shall be recorded all wills admitted to probate;

3. A record of letters testamentary and of administration, in which all letters testamentary and of administration shall be recorded;

4. A record of bonds, in which all bonds and obligations required by law to be approved by the court or judge in matters of probate shall be recorded;

5. A record of petitions, in which all petitions for orders of sale of real estate shall be recorded;

6. A record of claims, in which at least one page shall be given to each estate, or case, wherein shall be entered, under the title of each estate, or case, in separate columns properly ruled,—1. The names of claimants against the estate; 2. The date of filing proof of claim; 3. The amount claimed; 4. The amount allowed; 5. The date of allowance; 6. The nature of the claim; 7. The amount paid; 8. The number of the voucher for each payment; 9. The date of filing the voucher;

7. A memorandum of the files, in which at least one page shall be given to each estate or case, wherein shall be noted each paper filed in the case, except proof of claims and vouchers noted in record of claims, and the date of filing each paper;

8. A record of marriages, in which certificates of all marriages solemnized in the county shall be recorded. [Cf. L. '54, p. 310, § 5; L. '60, p. 235, § 5; Cd. '81, § 1300; L. '91, p. 380, § 2; 2 H. C., § 846; Abb. R. P. S., pp. 360–373.]

Cited in 17 Wash. 489.

§ 1280. Powers of Judge at Chambers.—The judges of the superior courts may, at chambers, appoint appraisers, receive inventories and accounts, suspend the powers of executors, administrators, or guardians in the cases allowed by law, grant letters of administration or guardianship, approve claims and bonds, and direct the issuance of all writs and process necessary in the exercise of their powers. [Cf. L. '65, p. 24, § 1; L. '73, p. 472, § 2; L. '75, p. 36, § 2; Cd. '81, § 2138; L. '91, p. 94, § 15; 2 H. C., § 847.]

CHAPTER II.

Notices and Citations.

§ 1281. Personal Notice—Citation.—Whenever personal notice is required to be given to any party to a proceeding in matters of probate, and no other mode of giving notice is prescribed, it shall be given by citation issued from the court, signed by the clerk and under the seal of the court, directed to the sheriff of the proper county, requiring him to cite such person to appear before the court or judge, as the case may be, at a time and place to be named in such citation. In the body of the citation shall be briefly stated the nature or character of the proceedings. [L. '54, p. 305, § 226; Cd. '81, § 1311; L. '91, p. 381, § 3; 2 H. C., § 848.]

§ 1282. Service and Return.—The officer to whom the citation is directed shall serve it by delivering a copy to the person or persons named therein, and shall return the original to the court according to its direction, indorsing thereon the time and manner of service. [Cf. L. '54, p. 305, § 227; L. '73, p. 255, § 17; Cd. '81, § 1312; 2 H. C., § 849.]

§ 1283. Time of Service.—In all cases in which citations are issued from the superior court in probate proceedings, they shall be served at least ten days before the term [time] at which they are made returnable, except when issued from the court in cases where the law requires the judge to issue them upon his own motion, and he does so issue them; and in such cases they shall be served in sufficient time to allow the person served to be in attendance on the court. [Cf. L. '63, p. 206, § 46; L. '73, p. 256, § 18; Cd. '81, § 1313; L. '91, p. 381, § 4; 2 H. C., § 850.]

Cited in 40 Wash. 214, 215.

CHAPTER III.

Venue.

§ 1284. Letters, etc., Granted in What County.—Wills shall be proved and letters testamentary or of administration shall be granted,—

1. In the county of which deceased was a resident or had his place of abode at the time of his death;

2. In the county in which he may have died, leaving estate therein, and not being a resident of the state;

3. In the county in which any part of his estate may be, he having died out of the state, and not having been a resident thereof at the time of his death. [L. '60, p. 173, § 43; Cd. '81, § 1340; 2 H. C., § 851.]

Cited in 26 Wash. 254; 30 Wash. 241; 33 Wash. 173; 39 Wash. 559; 43 Wash. 346; 63 Wash. 215; 86 Wash. 174.

§ 1285. Jurisdiction When Estate in Two Counties.—When the estate of the deceased is in more than one county, he having died out of the state, and not having been a resident thereof at the time of his death, the superior court of that county in which the application is first made for letters testamentary or of administration shall have exclusive jurisdiction of the settlement of the estate. [L. '60, p. 173, § 44; Cd. '81, § 1341; 2 H. C., § 852.]

Cited in 1 Wash. 188.

§ 1286. Venue in Subsequent Proceedings.—All orders, settlements, trials and other proceedings in probate shall be had or made in the county in which letters testamentary or of administration were granted. [Cf. L. '63, p. 206, § 47; Cd. '81, § 1314; L. '91, p. 381, § 5; 2 H. C., § 853.]

Cited in 5 Wash. 381.

CHAPTER IV.

The Custody and Proof of Wills.

§ 1287. Deposit of Will.—Any last will and testament in writing, being inclosed in a sealed envelope or wrapper, and having indorsed thereon the name of the testator or testatrix, and his or her place of residence, and the day when and the person by whom it is delivered, may be deposited by the person making the same, or by any person for him, in the office of the clerk of the superior court, in the county where the maker resides, and such clerk of court shall receive and safely keep the same in a place to be provided therefor and to be marked and designated as the "Files of Wills," and shall give a certificate of deposit thereof to the person so depositing the same, and said will shall be surrended and redelivered to the maker, or to such person as may be designated by the written order of the maker upon a surrender of such certificate. [L. '93, p. 49, § 1.]

Cited in 63 Wash. 438.

§ 1288. Custody, Delivery and Publication.—Such will when so deposited shall, during the lifetime of the testator or testatrix, be delivered only to himself or herself, or to some person by the maker authorized by order in writing, duly signed, executed and acknowledged before a notary public or other qualified officer in the same manner as is required by the laws of this state in the execution of instruments for the conveyance of real property, and upon the surrender of such certificate; and after the death of the maker said will shall be opened in public before witnesses by the judge of said

court and may be retained therein for probate if necessary. [L. '93, p. 49, § 2.]

Cited in 63 Wash. 440.

§ 1289. Custodian to Produce, When—Penalty.—Any person having the custody or control of any will, shall, within thirty days after he shall have received knowledge of the death of the testator or testatrix, deliver said will into the superior court which has jurisdiction, or to the person named in said will as executor; and any person who shall willfully fail or neglect to deliver any such will in accordance with the provisions of this section, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding one thousand dollars or by imprisonment in the county jail for a period not exceeding six months or by both such fine and imprisonment. [Cf. L. '60, p. 174, § 45; Cd. '81, § 1342; 2 H. C., § 854; L. '93, p. 49, § 3.]

§ 1290. Executor to Produce Will, When.—Any person named as executor in any will shall, within thirty days after he has knowledge that he is executor, present the will, if in his possession, to the superior court which has jurisdiction. [L. '60, p. 174, § 46; Cd. '81, § 1343; 2 H. C., § 855.]

§ 1291. Acceptance or Renunciation.—An executor named in the will may decline to act by filing a written renunciation at the time of filing said will; but if he intends to accept, he shall present with the will a petition praying that the will be admitted to probate, and that letters testamentary be issued to him. [L. '60, p. 174, § 47; Cd. '81, § 1344; 2 H. C., § 856.]

§ 1292. Damages for Failure to Comply.—Any person violating either of the last three preceding sections, without reasonable excuse, shall be liable to every person interested in the will for damages caused by such neglect. [Cf. L. '60, p. 174, § 48; Cd. '81, § 1345; L. '91, p. 382, § 6; 2 H. C., § 857.]

§ 1293. Petition by Executor for Production and Probate of.—Any person named as an executor in a will, not having the same in his possession, may petition the court of proper jurisdiction for an order to have the same produced, that it may be admitted to probate, and that letters testamentary may be issued to him. [L. '60, p. 174, § 49; Cd. '81, § 1346; 2 H. C., § 858.]

§ 1294. Petition by Other Interested Persons.—Any person having an interest in the will may in like manner present a petition praying that it may be required to be produced and admitted to probate. [L. '60, p. 174, § 50; Cd. '81, § 1347; 2 H. C., § 859.]

§ 1295. Court may Compel Production.—The said court may compel by citation and attachment any person in whose possession any will may be to produce it in court at such time as the court may order. [L. '60, p. 175, § 51; Cd. '81, § 1348; 2 H. C., § 860.]

§ 1296. Application, to Whom Made—Power to Enforce.—Applications for the probate of a will, or for letters testamentary, may be made to the judge of the superior court, and he may also at any time issue all necessary orders and process to enforce the production of any will. [L. '60, p. 175, § 52; Cd. '81, § 1349; 2 H. C., § 861.]

§ 1297. Certificate of Probate or Rejection.—When any will is exhibited to be proven, the court may immediately receive the proof and grant a certificate of probate, or if such will be rejected, issue a certificate of rejection. [L. '54, p. 315, § 17; Cd. '81, § 1350; 2 H. C., § 862.]

Cited in 63 Wash. 440; 69 Wash. 481, 483; 76 Wash. 32.

§ 1298. Testimony of Absent Witnesses.—If any witness be prevented by sickness from attending at the time when any will may be produced for probate, or reside out of the state or more than thirty miles from the place where the will is to be proven, such court may issue a commission, annexed to such will, and directed to any judge, justice of the peace, or mayor, or other person, empowering him to take and certify the attestation of such witness. [L. '54, p. 315, § 18; Cd. '81, § 1351; 2 H. C., § 863.]

§ 1299. Effect of Such Testimony.—If such witness appear before such officer and make oath or affirmation that the testator signed the writing annexed to such commission as his last will, or that some other person signed it by his direction and in his presence, that he was of sound mind, that the witness subscribed his name thereto in presence of the testator, the testimony so taken shall have the same force as if taken before the court. [L. '54, p. 315, § 19; Cd. '81, § 1352; 2 H. C., § 864.]

§ 1300. Proof Where One Witness is Dead, etc.—When one of the witnesses to such will shall be examined, and the other witnesses are dead, insane, or their residence unknown, then such proof shall be taken of the handwriting of the testator, and of the witness dead, insane, or residence unknown, and of such other circumstances as would be sufficient to prove such will. [L. '54, p. 315, § 20; Cd. '81, § 1353; 2 H. C., § 865.]

Cited in 10 Wash. 558; 69 Wash. 481.

§ 1301. Proof Where All Witnesses are Dead.—If it shall appear, to the satisfaction of the court, that all the subscribing witnesses are dead, insane, or their residence unknown, the court shall take

and receive such proof of the handwriting of the testator and subscribing witnesses to the will, and of such other facts and circumstances as would be sufficient to prove such will. [L. '54, p. 315, § 21; Cd. '81, § 1354; 2 H. C., § 866.]

Cited in 69 Wash. 481.

§ 1302. Testimony, How Taken and Authenticated.—All the testimony adduced in support of the will shall be reduced to writing, signed by the witnesses, and certified by the judge of the court. [L. '54, p. 315, § 22; Cd. '81, § 1355; 2 H. C., § 867.]

Cited in 69 Wash. 481, 483.

§ 1303. Recording Wills.—All wills shall be recorded in a book kept for that purpose, within thirty days after probate, and the originals shall be carefully filed. [L. '54, p. 316, § 26; Cd. '81, § 1356; 2 H. C., § 868.]

§ 1304. Admissible in Evidence, When.—Every will proved according to the provisions of this chapter, recorded and certified by the judge of the superior court, and attested by the seal of said court, may be read as evidence without any further proof. [L. '54, p. 316, § 27; Cd. '81, § 1357; 2 H. C., § 869.]

§ 1305. Copies Admissible, When.—The record of any will made, proved, and recorded as aforesaid, and the exemplification of such record by the clerk in whose custody the same may be, shall be received as evidence, and shall be as effectual in all cases as the original would be if produced and proven. [Cf. L. '54, p. 316, § 28; Cd. '81, § 1358; L. '91, p. 382, § 7; 2 H. C., § 870.]

Cited in 25 Wash. 296.

§ 1306. Recorded in Other Counties, When.—In all cases where lands devised by last will are situated in different counties, a copy of such will shall be recorded in the county auditor's office in each county within six months after probate. [L. '54, p. 316, § 29; Cd. '81, § 1359; 2 H. C., § 871.]

Cited in 57 Wash. 484.

§ 1307. Contest of Will.—If any person interested in any will shall appear within one year after the probate or rejection thereof, and, by petition to the superior court having jurisdiction, contests the validity of said will, or pray to have the will proven which has been rejected, he shall file a petition containing his objections and exceptions to said will, or to the rejection thereof. Issue shall be made up, tried and determined in said court respecting the competency of the deceased to make last will and testament, or respecting the execution by the deceased of such last will and testament under restraint or undue influence or fraudulent representation, or for

any other cause affecting the validity of such will. [Cf. L. '54, p. 316, § 30; L. '60, p. 176, § 63; L. '73, p. 264, § 64; Cd. '81, § 1360; L. '91, p. 382, § 8; 2 H. C., § 872.]

Cited in 10 Wash. 540; 25 Wash. 297; 40 Wash. 212; 43 Wash. 347; 57 Wash. 485, 486; 69 Wash. 482; 72 Wash. 466; 76 Wash. 31; 78 Wash. 314.

§ 1308. Interested Parties to be Cited.—Upon the filing of the petition referred to in the next preceding section, a citation shall be issued to the executors who have taken upon them the execution of the will, or to the administrators with the will annexed, and to all legatees named in the will residing in the state, or to their guardians if any of them are minors, or their personal representatives if any of them are dead, requiring them to appear before the court on a day therein specified, to show cause why the petition should not be granted. [Cf. L. '60, p. 176, § 64; Cd. '81, § 1361; L. '91, p. 382, § 9; 2 H. C., § 873.]

§ 1309. Adjudication Binding, When.—If no person shall appear within the time aforesaid, the probate or rejection of such will shall be binding, save to infants, married women, persons absent from the United States, or of unsound mind, a period of one year after their respective disabilities are removed. [Cf. L. '54, p. 316, § 32; L. '60, p. 176, § 65; Cd. '81, § 1362; 2 H. C., § 874.]

Cited in 25 Wash. 296; 28 Wash. 680; 57 Wash. 486; 67 Wash. 31; 78 Wash. 314.

§ 1310. Evidence Admitted at Time of Probate, Sufficient When. In all trials respecting the validity of a will, if any subscribing witness be deceased, or cannot be found, the oath of such witness, examined at the time of probate, may be admitted as evidence. [L. '54, p. 317, § 33; L. '60, p. 177, § 66; Cd. '81, § 1363; 2 H. C., § 875.]

§ 1311. Probate Annulled, When.—If, upon the trial of said issue, it shall be decided that the will is for any reason invalid, or that it is not sufficiently proved to have been the last will of the testator, the will and probate thereof shall be annulled and revoked. [L. '60, p. 177, § 67; Cd. '81, § 1364; 2 H. C., § 876.]

§ 1312. Effect of Revocation.—Upon the revocation being made, the powers of the executor, or administrator with the will annexed shall cease, but such executor or administrator shall not be liable for any act done in good faith previous to service of written notice of intention to contest said will. [L. '60, p. 177, § 68; Cd. '81, § 1365; 2 H. C., § 877.]

Cited in 87 Wash. 602.

§ 1313. Costs and Expenses, by Whom Paid.—The fees and expenses shall be paid by the losing party. If the probate be revoked

or the will annulled, the party who shall have resisted such revocation shall pay the cost and expenses of proceedings out of the property of the deceased. [L. '60, p. 177, § 69; Cd. '81, § 1366; 2 H. C., § 878.]

Cited in 58 Wash. 201, 202; 79 Wash. 598.

§ 1314. Proof of Lost or Destroyed Will.—Whenever any will be lost or destroyed, by accident or design, the superior court shall have power to take proof of the execution and validity of the will, and to establish the same, notice to [all] persons interested having first been given; such proof shall be reduced to writing, and signed by the witnesses. But no will shall be allowed to be proved as a lost or destroyed will, unless the same shall be proved to have been in existence at the time of the death of the testator, or be shown to have been fraudulently destroyed in the lifetime of the testator, nor unless its provisions shall be clearly and distinctly proved by at least two credible witnesses. [L. '60, p. 177, § 70; L. '73, p. 265, § 71; Cd. '81, § 1367; 2 H. C., § 879.]

Cited in 10 Wash. 557; 70 Wash. 230, 231, 232.

§ 1315. Decree—Recording.—When any such will shall be established, the provisions thereof shall be distinctly stated in the judgment establishing it, and a copy of such decree shall be certified by the clerk, under the seal of the court; and such copy, together with the testimony upon which the decree is founded, shall be recorded as other wills are required to be recorded, and letters testamentary or of administration, with the will annexed, shall be issued thereon, in the same manner as upon wills produced and duly proved. [Cf. L. '60, p. 177, § 71; Cd. '81, § 1368; L. '91, p. 382, § 10; 2 H. C., § 880.]

§ 1316. Restraining Order Pending Such Proceedings.—If, before or during the pendency of an application to prove a lost or destroyed will, letters of administration be granted on the estate of the testator, or letters testamentary of any previous will of the testator be granted, the court shall have authority to restrain the administrators or executors so appointed from any acts or proceedings which would be injurious to the legatees or devisees claiming under the lost or destroyed will. [L. '60, p. 177, § 72; Cd. '81, § 1369; 2 H. C., § 881.]

§ 1317. Foreign Wills, How Proved.—Wills probated in any other state or territory of the United States, or in any foreign country or state, shall be admitted to probate in this state on the production of a copy of such will and of the original record of probate thereof, authenticated by the attestation of the clerk of the court in which such probation was made; or if there be no clerk, by the attestation

of the judge thereof, and by the seal of office of such officers, if they have a seal. [L. '77, p. 284, § 1; Cd. '81, § 1370; 2 H. C., § 882.]

Cited in 52 Wash. 151; 64 Wash. 680.

§ 1318. Foreign Wills, Proceedings After Probate.—All provisions of law relating to the carrying into effect of domestic wills after probate shall, so far as applicable, apply to foreign wills admitted to probate in this state, as contemplated in the preceding section. [L. '77, p. 284, § 2; Cd. '81, § 1371; 2 H. C., § 883.]

Cited in 52 Wash. 151.

CHAPTER V.

Wills.

§ 1319. Who may Devise.—Every person who shall have attained the age of majority, of sound mind, may by last will devise all his or her estate, real and personal. [L. '54, p. 313, § 1; L. '60, p. 169, § 18; L. '63, p. 207, § 51; Cd. '81, § 1318; 1 H. C., § 1458.]

Cited in 7 Wash. 411; 47 Wash. 78–81; 83 Wash. 235.

§ 1320. Requisites, and Execution of.—Every will shall be in writing, signed by the testator or testatrix, or by some other person under his or her direction in his presence, and shall be attested by two or more competent witnesses, subscribing their names to the will in the presence of the testator. [L. '54, p. 313, § 4; Cd. '81, § 1319; 1 H. C., § 1459.]

Cited in 10 Wash. 558; 30 Wash. 242; 63 Wash. 441; 86 Wash. 468, 472; 87 Wash. 45.

§ 1320–1. Wills Made Outside the State.—A last will and testament, executed without this state in the mode prescribed by the law, either of the place where executed or of the testator's domicile, shall be deemed to be legally executed, and shall be of the same force and effect as if executed in the mode prescribed by the laws of this state: Provided, said last will and testament is in writing and subscribed by the testator. [L. '11, p. 9, § 1.]

§ 1321. Signing Testator's Name.—Every person who shall sign the testator's or testatrix's name to any will by his or her direction shall subscribe his own name as a witness to such will, and state that he subscribed the testator's name at his request. [L. '54, p. 313, § 5; Cd. '81, § 1320; 1 H. C., § 1460.]

Cited in 57 Wash. 484; 78 Wash. 318.

§ 1322. Will in Writing, Revocation of.—No will in writing, except in cases hereinafter mentioned, nor any part thereof, shall be revoked except by a subsequent will in writing, or by burning, canceling, tearing, or obliterating the same, by the testator or testatrix,

or in his or her presence, or by his or her consent or direction. [L. '54, p. 313, § 6; Cd. '81, § 1321; 1 H. C., § 1461.]

Cited in 47 Wash. 80; 63 Wash. 440.

§ 1323. Revocation of by Subsequent Marriage, When.—If, after making any will, the testator shall marry and the wife shall be living at the time of the death of the testator, such will shall be deemed revoked, unless provision shall have been made for her by marriage settlement, or unless she be provided for in the will, or in such way mentioned therein as to show an intention not to make such provision, and no other evidence to rebut the presumption of revocation shall be received. [L. '54, p. 313, § 7; Cd. '81, § 1322; 1 H. C., § 1462.]

Cited in 47 Wash. 78, 79, 80, 81, 82, 84; 52 Wash. 541, 543, 547; 78 Wash. 312, 322; 83 Wash. 182; 87 Wash. 147, 148.

§ 1324. Bond to Convey not Deemed Revocation.—A bond, covenant, or agreement made for a valuable consideration by a testator to convey any property, devised or bequeathed in any last will previously made, shall not be deemed a revocation of such previous devise or bequest, but such property shall pass by the devise or bequest, subject to the same remedies on such bond, covenant, or agreement, for specific performance or otherwise, against devisees or legatees, as might be had by law against the heirs of the testator or his next of kin, if the same had descended to him. [L. '54, p. 314, § 9; Cd. '81, § 1323; 1 H. C., § 1463.]

§ 1325. Charge or Encumbrance not Deemed Revocation.—A charge or encumbrance upon any real or personal estate for the purpose of securing the payment of money, or the performance of any covenant or agreement, shall not be deemed a revocation of any will relating to the same estate, previously executed. The devises and legacies therein contained shall pass and take effect, subject to such charge or encumbrance. [L. '54, p. 314, § 10; Cd. '81, § 1324; 1 H. C., § 1464.]

§ 1326. Void When Children not Provided for.—If any person make his last will and die, leaving a child or children, or descendants of such child or children, in case of their death, not named or provided for in such will, although born after the making of such will, or the death of the testator, every such testator, so far as he shall regard such child or children, or their descendants, not provided for, shall be deemed to die intestate, and such child or children, or their descendants, shall be entitled to such proportion of the estate of the testator, real and personal, as if he had died intestate, and the same shall be assigned to them, and all the other heirs,

devisees, and legatees shall refund their proportional part. [L. '54, p. 314, § 11; Cd. '81, § 1325; 1 H. C., § 1465.]

Cited in 5 Wash. 226, 391; 7 Wash. 410, 411; 20 Wash. 571; 34 Wash. 102, 103, 326; 38 Wash. 390; 57 Wash. 363; 76 Wash. 522; 77 Wash. 18; 78 Wash. 322.

See infra, § 1699, descent as to adopted children.

§ 1327. Advancements, Effect of.—If such child or children, or their descendants, shall have an equal proportion of the testator's estate bestowed on them in the testator's lifetime, by way of advancement, they shall take nothing by virtue of the provisions of the preceding sections. [L. '54, p. 314, § 12; Cd. '81, § 1326; 1 H. C., § 1466.]

§ 1328. Of Devise, Where Devisee Dies Before Testator.—When any estate shall be devised to any child, grandchild, or other relative of the testator, and such devisee shall die before the testator, having lineal descendants, such descendants shall take the estate, real and personal, as such devisee would have done in case he had survived the testator. [L. '54, p. 314, § 13; Cd. '81, § 1327; 1 H. C., § 1467.]

Cited in 10 Wash. 538, 539; 84 Wash. 165.

§ 1329. Revocation of Second Will Revives First, When.—If, after making any will, the testator shall duly make and execute a second will, the destruction, canceling, or revocation of such second will shall not revive the first will unless it appears by the terms of such revocation that it was his intention to revive and give effect to the first will, or unless he shall duly republish his first will. [L. '54, p. 315, § 14; Cd. '81, § 1328; 1 H. C., § 1468.]

§ 1330. Nuncupative Will Valid, When.—No nuncupative will shall be good when the estate bequeathed exceeds the value of two hundred dollars, unless the same be proved by two witnesses who were present at the making thereof, and it be proven that the testator, at the time of pronouncing the same, did bid some person present to bear witness that such was his will, or to that effect, and such nuncupative will was made at the time of the last sickness and at the dwelling-house of the deceased, or where he had been residing for the space of ten days or more, except where such person was taken sick from home and died before his return. Nothing herein contained shall prevent any mariner at sea or soldier in the military service from disposing of his wages or other personal property by nuncupative will. [L. '54, p. 315, §§ 23, 24; Cd. '81, § 1329; 1 H. C., § 1469.]

Cited in 69 Wash. 481; 87 Wash. 48.

§ 1331. Proof of Nuncupative Will.—No proof shall be received of any nuncupative will unless it be offered within six months after

speaking the testamentary words, nor unless the words, or the substance thereof, be first committed to writing, and a citation issued to the widow or next of kin of the deceased, that they may contest the will if they think proper. [L. '54, p. 316, § 25; Cd. '81, § 1330; 1 H. C., § 1470.]

Cited in 40 Wash. 214; 69 Wash. 481.

§ 1332. Devises to Witnesses Void, When.—All beneficial devises, legacies, and gifts whatever, made or given in any will to a subscribing witness thereto, shall be void unless there are two other competent witnesses to the same; but a mere charge on the estate of the testator for the payment of debts shall not prevent his creditors from being competent witnesses to his will. If such witness, to whom any beneficial devise, legacy, or gift may have been made or given, would have been entitled to any share in the testator's estate in case the will is not established, then so much of the estate as would have descended or would have been distributed to such witness shall be saved to him as will not exceed the value of the devise or bequest made to him in the will; and he may recover the same from the devisees or legatees named in the will in proportion to and out of the parts devised and bequeathed to him. [L. '60, p. 171, §§ 34, 35; Cd. '81, § 1331; 1 H. C., § 1471.]

§ 1333. Devise of Land, How Construed.—Every devise of land in any will shall be construed to convey all the estate of the devisor therein which he could lawfully devise, unless it shall clearly appear by the will that he intended to convey a less estate. [L. '60, p. 172, § 36; Cd. '81, § 1332; 1 H. C., § 1472.]

Cited in 24 Wash. 285.

§ 1334. Estate for Life, Remainder in Fee.—If any person, by last will, devise any real estate to any person for the term of such person's life, such devise vests in the devisee an estate for life, and without the remainder is specially devised to the heirs of said devisee, it shall revert to the heirs at law of the testator. [L. '54, p. 318, § 45; Cd. '81, § 1333; 1 H. C., § 1473.]

Cited in 47 Wash. 254.

§ 1335. After-acquired Lands Pass by Will.—Any estate, rights, or interest in lands acquired by the testator after the making of his or her will shall pass thereby, and in like manner as if it passed at the time of making the will, if such shall manifestly appear by the will to have been the intention of the testator. [L. '60, p. 172, § 38; Cd. '81, § 1334; 1 H. C., § 1474.]

§ 1336. Contribution Among Legatees.—When any testator in his last will shall give any chattel or real estate to any person, and

the same shall be taken in execution for the payment of the testator's debts, then all the other legatees, devisees, and heirs shall refund their proportional part of such loss to such person from whom the bequest shall be taken. [L. '54, p. 318, § 47; Cd. '81, § 1335; 1 H. C., § 1475.]

§ 1337. Contribution, When Court may Enforce.—When any devisees, legatees, or heirs shall be required to refund any part of the estate received by them, for the purpose of making up the share, devise, or legacy of any other devisee, legatee, or heir, the superior court, upon the petition of the person entitled to contribution or distribution of such estate, may order the same to be made, and enforce such order. [L. '54, p. 318, § 48; Cd. '81, § 1336; 1 H. C., § 1476.]

§ 1338. Term "Will" Construed.—The term "will," as used in this chapter, shall be so construed as to include all codicils attached to any will. [L. '54, p. 319, § 49; Cd. '81, § 1337; 1 H. C., § 1477.]

§ 1339. Construction of Wills.—All courts and others concerned in the execution of last wills shall have due regard to the direction[s] of the will, and the true intent and meaning of the testator, in all matters brought before them. [L. '54, p. 319, § 50; Cd. '81, § 1338; 1 H. C., § 1478.]

Cited in 23 Wash. 675.

§ 1340. Words Importing Number and Gender, How Construed.—Words in this chapter contained, or in this act, which import the singular number only, may also be applied to the plural of persons and things, and words importing the masculine gender only may be extended to females also, when such construction shall be necessary. [Cd. '81, § 1339; 1 H. C., § 1479.]

Cited in 47 Wash. 82, 84; 87 Wash. 148.

CHAPTER VI.

Descent.

§ 1341. Descent of Real Property—Rule of.—When any person shall die seised of any lands, tenements, or hereditaments, or any right thereto, or entitled to any interest therein, in fee simple, or for the life of another, not having devised the same, they shall descend subject to the debts as follows:—

1. If the decedent leaves a surviving husband or wife, and only one child, or the lawful issue of one child, in equal shares to the surviving husband or wife and child, or issue of such child; if the decedent leaves a surviving husband or wife, and more than one child living, or one child living and the lawful issue of one or more

deceased children, one-third to the surviving husband or wife, and the remainder in equal shares to his children and to the lawful issue of any deceased child by right of representation; if there be no child of the decedent living at his death, the remainder goes to all of his lineal descendants; and if all the descendants are in the same degree of kindred to the decedent, they share equally; otherwise they take according to the right of representation;

2. If the decedent leaves no issue, the estate goes in equal shares to the surviving husband or wife, and to the decedent's father and mother, if both survive. If there be no father nor mother, then one-half goes in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brothers or sisters, by right of representation. If decedent leaves no issue, nor husband nor wife, the estate must go to his father and mother;

3. If there be no issue, nor husband nor wife, nor father and mother, nor either, then in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister, by right of representation;

4. If the decedent leaves a surviving husband or wife and no issue, and no father nor mother, nor brother nor sister, the whole estate goes to the surviving husband or wife;

5. If the decedent leaves no issue, nor husband nor wife, and no father nor mother, nor brother nor sister, the estate must go to the next of kin, in equal degree, excepting that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestor must be preferred to those claiming through an ancestor more remote, however;

6. If the decedent leaves several children, or one child and the issue of one or more other children, and any such surviving child dies under age, and not having been married, all the estate that comes to the deceased child by inheritance from such decedent descends in equal shares to the other children of the same parent, and to the issue of any such other children who are dead, by right of representation;

7. If, at the death of such child, who dies under age, not having been married, all the other children of his parents are also dead, and any of them have left issue, the estate that came to such child by inheritance from his parent descends to the issue of all other children of the same parent and if all the issue are in the same degree of kindred to the child, they share the estate equally; otherwise they take according to the right of representation;

8. If the decedent leaves no husband, wife, or kindred, the estate escheats to the state, for the support of common schools in the

county in which the decedent resided during lifetime, or where the estate may be situated. [L. '75, p. 53, § 1; Cd. '81, § 3302; 1 H. C., § 1480.]

Cited in 1 Wash. 187; 3 Wash. 562; 10 Wash. 539; 14 Wash. 12, 15, 247; 18 Wash. 512; 25 Wash. 296; 47 Wash. 81; 48 Wash. 638; 60 Wash. 29; 84 Wash. 164, 165, 167; 86 Wash. 356; 87 Wash. 70.

For former laws on the subject of this chapter see: L. '54, pp. 305–308; L. '57, p. 24; L. '59, p. 7; L. '60, pp. 221–223; L. '63, pp. 261–264; Abb. R. P. S., pp. 373–377.

§ 1342. Descent of Community Property.—Upon the death of either husband or wife, one-half of the community property shall go to the survivor, subject to the community debts, and the other half shall be subject to the testamentary disposition of the deceased husband or wife, subject also to the community debts. In case no testamentary disposition shall have been made by the deceased husband or wife of his or her half of the community property, it shall descend equally to the legitimate issue of his, her, or their bodies. If there be no issue of said deceased living, or none of their representatives living, then the said community property shall all pass to the survivor, to the exclusion of collateral heirs, subject to the community debts, the family allowance, and the charges and expenses of administration. [Cf. L. '75, p. 55, § 2; Cd. '81, §§ 3303, 2411, 2412; 1 H. C., § 1481.]

Cited in 7 Wash. 410, 411; 10 Wash. 661; 14 Wash. 13, 154; 18 Wash. 107; 54 Wash. 267; 69 Wash. 462; 82 Wash. 111; 83 Wash. 235.

§ 1343. Tenancy in Dower and by Curtesy Abolished.—The provisions of section 1341 as to the inheritance of the husband and wife from each other, apply only to the separate property of the decedents, and take the place of tenancy in dower and tenancy by curtesy, which are hereby abolished. [L. '75, p. 55, § 3; Cd. '81, § 3304; 1 H. C., § 1482.]

Cited in 10 Wash. 539; 14 Wash. 15.

§ 1344. Survivorship Between Joint Tenants Abolished.—If partition be not made between joint tenants, the parts of those who die first shall not accrue to the survivors, but descend, or pass by devise, and shall be subject to debts and other legal charges, or transmissible to executors or administrators, and be considered, to every intent and purpose, in the same view as if such deceased joint tenants had been tenants in common: Provided, that community property shall not be affected by this section. [L. '86, p. 165, § 1; 1 H. C., § 1483.]

Cited in 10 Wash. 659; 63 Wash. 89; 71 Wash. 272.

§ 1345. Illegitimate Child, Rights of.—Every illegitimate child shall be considered as an heir to the person who shall in writing,

signed in the presence of a competent witness, have acknowledged himself to be the father of such child, and shall in all cases be considered as heir of his mother, and shall inherit his or her estate, in whole or in part, as the case may be, in the same manner as if he had been born in lawful wedlock; but he shall not be allowed to claim, as representing his father or mother, any part of the estate of his or her kindred, either lineal or collateral, unless before his death his parents shall have intermarried, and his father, after such marriage, shall have acknowledged him as aforesaid, and adopted him into his family, in which case such child and the legitimate children shall be considered as brothers and sisters, and on the death of either of them intestate, and without issue, the others shall inherit his estate, and he theirs, as heretofore provided in like manner as if all the children had been legitimate, saving to the father and mother, respectively, their rights in the estates of all the said children, as provided heretofore, in like manner as if all had been legitimate. [L. '75, p. 55, § 4; Cd. '81, § 3305; 1 H. C., § 1484.]

Cited in 20 Wash. 567; 22 Wash. 153; 81 Wash. 329.

§ 1346. Property of Illegitimate Child, Descent of.—If any illegitimate child shall die intestate without lawful issue, his estate shall descend to his mother, or in case of her decease, to her heirs at law. [L. '75, p. 65, § 5; Cd. '81, § 306; 1 H. C., § 1485.]

§ 1347. Degree of Kindred, How Computed.—The degree of kindred shall be computed according to the rules of the civil law, and the kindred of the half-blood shall inherit equally with those of the whole blood in the same degree. [L. '75, p. 56, § 6; Cd. '81, § 3307; 1 H. C., § 1486.]

§ 1348. Advancement, How Considered.—Any estate, real or personal, that may have been given by the intestate in his lifetime as an advancement to any child, or other lineal descendant, shall be considered a part of the intestate's estate, so far as regards the division and distribution thereof among his issue, and shall be taken by such child or other descendant, toward his share of the intestate's estate. [L. '75, p. 56, § 7; Cd. '81, § 3308; 1 H. C., § 1487.]

Cited in 26 Wash. 121.

§ 1349. Effect of Advancements on Distributive Shares.—If the amount of such advancement then exceed the share of the heir so advanced, he shall be excluded from any further portion in the division and distribution of the estate, but he shall not be required to refund any part of such advancement, and if the amount so received shall be less than his share, he shall be entitled to so

much more as will give him his full share of the estate of the deceased. [L. '75, p. 56, § 8; Cd. '81, § 3309; 1 H. C., § 1488.]

§ 1350. Advancement of Realty, Effect on Distributive Shares.—If any such advancement shall have been made in real estate, the value thereof shall, for the purposes of the preceding section, be considered as part of the real estate to be divided, and if it be in personal estate, and if in either case it shall exceed the share of real or personal estate respectively that would have come to the heir so advanced, he shall not refund any part of it, but shall receive so much less out of the other part of the estate as will make the whole share equal to those of the other heirs who are in the same degree with him. [L. '75, p. 56, § 9; Cd. '81, § 3310; 1 H. C., § 1489.]

§ 1351. Advancement, What is.—All gifts and grants shall be deemed to have been made in advancement, if expressed in the gift or grant to be so made, or if charged in writing by the intestate as an advancement, or acknowledged in writing as such by the child or other descendant. [L. '75, p. 57, § 10; Cd. '81, § 3311; 1 H. C., § 1490.]

§ 1352. Value of Estate Advanced.—If the value of the estate so advanced shall be expressed in the conveyance, or in the charge thereof made by the intestate, or in the acknowledgment by the party receiving it, it shall be considered of that value in the division and distribution of the estate; otherwise it shall be estimated at its value when given. [L. '75, p. 57, § 11; Cd. '81, § 3312; 1 H. C., § 1491.]

§ 1353. Death of Descendant to Whom Advancement Made.—If any child or lineal descendant so advanced shall die before the intestate, leaving issue, the advancement shall be taken into consideration in the division and distribution of estate, and the amount thereof shall be allowed accordingly by the representatives of the heir so advanced, as so much received towards their share of the estate, in like manner as if the advancement had been made directly to them. [L. '75, p. 57, § 12; Cd. '81, § 3313; 1 H. C., § 1492.]

§ 1354. Words "Issue" and "Real Estate" Defined.—The word "issue," as used in this chapter, includes all the lawful lineal descendants of the ancestor, and the words "real estate" include all lands, tenements, and hereditaments, and all rights thereto, and all interest therein possessed and claimed in fee simple, or for the life of a third person. [L. '75, p. 57, § 13; Cd. '81, § 314; 1 H. C., § 1493.]

§ 1355. Right of Representation—Posthumous Children, Inheritance by.—Inheritance or succession by right of representation takes

place when the descendants of any deceased heir take the same share or right in the estate of another that their parent would have taken if living. Posthumous children are considered as living at the death of their parent. [L. '75, p. 57, § 14; Cd. '81, § 315; 1 H. C., § 1494.]

§ 1356. Escheats for Want of Heirs.—Whenever any person possessed of any property within this state shall die intestate leaving no heirs, such property shall escheat to, and the title thereto immediately vest in the state of Washington, subject, however, to existing liens thereon, the payments of decedent's debts, and the expenses of administration. [L. '07, p. 253, § 1.]

Cited in 75 Wash. 103; 87 Wash. 71.

§ 1357. Administration of Escheated Estates.—Such estates shall be administered and settled in the same manner as other estates. If at the expiration of eighteen months after the issuance of letters of administration no heirs shall have appeared and established their claim thereto, the court having jurisdiction of such estate shall render a decree escheating all the property and effects of such decedent to the state of Washington. [L. '07, p. 253, § 2.]

Cited in 87 Wash. 71.

§ 1358. Personal Property to be Sold.—After any estate shall have been escheated as aforesaid, it shall be the duty of the administrator thereof, under the supervision and direction of the court, to sell all the personal property, such sales to be made in such manner and upon such terms and conditions as the court may deem to the best advantage to the estate. The proceeds of such personal property shall be first exhausted before any real property shall be subjected to the debts of decedent, expenses of administration, or the satisfaction of liens thereon. [L. '07, p. 254, § 3.]

§ 1359. Tax Commission—Powers in Relation to Escheats.—The state board of tax commissioners shall have supervision of all matters relating to escheats. Whenever the said board shall have information that any person possessed of property within this state has died intestate and without known heirs, said board, or any member thereof, may apply to the court for the appointment of an administrator, or take such other steps as it may deem proper. No sale of any property of such estate, except perishable goods or settlement of any final account, shall be made or be valid until after fifteen days' notice thereof in writing shall have been first served upon the said board of tax commissioners. Said board, or any member thereof, may demand of any administrator, other officer or person having charge of or being in possession of such estate or property, or any portion thereof, and it shall be the duty of such officer or person to furnish said board, or any member thereof, any

information or copies of any papers, vouchers, claims or reports in his possession, relating thereto, and failure or refusal so to do shall be cause for his removal by the court. [L. '07, p. 254, § 4.]

§ 1360. Account of Administrator—Lists of Property.—Upon the settlement of any esheated estate, and before the discharge of the administrator, officer or person in charge thereof, all moneys in his hands shall be paid to the state treasurer who shall issue his receipt therefor in duplicate, one of which shall be filed with the state board of tax commissioners, and he shall prepare a duplicate list accurately describing all real property so escheated, one of which shall be filed with the said state board of tax commissioners and one in the office of the commissioner of public lands. [L. '07, p. 254, § 5.]

§ 1361. Record of Escheats.—The state board of tax commissioners shall keep a record in which shall be entered memoranda of all matters and proceedings in relation to escheats, and in which shall be entered a description of all real property escheated, and they shall also keep an account of all moneys collected and paid into the state treasury under the provisions of this act. [L. '07, p. 255, § 6.]

§ 1362. Escheats to Permanent School Fund.—All escheats shall inure to and become a part of the permanent common school fund of the state, and all escheated real property shall be managed, sold and handled in the manner provided by law for the management, disposition and sale of the state common school funds. [L. '07, p. 255, § 7.]

§ 1363. Attorney General—Duty as to Escheats.—It shall be the duty of the attorney general and of the several county attorneys of the state to advise and assist the said state board of tax commissioners in any and all of the matters and proceedings that may be had under the provisions of this act. [L. '07, p. 255, § 8.]

CHAPTER VII.

Distribution.

§ 1364. Distribution of Separate Personal Estate.—When any person shall die possessed of any separate personal estate, or of any right or interest therein not lawfully disposed of by his last will, the same shall be applied and distributed as follows:—

1. The widow, if any, shall be allowed all articles of her apparel or ornament, according to the degree and estate of her husband, and such provisions and other necessaries, for the use of herself and family under her care, as shall be allowed and ordered in pursuance of the provisions of any law; and this allowance shall be made as

well when the widow receives the provision made for her in the will of her husband as when he dies intestate;

2. The personal estate remaining after such allowance shall be applied to the payment of the debts of the deceased, with the charges for the funeral and the settling of the estate;

3. The residue, if any, of the personal estate shall be distributed among the same persons as would be entitled to the real estate by section 1341, and in the same proportion as provided, excepting as herein further provided;

4. If the intestate leave a husband and issue, the husband shall be entitled to one-half the residue;

5. If there be no issue the husband shall be entitled to the whole of the residue;

6. If the intestate leave a widow and issue, the widow shall be entitled to one-half of said residue;

7. If there be no issue, the widow shall be entitled to the whole of the residue;

8. If there be no husband, widow, or kindred of the intestate, the said personal estate shall escheat to the state, for the use of common schools in the particular county in which the intestate shall have resided at time of death. [L. '75, p. 57, § 15; Cd. '81, § 3316; 1 H. C., § 1495.]

Cited in 10 Wash. 539; 14 Wash. 15; 70 Wash. 380.

§ 1365. Effect of Advancement Where Widow and Issue Survive. If the intestate leave a widow and issue, and any relation have received an advancement from the intestate in his lifetime, the value of such advancement shall not be taken into consideration in computing the one-half part to be assigned to the widow, but she shall be entitled to the one-half part only of the said residue, after deducting the value of the advancement. [L. '75, p. 58, § 16; Cd. '81, § 3317; 1 H. C., § 1496.]

§ 1366. Real Property Vests in Whom—Rights of Heirs in.— When a person dies seised of lands, tenements or hereditaments, or any right thereto or entitled to any interest therein in fee or for the life of another, his title shall vest immediately in his heirs or devisees, subject to his debts, family allowance, expenses of administration and any other charges for which such real estate is liable under existing laws. No administration of the estate of such decedent, and no decree of distribution or other finding or order of any court shall be necessary in any case to vest such title in the heirs or devisees, but the same shall vest in the heirs or devisees instantly upon the death of such decedent: Provided, that no person shall be deemed a devisee until the will has been probated. The

title and right to possession of such lands, tenements, or hereditaments so vested in such heirs or devisees, together with the rents, issues and profits thereof, shall be good and valid against all persons claiming adversely to the claims of any such heirs, or devisees, excepting only the executor or administrator when appointed, and persons lawfully claiming under such executor or administrator; and any one or more of such heirs or devisees, or their grantees, jointly or severally, may sue for and recover their respective shares or interests in any such lands, tenements, or hereditaments and the rents, issues and profits thereof, whether letters testamentary or of administration be granted or not, from any person except the executor or administrator and those lawfully claiming under such executor or administrator. [L. '95, p. 197, § 1.]

Cited in 10 Wash. 661; 16 Wash. 493; 18 Wash. 107; 23 Wash. 235; 25 Wash. 541; 27 Wash. 19; 33 Wash. 207; 38 Wash. 264; 41 Wash. 529; 42 Wash. 147, 148, 157, 351–354; 46 Wash. 186–189; 49 Wash. 290; 55 Wash. 286; 57 Wash. 364, 450, 451, 484; 72 Wash. 677, 79 Wash. 586; 86 Wash. 57, 62.

§ 1367. Titles of Heirs Confirmed.—This act shall apply to and govern the transmission of title of lands, tenements and hereditaments in the case of the estates of persons hereafter dying and of persons already deceased, whether letters testamentary or of administration have been granted on such estates or not, and the title of all heirs and devisees, and their grantees, to any such real property is hereby confirmed and made valid to the same extent as if this act had been passed before the death of such decedent. [L. '95, p. 198, § 2.]

Cited in 42 Wash. 147, 148.

"This act" included §§ 1366–1371.

§ 1368. Debts.—No real estate of a deceased person shall be liable for his debts unless letters testamentary or of administration be granted within six years from the date of the death of such decedent. [L. '95, p. 198, § 3.]

Cited in 32 Wash. 468; 42 Wash. 147, 353–355; 43 Wash. 537, 538; 57 Wash. 450, 451.

§ 1369. "Heirs," Meaning of.—The words "heirs" shall be construed as meaning the person or persons to whom land, tenements and hereditaments descend as defined in sections from 1341 to 1355, both inclusive. [L. '95, p. 198, § 4.]

§ 1370. Community Interests.—This act shall apply to community real property and also to separate estate; and upon the death of either husband or wife, title of all community real property shall vest immediately in the person or persons to whom the same shall go, pass, descend or be devised, as provided in section 1342, subject

to all the charges mentioned in section 1366 of this act. [L. '95, p. 199, § 5.]

Cited in 79 Wash. 586.

§ 1371. Liability of Existing Estates.—Nothing in this act shall have the effect to prevent the real estate of a person deceased for six years prior to the going into effect of this act from being liable for his debts, where letters testamentary or of administration of the estate of such deceased person shall be issued prior to one year after the going into effect of this act. [L. '95, p. 199, § 6.]

CHAPTER VIII.

Letters Testamentary and of Administration.

§ 1372. Letters Testamentary, When and to Whom Granted.—After probate of any will letters testamentary shall be granted to the persons therein appointed executors. If a part of the persons thus appointed refuse to act, or be disqualified, the letters shall be granted to the other persons appointed therein. If all such persons refuse to act, letters of administration with the will annexed shall be granted to the person to whom administration would have been granted if there had been no will. [L. '54, p. 268, § 5; Cd. '81, § 1372; 2 H. C., § 884.]

Cited in 4 Wash. 171; 52 Wash. 151.

§ 1373. Objections.—Any person interested in a will may file objections in writing to the granting of letters testamentary to the persons named as executors, or any of them, and the objection shall be heard and determined by the court. [L. '60, p. 179, § 74; Cd. '81, § 1373; 2 H. C., § 885.]

§ 1374. Letters During Minority or Absence of Executor.—If the executor be a minor, or absent from the state, letters of administration with the will annexed shall be granted, during the time of such minority or absence, to some other person, unless there be another executor, who shall accept the trust, in which case the estate shall be administered by such other executor until the disqualification shall be removed, when such minor, having arrived at full age, or such absentee, shall be admitted as joint executor with the former. [L. '54, p. 269, § 9; L. '60, p. 180, § 75; Cd. '81, § 1374; 2 H. C., § 886.]

§ 1375. Discovery of Will Revokes Letters.—If, after letters of administration are granted, a will of the deceased be found, and probate thereof be granted, the letters shall be revoked, and letters testamentary or of administration with will annexed shall be granted. [L. '54, p. 272, § 27; Cd. '81, § 1375; 2 H. C., § 887.]

Cited in 54 Wash. 267; 59 Wash. 132.

§ 1376. Setting Aside Will Revokes Letters.—If, after a will has been found and letters thereon granted, the will shall afterward be set aside, the letters shall be revoked, and letters of administration granted on the goods unadministered. [L. '54, p. 272, § 28; Cd. '81, § 1376; 2 H. C., § 888.]

§ 1377. Marriage of Executrix, etc., not to Affect Interest, etc.—If any executrix or administratrix marry, her husband shall not thereby acquire any interest in the effects of her testator or intestate, nor shall the administration thereby devolve on him. [L. '54, p. 272, § 29; Cd. '81, § 1377; 2 H. C., § 889.]

§ 1378. Marriage No Disqualification.—No woman shall be disqualified from acting as executrix of the last will of a deceased person, nor from acting as administratrix of the estate of any deceased person by reason of being a married woman. [L. '97, p. 24, § 1.]

§ 1379. Revocation of Letters, When.—If an executor or administrator become of unsound mind, or be convicted of felony or infamous crime, or become an habitual drunkard, or otherwise incapable of or unsuitable for executing the trust reposed in him, or so fail to discharge his official duties, or waste or mismanage the estate, or so act as to endanger any coexecutor or coadministrator, the superior court, upon complaint in writing made by any person interested, supported by affidavit, and due notice given to the person complained of, shall hear the complaint, and if found to be just, shall revoke the letters granted. [L. '54, p. 272, § 30; Cd. '81, § 1378; 2 H. C., § 890.]

§ 1380. Executor of Executor Administers What.—No executor of an executor shall, as such, be authorized to administer upon the estate of the first testator, but on the death of the sole or surviving executor of any last will, letters of administration with the will annexed, of the estate of the first testator left unadministered, shall be issued. [L. '60, p. 180, § 80; Cd. '81, § 1379; 2 H. C., § 891.]

§ 1381. Acts of Portion of Executors Valid, When.—When all the executors named shall not be appointed by the court, such as are appointed shall have the same authority to perform every act and discharge every trust required by the will, and their acts shall be as effectual for every purpose as if all were appointed and should act together. [L. '60, p. 180, § 81; Cd. '81, § 1380; 2 H. C., § 892.]

§ 1382. Administrator With Will Annexed, Power of.—Administrators with the will annexed shall have the same authority as the executor named in the will would have had, and their acts shall be as effectual for every purpose. [L. '60, p. 180, § 82; Cd. '81, § 3881; 2 H. C., § 893.]

§ 1383. Letters to be Signed and Under Seal.—Letters testamentary and of administration with the will annexed shall be signed by the clerk of the court, and be under the seal of the court, and a copy of the will shall be attached to the letters. [L. '60, p. 181, § 83; Cd. '81, § 1382; 2 H. C., § 894.]

§ 1384. Affidavit as to Knowledge of Other Will.—Every administrator with the will annexed, and executor, at the time letters are granted him, shall make an affidavit that he knows of no other and subsequent will of the deceased. [L. '54, p. 270, § 18; Cd. '81, § 1383; 2 H. C., § 895.]

§ 1385. Recording Letters — Certificate.—The clerk shall record, in a well-bound book kept for that purpose, all letters testamentary and of administration, before they are delivered to the executors or administrators, and shall certify on such letters that they have been so recorded. [Cf. L. '54, p. 271, § 22; Cd. '81, § 1384; L. '91, p. 383, § 11; 2 H. C., § 896.]

§ 1386. Certified Copies are Evidence.—Copies of such letters, or copies of the records thereof, certified by the clerk, and under the seal of the superior court, shall be received as evidence in any court in this state. [Cf. L. '54, p. 271, § 23; Cd. '81, § 1385; L. '91, p. 383, § 12; 2 H. C., § 897.]

§ 1387. Form of Letters Testamentary.—Letters testamentary to be issued to executors under the provisions of this chapter may be in the following form:—

State of Washington,
County of ——.

In the superior court of the county of ——.

Whereas, the last will of A B, deceased, was, on the —— day of ——, A. D. ——, duly exhibited, proven, and recorded in our said superior court, a copy of which is hereto annexed; and whereas, it appears in and by said will that C D is appointed executor thereon, now, therefore, know all men by these presents, that we do hereby authorize the said C D to execute said will according to law.

Witness my hand and the seal of said court this —— day of ——, A. D. 18—. [L. '54, p. 271, § 24; Cd. '81, § 1386; 2 H. C., § 898.]

§ 1388. Form of Letters With Will Annexed.—Letters of administration with the will annexed may be substantially in the following form:—

State of Washington,
County of ——.

In the superior court of the county of ——.

The last will of A B, deceased, a copy of which is hereunto annexed having been proved and recorded in the said superior court, and —— (as the case may be), ——, C D, is hereby appointed administrator with the will annexed.

Witness my hand and the seal of said court this —— day of ——, A. D. 18—. [L. '60, p. 181, § 88; Cd. '81, § 1387; 2 H. C., § 899.]

§ 1389. Who Entitled to Letters of Administration.—Administration of the estate of a person dying intestate shall be granted to some one or more of the persons hereinafter mentioned, and they shall be respectively entitled in the following order:—

1. The surviving husband or wife, or such person as he or she may request to have appointed;

2. The next of kin, in the following order: 1. Child or children; 2. Father or mother; 3. Brothers or sisters; 4. Grandchildren;

3. To one or more of the principal creditors: Provided, that if the persons so entitled or interested shall neglect for more than forty days after the death of the intestate to present a petition for letters of administration, or if there be no relatives or next of kin, or if the heirs or one or more of the principal creditors, in writing, waive their right to administration, or if there be no principal creditor or creditors, then the court or judge may appoint any suitable and competent person to administer such estate. [L. '54, p. 268, § 4; L. '60, p. 181, § 89; L. '73, p. 269, § 90; Cd. '81, § 1388; 2 H. C., § 900.]

Cited in 6 Wash. 191; 20 Wash. 219; 25 Wash. 435, 542; 31 Wash. 342; 33 Wash. 169, 173; 52 Wash. 151; 54 Wash. 265, 267; 59 Wash. 362; 69 Wash. 224, 226; 71 Wash. 548; 72 Wash. 677.

§ 1390. Application for Letters, How Made.—Application for letters of administration shall be made by petition in writing, signed by the applicant or his attorney, and filed in the superior court, which petition shall set forth the facts essential to giving the court jurisdiction of the case, and such applicant, at the time of making such application, shall make an affidavit, stating, to the best of his knowledge and belief, the names and places of residence of the heirs of the deceased, and that the deceased died without a will. [L. '54, p. 270, § 17; Cd. '81, § 1389; 2 H. C., § 901.]

Cited in 33 Wash. 169, 173; 54 Wash. 266; 78 Wash. 559; 86 Wash. 176.

§ 1391. Application for Letters de Bonis Non.—A similar affidavit, with such variations as the case may require, shall be made by administrators of the goods remaining unadministered, and by ad-

ministrators during the time of a contest about a will, or the granting of letters of administration. [L. '54, p. 270, § 16; Cd. '81, § 1390; 2 H. C., § 902.]

§ 1392. Notice of Application.—When a petition praying for letters of administration is filed, the clerk must give notice thereof, by causing notices to be posted in at least three public places in the county, one of which must be at the place where the court is held, containing the name of the decedent, the name of the applicant, and the time at which the applicant will be heard. Such notice must be given at least ten days before the hearing. [Cd. '81, § 1391; L. '83, p. 29, § 1; 2 H. C., § 903.]

Cited in 33 Wash. 170; 86 Wash. 177.

§ 1393. Form of Letters of Administration.—Letters of administration shall be signed by the clerk, and be under the seal of the court, and may be substantially in the following form:—

State of Washington,
County of ——.

Whereas, A B, late of ——, on or about the —— day of ——, A. D. ——, died intestate, leaving, at the time of his death, property in this state subject to administration, now, therefore, know all men by these presents, that we do hereby appoint —— administrator upon said estate, and hereby authorize him to administer the same according to law.

Witness my hand and the seal of said court this —— day of ——, A. D., 18—. [Cf. L. '54, p. 271, § 25; L. '60, p. 182, § 92; Cd. '81, § 1392; 2 H. C., § 904.]

§ 1394. Oath.—Before letters testamentary or of administration are issued to the executor or administrator, he must take and subscribe an oath, before some person authorized to administer oaths, that he will perform, according to law, the duties of his trust as executor or administrator, which oath must be attached to and recorded with the letters. [L. '77, p. 211, § 4; Cd. '81, § 1393; 2 H. C., § 905.]

§ 1395. Bond.—Every person to whom letters testamentary or of administration are directed to issue must, before receiving them, execute a bond to the state of Washington, with two or more sufficient sureties, to be approved by the judge. In form the bond must be joint and several, and the penalty must not be less than twice the value of the personal property, and twice the probable value of the annual rents, profits, and issues of the real property belonging to the estate; which values must be ascertained by the judge by exam-

ining on oath the party applying, and any other persons. [Cf. L. '54, p. 268, § 7; L. '77, p. 211, § 4; Cd. '81, § 1394; 2 H. C., § 906.]

See infra, §§ 1400 et seq., qualification and justification of sureties, etc.

§ 1396. Conditions of Bond.—The bond must be conditioned that the executor or administrator shall faithfully execute the duties of the trust according to law. [Cf. L. '54, p. 268, § 7; L. '77, p. 211, § 4; Cd. '81, § 1396; 2 H. C., § 907.]

§ 1397. Additional Bond Before Sale of Property.—The judge must require an additional bond whenever the sale of any real estate belonging to an estate is ordered by him; but no such additional bond must be required when it satisfactorily appears to the court that the penalty of the bond given, before receiving letters, or of any bond given in place thereof, is equal to twice the value of the personal property remaining in or that may come into the possession of the executor or administrator, including the annual rents, profits, and issues of real estate, and twice the probable amount to be realized on the sale of the real estate ordered to be sold. [Cf. L. '54, p. 268, § 7; L. '77, p. 211, § 4; Cd. '81, § 1395; 2 H. C., § 908.]

§ 1398. Separate Bonds, When.—When two or more persons are appointed executors or administrators, the judge must require and take a separate bond from each of them. [Cf. L. '54, p. 269, § 8; L. '60, p. 183, § 94; Cd. '81, § 1397; 2 H. C., § 909.]

§ 1399. Successive Recoveries on Bond.—The bond shall not be void upon the first recovery, but may be sued and recovered upon, from time to time, by any person aggrieved in his own name, until the whole penalty is exhausted. [L. '77, p. 211, § 4; Cd. '81, § 1398; 2 H. C., § 910.]

§ 1400. Qualifications of Sureties.—In all cases where bonds or undertakings are required to be given under this chapter, the sureties must possess the qualifications and justify thereon in the same manner as required for bail upon an arrest, and the certificate thereof must be attached to and filed and recorded with the bond or undertaking. All such bonds or undertakings must be approved by the judge before being filed or recorded. [Cf. L. '77, p. 211, § 4; Cd. '81, § 1399; L. '91, p. 383, § 13; 2 H. C., § 911.]

§ 1401. Justification of Sureties.—Before the judge approves any bond required under this chapter, and after its approval, he may, of his own motion, or upon the motion of any person interested in the estate, supported by affidavit that the sureties, or some one or more of them, are not worth as much as they have justified to, order a citation to issue, requiring such sureties to appear before him at a designated time and place, to be examined touching their property

and its value; and the judge must, at the same time, cause notice to be issued to the executor or administrator, requiring his appearance on the return of the citation, and on its return he may examine the sureties and such witnesses as may be produced touching the property of the sureties and its value; and if upon such examination he is satisfied that the bond is insufficient, he must require sufficient additional security. [L. '77, p. 211, § 4; Cd. '81, § 1400; 2 H. C., § 912.]

§ 1402. New Bond Discharges Former Sureties.—Such additional bond, when given and approved, shall discharge the former sureties from any liability arising from the misconduct of the principal after the filing of the same, and such former sureties shall only be liable for such misconduct as happened prior to the giving such new bond. [L. '73, p. 272, § 101; Cd. '81, § 1401; 2 H. C., § 913.]

§ 1403. Failure to Give Security Annuls Powers.—If sufficient security is not given within the time fixed by the judge's order, the right of such executor or administrator to the administration shall cease, and the person next entitled to the administration on the estate, who shall execute a sufficient bond, must be appointed to the administration. [Cf. L. '73, p. 272, § 102; L. '77, p. 211, § 4; Cd. '81, § 1402; 2 H. C., § 914.]

§ 1404. No Bond When Will so Provides.—When it is expressly provided in the will that no bond shall be required of the executor, letters testamentary may issue and sale of real estate be made and confirmed without any bond, unless the court for good cause require one to be executed; but the executor may at any time afterward, if it appear from any cause necessary or proper, be required to file a bond, as in other cases. [Cf. L. '60, p. 184, § 103; L. '73, p. 272, § 103; L. '77, p. 211, § 4; Cd. '81, § 1403; 2 H. C., § 915.]

§ 1405. Additional Security, When.—Any person interested in an estate may, by verified petition, represent to the judge that the sureties of the executor or administrator thereof have become, or are becoming, insolvent, or that they have removed, or are about to remove, from the state, or from any other cause the bond is insufficient, and ask that further security be required. [Cf. L. '77, p. 211, § 4; Cd. '81, § 1404; L. '91, p. 383, § 13½; 2 H. C., § 916.]

Cited in 48 Wash. 428.

§ 1406. Citation for Additional Security — Service of.—If the judge is satisfied that the matter requires investigation, citation must be issued to the executor or administrator requiring him to appear, at a time and place specified, to show cause why he should not give further security. The citation must be served personally

on the administrator or executor, at least five days before the return day. If he has absconded or cannot be found, it may be served by leaving a copy of it at his last place of residence, or by such publication as the court or judge may order. [L. '77, p. 211, § 4; Cd. '81, § 1405; 2 H. C., § 917.]

§ 1407. Hearing and Order.—On the return of the citation, or at such other time as the judge may appoint, he must proceed to hear the proof and allegations of the parties. If it satisfactorily appears that the security is from any cause insufficient, he may make an order requiring the executor or administrator to give further security, or to file a new bond in the usual form, within a reasonable time, not less than five days. [L. '77, p. 211, § 4; Cd. '81, § 1406; 2 H. C., § 918.]

§ 1408. Letters Revocable for Failure to Comply With Order.—If the executor or administrator neglects to comply with the order within the time prescribed, the judge must by order revoke his letters, and his authority must thereupon cease. [L. '77, p. 211, § 4; Cd. '81, § 1407; 2 H. C., § 919.]

§ 1409. Further Security on Motion of Court.—When it comes to his knowledge that the bond of any executor or administrator is from any cause insufficient, the judge, without any application, must cause him to be called to appear and show cause why he should not give further security, and must proceed thereon as upon the application of any person interested. [L. '77, p. 211, § 4; Cd. '81, § 1408; 2 H. C., § 920.]

§ 1410. Who Disqualified as Sureties.—No judge of the superior court, no sheriff, clerk of a court, or deputy of either, and no attorney at law, shall be taken as surety in any bond required to be taken in any proceeding in probate. [Cf. L. '54, p. 270, § 19; Cd. '81, § 1409; L. '91, p. 383, § 14; 2 H. C., § 921.]

§ 1411. Special Care in Taking Sureties.—The judge shall take special care to take as sureties men who are solvent and sufficient, and who are not bound in too many other bonds; and to satisfy himself, he may take testimony, and examine, on oath, the applicant or person offered as surety. [Cf. L. '54, p. 271, § 20; Cd. '81, § 1410; L. '91, p. 384, § 15; 2 H. C., § 922.]

§ 1412. Bonds to be Recorded.—The clerk shall record, in a well-bound book kept for that purpose, all bonds given by executors and administrators, and preserve the originals in regular file. [Cf. L. '54, p. 271, § 22; Cd. '81, § 1411; L. '91, p. 384, § 16; 2 H. C., § 923.]

§ 1413. Bond not to Fail for Want of Form.—No bond required under the provisions of this chapter, and intended as such bond,

shall be void for want of form or substance, recital or condition; nor shall the principal or surety on such account be discharged, but all the parties thereto shall be held and bound to the full extent contemplated by the law requiring the same, to the amount specified in such bond. In all actions on such defective bond, the plaintiff may state its legal effect in the same manner as though it were a perfect bond. [Cd. '81, § 1412; 2 H. C., § 924.]

§ 1414. Hearing and Orders.—The applications and acts authorized by the foregoing sections in this chapter may be heard and determined in court or at chambers. All orders made therein must be entered upon the minutes of the court. [Cf. L. '77, p. 211, § 4; Cd. '81, § 1413; L. '91, p. 384, § 17; 2 H. C., § 925.]

§ 1415. Suspension by Judge, When.—Whenever the judge has reason to believe, from his own knowledge, or from credible information, that any executor or administrator has wasted, embezzled, or mismanaged, or is about to waste or embezzle, the property of the estate committed to his charge, or has committed, or is about to commit, a fraud upon the estate, or is incompetent to act, or has permanently removed from the state, or has wrongfully neglected the estate, or has long neglected to perform any acts as such executor or administrator, he must, by order entered upon the minutes of the court, suspend the powers of such executor or administrator until the matter is investigated. [L. '77, p. 211, § 4; Cd. '81, § 1414; 2 H. C., § 926.]

Cited in 32 Wash. 488.

§ 1416. Hearing and Determination After Suspension.—When such suspension is made notice thereof must be given to the executor or administrator, and he must be cited to appear and show cause why his letters should not be revoked. If he fail to appear in obedience to the citation, or if, appearing, the court is satisfied that there exists cause for his removal, his letters must be revoked, and letters of administration granted anew, as the case may require. [Cf. L. '77, p. 211, § 4; Cd. '81, § 1415; L. '91, p. 384, § 18; 2 H. C., § 927.]

§ 1417. Issues at Hearing.—At the hearing, any person interested in the estate may appear and file his allegations in writing, showing that the executor or administrator should be removed, to which the executor or administrator may demur or answer. [L. '77, p. 211, § 4; Cd. '81, § 1416; 2 H. C., § 928.]

§ 1418. Service of Notice by Publication.—If the executor or administrator has absconded or conceals himself, or has removed or absented himself from the state, notice may be given him of the

pendency of the proceedings by publication in such manner as the court may direct, and the court may proceed upon such notice as if the citation had been personally served. [L. '77, p. 211, § 4; Cd. '81, § 1417; 2 H. C., § 929.]

§ 1419. Answer of Executor or Administrator.—In the proceedings authorized by the preceding section[s] for the removal of an executor or administrator, the court may compel his attendance by attachment, and may compel him to answer questions on oath touching his administration, and upon his refusal so to do, may commit him to jail until he obey, or may revoke his letters, or both. [L. '77, p. 211, § 4; Cd. '81, § 1418; 2 H. C., § 930.]

§ 1420. Special Administrator Appointed, When.—When, by reason of an action concerning the proof of a will, or from any other cause, there shall be a delay in granting letters testamentary or of administration, the judge may, in his discretion, appoint a special administrator (other than one of the parties) to collect and preserve the effects of the deceased; and in case of an appeal from the decree appointing such special administrator, he shall, nevertheless, proceed in the execution of his trust, until he shall be otherwise ordered by the appellate court. [L. '54, p. 269, § 11; Cd. '81, § 1419; L. '91, p. 384, § 19; 2 H. C., § 931.]

Cited in 17 Wash. 130; 38 Wash. 434; 71 Wash. 680, 681.

§ 1421. Bond of Special Administrator.—Every such administrator shall, before entering on the duties of his trust, give bond, with sufficient surety or sureties, in such sum as the judge shall order, payable to the state of Washington, with condition as required of an executor or in other cases of administration, to make and return into court, as soon as practicable, a true inventory of the goods, chattels, rights, and credits of the deceased which have or shall come into his possession or knowledge; and that he will truly account for all the goods, chattels, debts, and effects of the deceased that shall be received by him as special administrator, whenever required by the court, and will deliver the same to the person who shall be appointed executor or administrator of the deceased, or to such other person as shall be lawfully authorized to receive the same. [L. '54, p. 269, § 12; Cd. '81, § 1420; 2 H. C., § 932.]

§ 1422. Duties of Special Administrator.—Such special administrator shall collect all the goods, chattels, and debts of the deceased, and preserve the same for the executor or administrator who shall thereafter be appointed; and for that purpose may commence and maintain suits as an administrator, and may also sell such perishable and other goods as the court shall order sold, and he shall be allowed such compensation for his service as the said court shall

deem reasonable. [L. '54, p. 270, § 13; Cd. '81, § 1421; 2 H. C., § 833.]

§ 1423. Powers of Special Administrator Cease, When.—Upon granting letters testamentary or of administration, the power of the special administrator shall cease, and he shall forthwith deliver to the executor or administrator all the goods, chattels, money, and effects of the deceased in his hands, and the executor or administrator may be admitted to prosecute any suit commenced by the special administrator, in like manner as an administrator de bonis non is authorized to prosecute a suit commenced by a former executor or administrator. [L. '54, p. 270, § 14; Cd. '81, § 1422; 2 H. C., § 934.]

§ 1424. Special Administrator not Liable to Creditors.—Such special administrator shall not be liable to an action by any creditor of the deceased, and the time for limitation of all suits against the estate shall begin to run from the time of granting letters testamentary or of administration in the usual form, in like manner as if such special administration had not been granted. [L. '54, p. 270, § 15; Cd. '81, § 1423; 2 H. C., § 935.]

Cited in 71 Wash. 680, 681, 683, 687.

§ 1425. Account of Special Administrator.—The special administrator shall also render an account, under oath, of his proceedings, in like manner as other administrators are required to do. [L. '60, p. 185, § 109; Cd. '81, § 1424; 2 H. C., § 936.]

Cited in 71 Wash. 680, 681.

§ 1426. Resignation of Executor or Administrator.—If any executor or administrator, having first settled his accounts, shall publish for six weeks, in some newspaper in this state in general circulation in the county wherein his letters were granted, a notice of his intention to apply to the court to resign his letters, and the court, on proof of such publication, believe that he should be permitted to resign, it shall so order. [Cf. L. '54, p. 273, § 36; L. '60, p. 185, § 110; L. '73, p. 274, § 110; Cd. '81, § 1425; 2 H. C., § 937.]

§ 1427. Letters to be Surrendered on Resignation.—Such person shall then surrender his letters, his power from that time shall cease, and he shall pay the expense of publication and of all the proceedings on such application. [L. '54, p. 273, § 37; Cd. '81, § 1426; 2 H. C., § 938.]

§ 1428. Where One Resigns Others may Act.—If there be more than one executor or administrator of an estate, and the letters to part of them be revoked or surrendered, or a part die or in any way

become disqualified, those who remain shall perform all the duties required by law. [L. '54, p. 273, § 38; Cd. '81, § 1427; 2 H. C., § 939.]

§ 1429. Order of Appointment on Death or Resignation.—If the executor or administrator of an estate shall die, resign, or the letters be revoked before the settlement of the estate, letters of administration of the goods remaining unadministered shall be granted to those to whom administration would have been granted if the original letters had not been obtained, or the person obtaining them had renounced administration, and the administrator de bonis non shall perform the like duties and incur the like liabilities as the former executors or administrators. [Cf. L. '54, p. 273, § 39; L. '73, p. 274, § 113; Cd. '81, § 1428; 2 H. C., § 940.]

§ 1430. Accounting upon Resignation or Revocation, etc.—If any executor or administrator resign, or his letters be revoked, or he die, he or his representatives shall account for, pay, and deliver to his successor, or to the surviving or remaining executor or administrator, all money and property of every kind, and all rights, credits, deeds, evidences of debt, and papers of every kind of the deceased, at such time and in such manner as the court shall order on final settlement with such executor or administrator, or his legal representatives. [L. '54, p. 273, § 40; Cd. '81, § 1429; 2 H. C., § 941.]

Cited in 6 Wash. 292; 80 Wash. 518, 520.

§ 1431. Action by Successor for Assets.—The succeeding administrator, or remaining executor or administrator, may proceed by law against any delinquent former executor or administrator, or his personal representatives, or the sureties of either, or against any other person possessed of any part of the estate. [Cf. L. '54, p. 273, § 41; Cd. '81, § 1430; L. '91, p. 384, § 20; 2 H. C., § 942.]

Cited in 80 Wash. 518–520.

§ 1432. Limitation of Actions Against Sureties.—All actions against sureties shall be commenced within six years after the revocation or surrender of letters of administration or death of the principal. [Cf. L. '54, p. 274, § 42; Cd. '81, § 1431; L. '91, p. 385, § 21; 2 H. C., § 933.]

§ 1433. Attachment for Failure to Settle.—If any executor or administrator fail to make either annual or final settlement as required by law, and do not show good cause for such failure, after having been cited for that purpose, the court shall order such executor or administrator to make such settlement, and may enforce obedience to such order by attachment and may revoke his letters. [L. '54, p. 274, § 43; Cd. '81, § 1432; 2 H. C., § 944.]

§ 1434. Attachment of, When Letters Surrendered.—If any person who has surrendered his letters testamentary or of administration, or whose letters have been revoked, or the legal representatives of any deceased executor or administrator, shall fail to make final settlement as required by law, after being cited for that purpose by the court, it shall order such delinquent to make such settlement, and may enforce obedience to such order by attachment. [L. '54, p. 274, § 44; Cd. '81, § 1433; 2 H. C., § 945.]

§ 1435. Costs upon Attachment.—In all cases where citations or attachments may be issued against any executor, administrator, or other person for failing to settle his accounts, such delinquent shall pay all costs incurred thereby, the collection of which costs may be enforced by attachment. [Cf. L. '54, p. 274, § 45; L. '73, p. 275, § 119; Cd. '81, § 1434; 2 H. C., § 946.]

§ 1436. Partnership Property, Inventory of.—The executor or administrator of a deceased person who was a member of a copartnership shall include in the inventory of such person's estate, in a separate schedule, the whole of the property of such partnership; and the appraisers shall estimate the value thereof, and also the value of such person's individual interest in the partnership property, after the payment or satisfaction of all the debts and liabilities of the partnership. [L. '54, p. 274, § 46; L. '73, p. 275, § 120; Cd. '81, § 1435; 2 H. C., § 947.]

Cited in 2 Wash. 335; 5 Wash. 381; 12 Wash. 70; 27 Wash. 187; 30 Wash. 279; 31 Wash. 42; 76 Wash. 304.

§ 1437. Administration of Partnership Estate.—After the inventory is taken, the partnership property shall be in the custody and control of the executor or administrator for the purposes of administration, unless the surviving partner shall within five days from the filing of the inventory, or such further time as the court may allow, apply for the administration thereof, and give the bond therefor hereinafter prescribed. [Cf. L. '54, p. 274, § 47; L. '73, p. 276, § 121; Cd. '81, § 1436; 2 H. C., § 948.]

Cited in 76 Wash. 304, 305.

§ 1438. Surviving Partner Entitled to Administration.—If the surviving partner apply therefor, as provided in the last section, he is entitled to the administration of the partnership estate, if he have the qualifications and competency required for a general administrator. He is denominated an administrator of the partnership, and his powers and duties extend to the settlement of the partnership business generally, and the payment or transfer of the interest of the deceased in the partnership property remaining after the payment or satisfaction of the debts and liabilities of the partnership,

to the executor or general administrator, within six months from the date of his appointment, or such further time, if necessary, as the court may allow. In the exercise of his powers and the performance of his duties, the administrator of the partnership is subject to the same limitations and liabilities, and control and jurisdiction of the court, as a general administrator. [Cf. L. '54, p. 274, §§ 48–51; L. '63, p. 225, §§ 155–158; L. '73, p. 276, § 122; Cd. '81, § 1437; 2 H. C., § 949.]

Cited in 20 Wash. 219; 29 Wash. 392; 30 Wash. 278; 76 Wash. 296, 304.

§ 1439. Bond of Administrator of Partnership.—The bond of the administrator of the partnership shall be in a sum not less than double the value of the partnership property, and shall be given in the same manner and be of the same effect as the bond of a general administrator. [Cf. L. '54, p. 274, § 48; L. '63, p. 225, § 155; L. '73, p. 276, § 123; Cd. '81, § 1438; 2 H. C., § 950.]

§ 1440. General Administrator to Give Additional Bond, When.—In case the surviving partner is not appointed administrator of the partnership, the administration thereof devolves upon the executor or general administrator, but before entering upon the duties of such administration, he shall give an additional bond in double the value of the partnership property. [Cf. L. '63, p. 226, § 157; L. '73, p. 276, § 124; Cd. '81, § 1439; 2 H. C., § 951.]

Cited in 76 Wash. 296, 304.

§ 1441. Surviving Partner to Furnish Exhibit.—Every surviving partner, on the demand of an executor or administrator of a deceased partner, shall exhibit and give information concerning the property of the partnership at the time of the death of the deceased partner, so that the same may be correctly inventoried and appraised; and in case the administration thereof shall devolve upon the executor or administrator, such survivor shall deliver or transfer to him, on demand, all the property of the partnership, including all books, papers, and documents pertaining to the same, and shall afford him all reasonable information and facilities for the performance of the duties of his trust. [Cf. L. '63, p. 226, § 159; L. '73, p. 277, § 125; Cd. '81, § 1440; 2 H. C., § 952.]

§ 1442. Surviving Partner Cited to Give Information.—Any surviving partner who shall refuse or neglect to comply with the requirements of the last section may be cited to appear before the court; and unless he show cause to the contrary, the court shall require him to comply with such section in the particular complained of. [Cf. L. '54, p. 275, § 53; L. '63, p. 227, § 160; L. '73, p. 227, § 126; Cd. '81, § 1441; 2 H. C., § 953.]

§ 1443. Who Disqualified — Revocation.—The following persons are not qualified to act as executors or administrators: Nonresidents of this state, minors, judicial officers other than justices of the peace, persons of unsound mind or who have been convicted of any felony or of a misdemeanor involving moral turpitude. And when any person to whom letters testamentary or of administration have been issued becomes disqualified to act because of leaving the state, becoming of unsound mind, or is convicted of any crime or misdemeanor involving moral turpitude, the court having jurisdiction shall revoke his or her letters as in this chapter provided. [L. '63, p. 227, § 164; L. '77, p. 227, § 127; Cd. '81, § 1442; 2 H. C., § 954.]

Cited in 33 Wash. 170, 171; 76 Wash. 304.

§ 1444. Settlement of Estates Without Administration.—In all cases where it is provided in the last will and testament of the deceased that the estate shall be settled in a manner provided in such last will and testament, and that letters testamentary or of administration shall not be required, and where it also duly appears to the court, by the inventory filed, and other proof, that the estate is fully solvent, which fact may be established by an order of the court on the coming in of the inventory, it shall not be necessary to take out letters testamentary or of administration, except to admit to probate such will, and to file a true inventory of all the property of such estate in the manner required by existing laws. And after the probate of such will and the filing of such inventory all such estates may be managed and settled without the intervention of the court, if the said last will and testament shall so provide: But provided, that in all such cases the claims against such estates shall be paid within one year from the date of the first publication of notice to creditors to present their claims, unless such time be extended by the court, for good cause shown, for a reasonable time: Provided, however, in all such cases, if the party named in such will as executor shall decline to execute the trust, or shall die or be otherwise disabled from any cause from acting as such executor, then letters testamentary or of administration shall issue as in other cases: And provided further, if the party named in the will shall fail to execute the trust faithfully and to take care and promote the interests of all parties taking under the will, then, upon petition of a creditor of such estate, or of any of the heirs, or of any person on behalf of any minor heirs, it shall be the duty of the court of the county wherein such estate is situated to cite such person having the management of such estate to appear before such court, and if, upon hearing of such petition it shall appear that the trust in such will is not faithfully discharged, and that the parties interested, or any of them, have been or are about to be damaged by such actual doings

of the executor, then letters testamentary or of administration shall be had and required in such cases, and all other matters and proceedings shall be had and required as are now required in the administration of estates, and in such cases the costs of the citation and hearing shall be charged against the party failing and neglecting to execute the trust as required in such will. [Cf. L. '68, p. 49, § 2; L. '69, p. 298 et seq.; Cd. '81, § 1443; 2 H. C., § 955; L. '97, p. 285, § 1.]*

Cited in 3 Wash. 411; 5 Wash. 117; 11 Wash. 262; 16 Wash. 342; 19 Wash. 667; 21 Wash. 187, 188, 578; 26 Wash. 104; 29 Wash. 423; 48 Wash. 275; 55 Wash. 251, 253; 63 Wash. 168; 73 Wash. 685, 687; 76 Wash. 81; 83 Wash. 434; 86 Wash. 351.

§ 1445. Inventory to be Filed Within Thirty Days.—All executors and administrators of estates that have not been fully settled and closed, and who shall not have filed an inventory of all the property as required by the existing laws, shall, within thirty days after the taking effect of this act, file a true inventory of all the property of any such estate, and in case it appears to the court by any such inventory or other proof that any such estates are insolvent, such estates shall be settled by the court as in cases of intestacy, and the court shall make an order requiring the executor or administrator to make a report of his acts to the court. [L. '97, p. 286, § 2.]

Cited in 21 Wash. 188, 578.

"This act": Of March 16, 1897.

§ 1446. Sale of Property.—Such executors, who have been heretofore acting under wills dispensing with letters testamentary or of administration, and those who may hereafter act under such wills, shall have power, after the filing of an inventory of the estate, if the said estate has been adjudged to be solvent according to the provisions of the last preceding section, to sell and convey the real and personal property of their testator, where the will authorizes them so to do, without an order of the court for that purpose, and without notice or confirmation of sale. [L. '97, p. 286, § 3.]

Cited in 73 Wash. 685, 687.

§ 1447. Performance of Contracts.—Such executor, after the order referred to in section 1445 has been made, declaring the estate solvent, shall have the power to carry out and perform all the contracts and undertakings of his testator, which he might be required by law to execute, and it shall not be necessary to obtain an order of the court authorizing the same, or an order confirming the same. [L. '97, p. 286, § 4.]

§ 1448. Publication of Notice.—Upon publication of notice to creditors to present their claims to such executor, for a period of

time and in the manner required of executors and of administrators holding letters testamentary and of administration under the laws of this state, said creditors shall be required to present their claims to the said executor within one year from the date of the first publication of said notice, and if they fail to do so their claim shall be barred. [L. '97, p. 287, § 5.]

Cited in 48 Wash. 275.

CHAPTER IX.

The Inventory and Effects of Deceased Persons.

§ 1449. Right of Possession of Estate.—Every executor or administrator shall, after having qualified, by giving bond as hereinbefore provided, have a right to the immediate possession of all the real as well as personal estate of the deceased, and may receive the rents and profits of the real estate until the estate shall be settled or delivered over, by order of the court, to the heirs or devisees, and shall keep in tenantable repair all houses, buildings, and fixtures thereon, which are under his control. [Cf. L. '54, p. 278, § 65; L. '60, p. 189, § 132; Cd. '81, § 1444; 2 H. C., § 956.]

Cited in 1 Wash. 480; 2 Wash. 335; 4 Wash. 172, 500, 501; 7 Wash. 381, 650; 10 Wash. 599; 17 Wash. 676; 27 Wash. 188; 32 Wash. 487; 38 Wash. 264; 42 Wash. 351, 353.

See supra, Title X, Chaps. VI and VII, descent and distribution.
See supra, § 1366 et seq., rights of heirs, devisees, etc.

§ 1450. Inventory.—Every executor and administrator shall make and return, upon oath, into the court, within one month after his appointment, a true inventory of the real and personal estate of the deceased, which shall come to his possession or knowledge. [L. '60, p. 190, § 136; Cd. '81, § 1445; 2 H. C., § 957.]

Cited in 29 Wash. 540; 30 Wash. 567; 38 Wash. 265; 42 Wash. 353; 72 Wash. 677; 82 Wash. 229.

§ 1451. Appraisement of Estates.—The estates and effects comprised in the inventory shall be appraised by three suitable disinterested persons, who shall be appointed by the court. If any part of the estate shall be in another county than that in which letters are issued, appraisers residing in such county may be appointed by the court having jurisdiction of the case, or, if most advisable, the same appraisers may act. Such appraisers shall receive as compensation for their services three dollars per day, to be paid out of the estate, and when they have to go out of their county, mileage shall be allowed: Provided, that where it appears to the satisfaction of the court, from the return of the inventory or other proof, that the whole estate consists of personal property of less value than one hundred dollars, exclusive of moneys, drafts, checks, bonds, or other securities of fixed valuation, an appraisement may be dispensed with,

in the discretion of the court. [Cf. L. '54, p. 276, § 57; Cd. '81, § 1446; L. '88, p. 186, § 1; 2 H. C., § 958.]

§ 1452. Oath and Duties of Appraisers.—Before proceeding to the discharge of their duties, the appraisers shall take and subscribe an oath, before any officer authorized to administer oaths, to be attached to the inventory, that they will honestly and impartially appraise the property which shall be exhibited to them, according to the best of their knowledge and ability; they shall proceed to estimate and appraise the property, and set down each article separately, with the value thereof in dollars and cents, in figures, opposite the respective articles. The inventory shall contain all the estate of the deceased, real and personal, a statement of all debts, partnership and other interests, bonds, mortgages, notes, and other securities for the payment of money belonging to the deceased, specifying the name of the debtor in each security, the date, the sum originally payable, the indorsements thereon, if any, and their dates, and the sum which, in the judgment of the appraisers, may be collectible on each debt, interest, or security. [L. '54, p. 276, § 58; Cd. '81, § 1447; 2 H. C., § 959.]

§ 1453. Inventory to Include Moneys, etc.—The inventory shall also contain an account of all moneys belonging to the deceased, which shall have come to the possession or knowledge of the executor or administrator; and if none shall come to his possession or knowledge, the fact shall be so stated in the inventory. [L. '54, p. 277, § 59; Cd. '81, § 1448; 2 H. C., § 960.]

Cited in 29 Wash. 541.

§ 1454. Executor or Administrator not Released by Appointment. The naming of any person as executor in a will, or the appointment of any person as administrator, shall not operate as a discharge from any just claim which the testator or intestate had against the executor or administrator, but the claim shall be included in the inventory, and the executor and administrator shall be liable to the same extent as he would have been had he not been appointed executor or administrator. [Cf. L. '54, p. 277, § 60; L. '60, p. 63, § 5; Cd. '81, § 1449; 2 H. C., § 961.]

Cited in 17 Wash. 52.

§ 1455. Bequest Invalid Against Creditor, When.—The discharge or bequest in a will of any debt or demand of the testator against any executor named in his will or against any other person, shall not be valid against the creditors of the deceased, but shall be construed as a specific bequest of such debt or demand, and the amount thereof shall be included in the inventory, and shall, if necessary, be applied in payment of his debts; if not necessary for that pur-

pose, it shall be paid in the same manner and proportions as other specific legacies. [L. '54, p. 277, § 61; Cd. '81, § 1450; 2 H. C., § 962.]

§ 1456. Inventory to be Signed and Verified.—The inventory shall be signed by the appraisers, and be verified by the oath of the executor or administrator to the effect that the inventory contains a true statement of all of the estate of the deceased which has come to his possession or knowledge, and particularly of all moneys belonging to the deceased, and of all just claims of the deceased against the executor or administrator. [L. '54, p. 277, § 62; L. '73, p. 280, § 136; Cd. '81, § 1451; 2 H. C., § 963.]

§ 1457. Penalty for Failure to Return Inventory.—If any executor or administrator shall neglect or refuse to return the inventory within the period prescribed, or within such further time, not exceeding three months, as the court shall allow, the court shall revoke the letters testamentary or of administration; and the executor or administrator shall be liable on his bond to any party interested for the injury sustained by the estate through his neglect. [L. '54, p. 277, § 63; L. '73, p. 280, § 137; Cd. '81, § 1452; 2 H. C., § 964.]

Cited in 30 Wash. 568; 72 Wash. 677.

§ 1458. Additional Inventory, When.—Whenever property not mentioned in any inventory shall come to the knowledge and possession of the executor or administrator, he shall cause the same to be appraised in the manner prescribed in this chapter, and an additional inventory to be returned, subscribed and sworn to as is provided in this chapter, as soon as practicable after the discovery thereof, and the making of such inventory may be enforced, after notice, by attachment to which may be added the revocation of the letters. [Cf. L. '54, p. 277, § 64; L. '73, p. 281, § 138; Cd. '81, § 1453; 2 H. C., § 965.]

Cited in 29 Wash. 541; 82 Wash. 229.

See notes to § 1450, supra, inventory.

§ 1459. Personal Estate, How Applied.—The personal estate of the deceased which shall come into the hands of the executor or administrator shall be first chargeable with the payment of the debts and expenses; and if the goods, chattels, rights, and credits in the hands of the executor or administrator shall not be sufficient to pay the debts of the deceased, the expenses of the administration, and the allowance to the family of the deceased, the whole, or so much as may be necessary, of the real estate may be sold for that purpose by the executor or administrator, in the manner prescribed in this chapter. [L. '54, p. 278, § 66; Cd. '81, § 1454; 2 H. C., § 966.]

§ 1460. Penalty for Embezzlement.—If any person, before the granting of letters testamentary or administration, shall embezzle or alienate any of the moneys, goods, chattels, or effects of any deceased person, he shall stand chargeable, and be liable to the action of the executor or administrator of the estate, in double the value of the property so embezzled or alienated, to be recovered for the benefit of the estate. [L. '54, p. 278, § 67; Cd. '81, § 1455; 2 H. C., § 967.]

Cited in 67 Wash. 394.

§ 1461. Citation to Recover Property Unlawfully Withheld.—If the executor, administrator, heir, legatee, creditor, or other person interested in the estate of any deceased person, shall complain to the court, on oath, that any person is suspected of having concealed, embezzled, smuggled, conveyed away, or disposed of any moneys, goods, or chattels of the deceased, or that he has in his possession or knowledge any deeds, conveyances, bonds, contracts, or other writings which contain evidence of or tend to disclose the right, title, interest, or claim of the deceased to any real or personal estate, or any claim, demand, or last will of the deceased, the said court may cite such person to appear, and may examine him on oath upon the matter of such complaint. If such person be not in the county where letters have been granted, he may be cited and examined, either before the court for the county where he may be found, or before the court issuing the order or citation; but in the latter case, if he appear and be found innocent, his necessary expenses shall be allowed him out of the estate. [Cf. L. '54, p. 278, § 68; Cd. '81, § 1456; L. '91, p. 385, § 22; 2 H. C., § 968.]

Cited in 82 Wash. 229.

§ 1462. Penalty for Failure to Submit to Examination.—If the person so cited refuse to appear and submit to such examination, or to answer such interrogatories as may be put to him touching the matter of such complaint, the court may, by warrant for that purpose, commit him to the county jail, there to remain in close custody until he shall submit to the order of the court; and all such interrogatories and answers shall be in writing, and shall be signed by the party examined, and filed in the court. [L. '54, p. 278, § 69; Cd. '81, § 1457; 2 H. C., § 969.]

§ 1463. Citation to Person Intrusted With Property.—The court, upon the complaint on oath of any executor or administrator, may cite any person who shall have been intrusted with any part of the estate of the deceased person to appear before the said court, and may require such person to give a full account, on oath, of any moneys, goods, chattels, bonds. accounts, or other papers belonging

to the estate, which shall have come to his possession in trust for such executor or administrator, and of his proceeding thereon; and if the person so cited shall refuse to appear and answer such account, the court may proceed against him as provided in the preceding section. [L. '54, p. 279, § 70; Cd. '81, § 1458; 2 H. C., § 970.]

§ 1464. Proceedings When Estate Does not Exceed One Thousand Dollars.—If, by the return of the inventory of the estate of any intestate who died leaving a widow or minor children, it shall appear that the value of the estate does not exceed one thousand dollars, the court shall, by decree for that purpose, assign for the use and support of the widow and minor children of the [int]estate, or for the support of the minor child or children, if there be no widow, the whole estate, after the payment of the funeral expenses and expenses of administration, and there shall be no further proceedings in the administration unless further estate be discovered. [Cf. L. '68, p. 49, § 1; L. '73, p. 283, § 145; Cd. '81, § 1459; L. '88, p. 186, § 2; L. '91, p. 385, § 23; 2 H. C., § 971.]

Cited in 30 Wash. 42, 55; 40 Wash. 671; 75 Wash. 613, 616; 83 Wash. 237.

CHAPTER X.

Provision for the Support of the Family.

§ 1465. Probate Homestead and Widow's Allowance.—When a person shall die, leaving a widow, or minor child or children, the widow, child or children, shall be entitled to remain in the possession of the homestead, and of all the wearing apparel of the family, and of all the household furniture of the deceased; and if the head of the family in his lifetime had not complied with the provisions of the law relative to the acquisition of a homestead, the widow, or the child or children, may comply with such provisions, and shall be entitled on such compliance to a homestead as now provided by law for the head of a family, and the same shall be set aside for the use of the widow, child or children, and shall be exempt from all claims for the payment of any debt, whether individual or community. Said homestead shall be for the use and support of said widow, child or children, and shall not be assets in the hands of any administrator or executor for the debts of the deceased, whether individual or community. [Cf. L. '54, p. 279, § 71; L. '73, p. 283, § 146; L. '77, p. 209, § 3; Cd. '81, § 1460; L. '83, p. 44, § 1; L. '86, p. 170, § 1; L. '91, p. 386, § 24; 2 H. C., § 972.]

Cited in 4 Wash. 232; 7 Wash. 292; 17 Wash. 677; 20 Wash. 576; 24 Wash. 174; 30 Wash. 39, 55; 34 Wash. 90; 66 Wash. 585; 76 Wash. 118; 77 Wash. 528; 86 Wash. 57, 58, 59.

§ 1466. Exempt Property to be Set Apart.—In case of the appointment of an executor or administrator upon the death of the

husband, as mentioned in the last preceding section, the court shall, without cost to the widow, minor child or children, set apart, for the use of such widow, minor child or children, all the property of the estate by law exempt from execution; if the amount thus exempt be insufficient for the support of the widow and minor child or children the court shall make such further reasonable allowance out of the estate as may be necessary for the maintenance of the family according to their circumstances, during the progress of the settlement of the estate. [Cf. L. '54, p. 279, §§ 72, 73; Cd. '81, § 1461; L. '86, p. 171, § 2; L. '91, p. 386, § 25; 2 H. C., § 973.]

Cited in 13 Wash. 172; 20 Wash. 572; 30 Wash. 11, 55; 66 Wash. 586; 70 Wash. 500; 76 Wash. 118; 83 Wash. 238.

§ 1467. Family Allowance has Preference.—Any allowance made by the court in accordance with the provisions of the preceding section shall be paid by the executor or administrator in preference to all other charges, except funeral charges and expenses of administration. [L. '54, p. 279, § 74; Cd. '81, § 1462; 2 H. C., § 974.]

Cited in 18 Wash. 107; 70 Wash. 501.

§ 1468. Distribution of Property Set Apart.—When property shall have been set apart for the use of the family, in accordance with the provisions of this chapter, if the deceased shall have left a widow and no minor children, such property shall be the property of the widow; if he shall have left also a minor child or children, one-half to the widow, and the remainder to such child, or in equal shares to such children, if there are more than one; if there be no widow, then the whole shall belong to the minor child or children. [L. '54, p. 279, § 75; Cd. '81, § 1463; 2 H. C., § 975.]

Cited in 24 Wash. 174; 30 Wash. 40; 34 Wash. 90; 86 Wash. 59.

§ 1469. When No Widow or Children, Estate to be Administered. If intestate leave no widow or minor children, all his estate shall be assets in the hands of the administrator, after payment of funeral expenses and expenses of administration, for the payment of the debts of the deceased, or distribution according to law. [Cf. L. '54, p. 280, § 77; L. '73, p. 284, § 151; Cd. '81, § 1464; 2 H. C., § 976.]

CHAPTER XI.

Claims Against the Estate.

§ 1470. Notice to Creditors.—Every executor or administrator shall, immediately after his appointment, cause to be published in some newspaper printed in the county, if there be one, if not, then in such newspaper as may be designated by the court, a notice to the creditors of the deceased, requiring all persons having claims

against the deceased to present them, with the necessary vouchers, within one year after the date of such notice, to such executor or administrator, at the place of his residence or transaction of business, to be specified in the notice. Such notice shall be published as often as the court shall deem necessary, but not less than once in a week for four successive weeks. [L. '54, p. 280, § 78; L. '60, p. 195, § 157; Cd. '81, § 1465; 2 H. C., § 977.]

Cited in 1 Wash. 181; 2 Wash. 335; 18 Wash. 606; 19 Wash. 608; 21 Wash. 614; 32 Wash. 486; 51 Wash. 688; 52 Wash. 176; 72 Wash. 405.

§ 1471. Copy of Notice to be Filed.—After the notice shall have been published, a copy thereof, together with the affidavit attached thereto, of the publisher or printer of the paper in which the same was published, shall be filed by the executor or administrator in court. [L. '54, p. 281, § 79; Cd. '81, § 1466; 2 H. C., § 978.]

§ 1472. Claims Barred in One Year.—If a claim be not presented within one year after the first publication of the notice, it shall be barred. [L. '54, p. 281, § 80; L. '61, p. 63, § 6; Cd. '81, § 1467; 2 H. C., § 979.]

Cited in 1 Wash. 181; 18 Wash. 606; 19 Wash. 608; 21 Wash. 614; 32 Wash. 486; 56 Wash. 371; 72 Wash. 408; 87 Wash. 413.

§ 1473. Claims to be Verified.—Every claim presented to the administrator shall be supported by the affidavit of the claimant that the amount is justly due, that no payments have been made thereon, and that there are no offsets to the same to the knowledge of the claimant. The oath may be taken before any officer authorized to administer oaths. The executor or administrator may also require satisfactory vouchers to be produced in support of the claim. [Cf. Cd. '81, § 1468; L. '83, p. 29, § 1; 2 H. C., § 980.]

Cited in 9 Wash. 517; 15 Wash. 207; 18 Wash. 606; 19 Wash. 112; 21 Wash. 614; 32 Wash. 3, 99; 72 Wash. 408.

§ 1474. Allowance and Rejection of Claims.—When a claim, accompanied by the affidavit required in the preceding section, has been presented to the executor or administrator, he shall indorse thereon his allowance or rejection, with the day and date thereof. If he allow the claim, it shall be presented to the judge of the court, who shall in the same manner indorse on it his allowance or rejection. If the executor or administrator reject the claim, he shall notify the claimant forthwith of said rejection. [Cf. L. '54, p. 231, § 82; L. '73, p. 285, § 156; Cd. '81, § 1469; 2 H. C., § 981.]

Cited in 72 Wash. 407.

§ 1475. Claims to be Filed.—Every claim which has been allowed by the executor or administrator and the said judge shall be filed

in the court and be ranked among the acknowledged debts of the estate, to be paid in the course of the administration. [L. '54, p. 281, § 83; Cd. '81, § 1470; 2 H. C., § 982.]

Cited in 21 Wash. 618; 72 Wash. 407.

§ 1476. Claim of Judge Referred to Another.—Any judge of a court may present a claim against the estate of any decedent for allowance, to the executor or administrator; and if the executor or administrator allows such claim, he shall, in writing, designate some judge of the court of an adjoining county, and the said judge shall have the same power to allow or reject it as he would have, had letters issued in his court; and the claimant shall have, in the event of his claim being rejected, all the rights incident to any other creditor against the estate. [L. '60, p. 196, § 163; Cd. '81, § 1471; 2 H. C., § 983.]

§ 1477. Claim Barred, When.—When a claim is rejected by either the executor, administrator, or the court, the holder must bring suit in the proper court against the executor or administrator within three months after its rejection, otherwise the claim shall be forever barred. [Cf. L. '54, p. 281, § 84; L. '69, p. 166, § 665; L. '73, p. 285, § 159; Cd. '81, § 1472; 2 H. C., § 984.]

Cited in 1 Wash. 88; 8 Wash. 599; 28 Wash. 70; 66 Wash. 311; 86 Wash. 515.

§ 1478. No Claim to be Allowed if Barred by Statute.—No claim shall be allowed by the executor, administrator, or court which is barred by the statute of limitations. [L. '54, p. 281, § 85; Cd. '81, § 1473; 2 H. C., § 985.]

§ 1479. No Action on Unpresented Claim.—No holder of any claim against an estate shall maintain an action thereon, unless the claim shall have been first presented to the executor or administrator. [L. '54, p. 281, § 86; Cd. '81, § 1474; 2 H. C., § 986.]

Cited in 8 Wash. 599; 15 Wash. 560; 18 Wash. 606; 21 Wash. 614; 48 Wash. 274; 57 Wash. 189; 67 Wash. 422; 71 Wash. 682, 684; 72 Wash. 408; 86 Wash. 517.

§ 1480. Vacancy in Administration not Included.—The time during which there shall be a vacancy in the administration shall not be included in any limitations herein prescribed. [L. '54, p. 281, § 87; Cd. '81, § 1475; 2 H. C., § 987.]

§ 1481. Claim to be Presented Though Action Pending at Death of Decedent.—If any action be pending against the testator or intestate at the time of his death, the plaintiff shall, in like manner, present his claim to the executor or administrator for allowance or rejection, authenticated as in other cases; and no recovery shall

be had in the action, unless proof be made of the presentment. [L. '54, p. 281, § 88; Cd. '81, § 1476; 2 H. C., § 988.]

Cited in 8 Wash. 599; 9 Wash. 517; 15 Wash. 560; 72 Wash. 533.

§ 1482. Costs Disallowed on Failure to Recover Full Amount.—Whenever any claim shall have been presented to an executor or administrator and the court, and a part thereof shall be allowed, the amount of such allowance shall be stated in the indorsement. If the creditor shall refuse to accept the amount so allowed in satisfaction of his claim, he shall recover no costs in any action he may bring against the executor or administrator, unless he shall recover a greater amount than that offered to be allowed, exclusive of interest and costs. [L. '54, p. 282, § 89; Cd. '81, § 1477; 2 H. C., § 989.]

§ 1483. Effect of Judgment.—The effect of any judgment rendered against any executor or administrator shall be only to establish the claim in the same manner as if it had been allowed by the executor or administrator and the court; and the judgment shall be, that the executor or administrator pay, in due course of administration, the amount ascertained to be due, but no execution shall issue upon such judgment, nor shall it create a lien upon the property of the estate, or give the judgment creditor any priority of payment. [L. '54, p. 282, § 90; Cd. '81, § 1478; 2 H. C., § 990.]

Cited in 15 Wash. 207; 16 Wash. 22; 29 Wash. 425; 57 Wash. 189, 191; 86 Wash. 370.

§ 1484. No Execution After Death—Proceedings.—When any judgment has been rendered against the testator or intestate in his lifetime, no execution shall issue thereon after his death, but it shall be presented to the executor or administrator as any other claim, but need not be supported by the affidavit of the claimant, and if justly due and unsatisfied, shall be paid in due course of administration: Provided, however, that if it be a lien upon any property of the deceased, the same may be sold for the satisfaction thereof, and the officer making the sale shall account to the executor or administrator for any surplus in his hands. [L. '54, p. 282, § 91; Cd. '81, § 1479; 2 H. C., § 991.]

Cited in 2 Wash. 335.

§ 1485. Arbitration of Claims, When.—If the executor or administrator doubt the correctness of any claim presented to him, he may enter into an agreement in writing with the claimant to refer the matter in controversy to some disinterested person or persons, to be approved by the court. Upon filing the agreement in the court, the court shall enter an order referring the matter in controversy to the persons so selected. [Cf. L. '54, p. 282; L. '60, p. 197, § 172; Cd. '81, § 1480; 2 H. C., § 992.]

§ 1486. Referees—Proceedings upon Reference.—The referee or referees, having been sworn, shall proceed to hear and determine the case and make return thereof; and their award, if not excepted to, shall be entered as the decision of the court. If exceptions in writing are filed, the court shall proceed to determine the case in like manner as other claims are determined. The compensation of referees shall be the same as allowed to referees in other causes. [Cf. L. '54, p. 282, § 93; L. '60, p. 197, § 173; Cd. '81, § 1481; L. '91, p. 386, § 26; H. C., § 993.]

§ 1487. Executor or Administrator's Claims Presented to Court. If the executor or administrator is himself a creditor of the testator or intestate, his claim, duly authenticated by affidavit, shall be presented for allowance or rejection to the judge of the court, and its allowance by the judge shall be sufficient evidence of its correctness. [Cf. L. '54, p. 283, § 94; Cd. '81, § 1482; L. '91, p. 386, § 27; 2 H. C., § 994.]

§ 1488. Failure to Give Notice to Creditors, Effect of.—If the executor or administrator shall neglect, for two months after his appointment, to give notice to creditors as prescribed by section 1470, it shall be the duty of the court to revoke his letters. [Cf. L. '54, p. 283, § 95; L. '60, p. 197, § 174; Cd. '81, § 1483; 2 H. C., § 995.]

§ 1489. Statements Required of Executors and Administrators.—At the same time at which the executor or administrator is required to return his inventory, he shall also return a statement of all claims against the estate which shall have been presented to him, when required by the court, and from time to time thereafter shall present a statement of claims subsequently presented to him; and in all such statements he shall designate the names of creditors, the nature of each claim, when it did or will become due, and whether it was allowed or rejected by him. [L. '54, p. 283, § 96; Cd. '81, § 1484; 2 H. C., § 996.]

Cited in 21 Wash., 615.

§ 1490. Notice on Change of Executor or Administrator.—In case of resignation or removal for any cause of any executor or administrator, and the appointment of another or others after notice has been given by publication as required by law, by such executor or administrator first appointed, to persons to present their claims against the estate, it shall be the duty of the judge of the court to cause notice of such resignation or removal and such new appointment to be published two successive weeks in the same newspaper in which the original notice was published, if the publication of such paper is at the time continued, and if not, then in some other

newspaper published in the county, or if there be no newspaper published in such county, then in a newspaper published in the state and of general circulation in the county, and the estate shall be closed up and settled within the year from the date of said original notice, unless further time be granted by the court as provided by law. [Cf. L. '67, p. 106, § 3; L. '73, p. 288, § 172; Cd. '81, § 1485; L. '91, p. 387, § 28; 2 H. C., § 997.]

CHAPTER XII.

Sales by Executors and Administrators.

§ 1491. Sales or Mortgages to be Made Under Order of Court.—No sale or mortgage of any property shall be valid unless made under order of the court, unless otherwise provided by law. [Cf. L. '54, p. 284, § 97; Cd. '81, § 1486; L. '83, p. 29, § 1; 2 H. C., § 998; L. '95, p. 394, § 1.]

§ 1492. Application for Order of Sale.—All applications for orders of sale shall be by petition, in writing, in which shall be set forth the facts, showing the sale to be necessary, and upon the hearing any person interested in the estate may file his written objections, which shall be heard and determined. [L. '54, p. 284, § 98; Cd. '81, § 1487; 2 H. C., § 999.]

§ 1493. Sale of Perishable Property, etc.—Within twenty days after the filing of the inventory, the executor or administrator shall apply for an order to sell the perishable property of the estate, and so much other property as may be necessary to be sold to pay the allowance made to the family of the deceased; and the order of sale may be made without notice of the application, but the executor or administrator shall be responsible for the value of the property unless the sale be reported to and approved by the court. [Cf. L. '54, p. 284, § 99; Cd. '81, § 1488; L. '91, p. 387, § 29; 2 H. C., § 1000.]

§ 1494. Application to Sell to Pay Expenses.—If the claims against the estate have been allowed, or a sale of property shall be necessary for the payment of the expenses of the administration, he may also apply for an order to sell so much of the personal estate as shall be necessary. [Cf. L. '54, p. 284, § 99; L. '60, p. 199, § 179; Cd. '81, § 1489; L. '91, p. 387, § 30; 2 H. C., § 1001.]

§ 1495. Order of Sale, Contents of.—If it appear to the court that a sale is necessary, it shall so order. In making such sale, the court shall order such articles as are not necessary for the support and subsistence of the family of the deceased, or not specially bequeathed, to be first sold. [L. '54, p. 285, § 100; Cd. '81, § 1490; 2 H. C., § 1002.]

§ 1496. Sales of Personalty, How Made.—Sales of personal property shall be made at public auction, and after notice given for at least two weeks, which notice shall be given by notices posted in ten public places in the county, or by publication in a newspaper, if the judge shall so order, in which shall be stated the time and place of sale. [Cf. L. '54, p. 285, § 101; L. '73, p. 289, § 178; Cd. '81, § 1491; 2 H. C., § 1003.]

§ 1497. Private Sales of Personalty.—If it be made to appear to the satisfaction of the court that it will be for the interest of the estate to allow the executor or administrator to sell some or the whole of the personal estate at private sale, the court may so order. [Cf. L. '54, p. 285, § 102; L. '60, p. 199, § 182; Cd. '81, § 1492; L. '83, p. 29, § 1; 2 H. C., § 1004.]

§ 1498. Real Property may be Sold or Mortgaged, When.—When the personal estate in the hands of the executor or administrator shall be insufficient to pay the allowance to the family and all the debts and charges of the administration, the executor or administrator may sell or mortgage the real estate for that purpose, upon the order of the court. To obtain such order he shall present a petition to the court setting forth the amount of the personal estate that has come to his hands, and how much, if any, remains undisposed of, a list and the amounts of the debts outstanding against the deceased, as far as the same can be ascertained, a description of all the real estate of which the testator or intestate died seised, the condition and value of the respective lots and portions, the names and ages of the devisees, if any, and of the heirs of the deceased, which petition shall be verified by the oath of the party presenting the same. [Cf. L. '54, p. 285, § 103; Cd. '81, § 1493; 2 H. C., § 1005.]

Cited in 10 Wash. 168, 196; 16 Wash. 23; 27 Wash. 133.

§ 1499. Order to Show Cause Why Realty Should not be Sold or Mortgaged.—If it should appear from such petition that there is not sufficient personal estate in the hands of the executor or administrator to pay the allowance to the family, the debts outstanding against the deceased and the expenses of administration, and that it is necessary to sell or mortgage the whole or some portion of the real estate to provide funds for the payment of such debts, the court shall thereupon make an order directing all persons interested to appear at a time and place specified, not less than four nor more than eight weeks from the time of making such order, to show cause why an order shall not be granted to the executor or administrator to sell or mortgage the real estate of the deceased, or so much

thereof as shall be necessary to pay such allowances, charges and debts. [Cf. L. '54, p. 285, § 104; Cd. '81, § 1494; 2 H. C., § 1006; L. '95, p. 385, § 3.]

Cited in 13 Wash. 74; 34 Wash. 310; 57 Wash. 365, 481; 74 Wash. 229; 78 Wash. 313; 83 Wash. 436.

§ 1500. Service of Order to Show Cause.—A copy of such order to show cause shall be personally served on all persons interested in the estate at least ten days before the time appointed for the hearing of the petition, or shall be published, at least four successive weeks in such newspaper as the court shall order: Provided, however, that if all persons interested in the estate shall signify in writing their assent to such sale or the making of such mortgage, the notice may be dispensed with. [Cf. L. '54, p. 285, § 105; Cd. '81, § 1495; 2 H. C., § 1007; L. '95, § 395, § 4.]

Cited in 13 Wash. 75; 34 Wash. 310; 57 Wash. 365, 481; 74 Wash. 229; 78 Wash. 313; 83 Wash. 436.

§ 1501. Hearing of Application.—The court, at the time and place appointed in such order, or at such other time to which the hearing may be adjourned, upon proof of due service or publication of a copy of the order, or upon filing the consent in writing to such sale or to the making of such mortgage of all parties interested, shall proceed to the hearing of such petition, and if such consent be not filed, shall hear and examine the allegations and proofs of the petitioner and of all persons interested in the estate who may oppose the application. [Cf. L. '54, p. 286, § 106; Cd. '81, § 1496; 2 H. C., § 1008; L. '95, p. 396, § 5.]

§ 1502. Service on Guardian—Appointment of.—If any of the devisees or heirs of the deceased are minors, and have a general guardian in the county, the copy of the order shall be served on the guardian. If they have no such guardian, the court shall, before proceeding to act on the petition, appoint some disinterested person their guardian for the sole purpose of appearing for them, and taking care of their interests in the proceedings. [L. '54, p. 286, § 107; Cd. '81, § 1497; 2 H. C., § 1009.]

Cited in 34 Wash. 310; 57 Wash. 481.

§ 1503. Examination of Witnesses.—The executor or administrator may be examined under oath, and witnesses may be examined by either party, and process may be issued to compel their attendance and testimony, by the court, in the same manner and with like effect as in other cases. [L. '54, p. 286, § 108; Cd. '81, § 1498; 2 H. C., § 1010.]

Cited in 86 Wash. 69.

§ 1504. Court may Order Part or All of Estate Sold.—If it shall appear to the court that it is necessary to sell a part of the real estate, and that by a sale of such part the residue of the estate or some specific part or piece thereof would be greatly injured, the court may authorize the sale of the whole estate, or of such part thereof as may be adjudged necessary, and most to the interest of all concerned. [L. '54, p. 286, § 109; Cd. '81, § 1499; 2 H. C., § 1011.]

Cited in 86 Wash. 69.

§ 1505. Order to Sell or Mortgage, When Granted.—If the court shall be satisfied, after a full hearing upon the petition, and on examination of the proofs and allegations of the parties interested, that it is necessary, in order to raise funds for the payment of the allowance to the family and all valid claims against the estate, and charges of administration, to sell or mortgage the whole or some portion of the real estate, the court shall then proceed to determine which method of raising such funds will be most beneficial to the estate and those interested therein, and shall thereupon make an order authorizing the executor or administrator to sell the whole or so much and such parts of the real estate described in the petition as the court shall adjudge necessary or beneficial, or authorizing the executor or administrator to mortgage the whole or so much and such parts of the real estate described in said petition as the court shall adjudge necessary or beneficial, according as the court shall determine one or the other methods most beneficial to the estate and those interested therein: Provided, that if the executor or administrator shall, in his petition, represent to the court that one or the other of such methods of providing such funds will be most beneficial to the estate, and all parties interested in the estate shall join in such petition, then the court, if it grants such petition, shall order that such funds be raised in the manner petitioned for. [Cf. L. '54, p. 286, § 110; Cd. '81, § 1500; 2 H. C., § 1012; L. '95, p. 396, § 6.]

Cited in 86 Wash. 69.

§ 1506. What Order must Contain.—The order shall specify the lands to be sold or mortgaged and the terms of the sale or mortgage. If a sale be ordered it may be either for cash or on credit, not exceeding six months, as the court may direct. If a sale has been ordered and it appears that any part of the real estate has been devised and not charged in such devise with the payment of debts, the court shall order that part descended to heirs to be sold before that part devised. If a mortgage be ordered the court shall order the amount to be borrowed, which may be greater or less than the amount prayed for in the petition, and shall prescribe the maximum rate of interest which shall be paid, and the period for which

the mortgage shall run, and may require that the interest and part or the whole of the mortgage debt be paid from any part of the estate, and may direct that any buildings on the lands to be mortgaged shall be insured for the further security of the mortgagee, the premiums to be paid from any funds in the hands of the executor or administrator. If a mortgage be ordered the executor or administrator shall at once proceed to negotiate a loan for the amount and upon the terms and upon the security ordered by the court, and upon securing said loan and upon the receipt of the money borrowed, shall execute and deliver to the lender of said money a mortgage of the premises described in the order of the court directing such mortgage, in accordance with said order, setting forth in the mortgage that it is executed by order of the court, and giving the date of such order. Before the delivery of such mortgage the same shall be presented to a judge of the court making the order for his approval, and if he shall approve the same his approval shall be indorsed upon said mortgage. No notice of such presentation need be given. Every mortgage so made and approved shall be effectual to mortgage and hypothecate all the right, title and interest which the decedent had in the premises described therein at the time of his death or acquired by his estate subsequent to his death. Jurisdiction of the court to administer such estate shall be sufficient to clothe such court with jurisdiction to make an order to mortgage the real property thereof, and such jurisdiction shall inure to the benefit of the mortgagee, his heirs and assigns. No irregularity in the proceedings shall impair or invalidate any mortgage given pursuant to such order and so approved, and the mortgagee, his heirs and assigns, shall have the same rights and remedies by virtue of such mortgage as if it had been duly executed and delivered by the decedent in his lifetime. Whenever any such mortgage shall be foreclosed and the mortgaged property sold under such foreclosure proceedings, and the proceeds of the sale of such lands shall not be sufficient to pay the costs of such foreclosure proceedings and sale and the amount due upon said mortgage, then the amount of the deficiency shall be stated by the sheriff in his return of said sale, and the same shall stand as an allowed claim against the estate. [Cf. L. '54, p. 286, § 11; Cd. '81, § 1501; 2 H. C., § 1013; L. '95, p. 397, § 7.]

Cited in 54 Wash. 442.

§ 1507. Interested Persons may Apply for Order, When.—If the executor or administrator shall neglect to apply for an order to sell or mortgage the real property of the estate, whenever it may be necessary, any person interested in the estate may make application therefor in the same manner as an executor or administrator, but

notice thereof shall be given to the executor or administrator before the hearing. [Cf. L. '54, p. 287, § 112; Cd. '81, § 1502; 2 H. C., § 1014; L. '95, p. 398, § 8.]

Cited in 16 Wash. 23.

§ 1508. Order Delivered to Executor or Administrator.—Upon the making of such order the clerk of the court shall deliver the same to the executor or administrator, who shall thereupon be authorized to sell or mortgage the real estate as directed. [Cf. L. '54, p. 287, § 113; Cd. '81, § 1503; 2 H. C., § 1015; L. '95, p. 398, § 9.]

§ 1509. Notice of Sale, What to Contain.—When a sale is ordered, notice of the time and place of sale shall be posted in three of the most public places in the county where the land is situated, at least twenty days before the day of sale, and shall be published in some newspaper of said county, if any there be, and if not, in some newspaper of this state in general circulation in said county, for three successive weeks next before such sale, in which notice the lands and tenements shall be described with proper certainty. [Cf. L. '54, p. 287, § 114; Cd. '81, § 1504; L. '88, p. 187, § 1; 2 H. C., § 1016.]

§ 1510. Sale of Real Estate, Where, When and How Made.—Such sale shall be in the county where the lands are situated, at public auction, between the hours of ten o'clock in the morning and the setting of the sun the same day; but if the executor or administrator shall deem it for the interest of all concerned that the sale should be postponed, he may adjourn it for any time not exceeding fourteen days. [L. '54, p. 287, § 115; Cd. '81, § 1505; 2 H. C., § 1017.]

§ 1511. Notice of Adjournment, How Given.—In case of such adjournment, notice thereof shall be given by a public proclamation at the time and place first appointed for the sale; and if the adjournment shall be for more than one day, further notice shall be given by posting or publishing as the time and circumstances may admit. [L. '54, p. 287, § 116; Cd. '81, § 1506; 2 H. C., § 1018.]

§ 1512. Sale on Credit, Security Taken.—The executor or administrator shall, when the sale is on credit, take the note or notes of the purchaser for the purchase money, with surety, and mortgage on the property to secure their payment. [L. '54, p. 287, § 117; Cd. '81, § 1507; 2 H. C., § 1019.]

§ 1513. Resale, When will be Ordered.—The executor or administrator making any sale of real estate shall, within ten days thereafter, make a return of his proceedings to the court, which shall examine the same, and if the court shall be of opinion that the pro-

ceedings were unfair, or that the sum bidden is disproportionate to the value, and that a sum exceeding such bid at least ten per cent, exclusive of expenses of a new sale, may be obtained, the order of sale shall be vacated [and] another sale shall be ordered. On a resale, notice shall be given, and the sale shall be conducted in all respects as if no previous sale had been made. [Cf. L. '54, p. 287, § 118; Cd. '81, § 1508; L. '91, p. 387, § 31; 2 H. C., § 1020.]

§ 1514. Objections to Confirmation.—When the return of the sale is made, any person interested in the estate may file written objections to the confirmation of the sale, and may be heard and produce witnesses in support of his objections. [L. '54, p. 287, § 119; Cd. '81, § 1509; 2 H. C., § 1021.]

§ 1515. Confirmation of Sale.—If it appear to the court that the sale was legally made and fairly conducted, and that the sum bidden was not disproportionate to the value of the property sold, or if disproportionate, that a greater sum, as above specified, cannot be obtained, the court shall make an order confirming the sale and directing conveyances to be executed; and such sale, from that time, shall be confirmed and valid. [L. '54, p. 287, § 120; Cd. '81, § 1510; 2 H. C., § 1022.]

Cited in 3 Wash. 368; 54 Wash. 444.

§ 1516. Conveyance.—Such conveyances shall thereupon be executed to the purchaser by the executor or administrator. They shall refer to the original order authorizing a sale, and the order confirming the sale and directing the conveyance; and they shall be deemed to convey all the estate, rights, and interest of the testator or intestate at the time of his death. [L. '54, p. 288, § 121; Cd. '81, § 1511; 2 H. C., § 1023.]

Cited in 10 Wash. 599.

§ 1517. Order of Confirmation to Show Notice of Sale.—Before any order is entered confirming the sale, it shall be proven to the satisfaction of the court that notice of the sale was given as herein prescribed, and the order of confirmation shall state that such proof was made. [L. '54, p. 288, § 122; Cd. '81, § 1512; 2 H. C., § 1024.]

§ 1518. Sale to Pay Legacy.—When a testator shall have given any legacy by will that is effectual to charge real estate, and his goods, chattels, rights and credits shall be insufficient to pay such legacy, together with the debts and charges of administration, the executor or administrator, with the will annexed, may obtain an order to sell or mortgage his real estate for that purpose in the same manner and upon the same terms and conditions as prescribed in this chapter in case of a sale or mortgage for the payment of the

debts. [Cf. L. '54, p. 288, § 123; Cd. '81, § 1513; 2 H. C., § 1025; L. '95, p. 398, § 10.]

§ 1519. Debts and Expenses Paid According to Terms of Will.—If the testator shall make provision by his will or designate the estate to be appropriated for the payment of his debts, the expenses of administration, or family expenses, they shall be paid according to the provision of the will, and out of the estate thus appropriated, so far as the same may be sufficient. [L. '54, p. 288, § 124; Cd. '81, § 1514; 2 H. C., § 1026.]

§ 1520. Sale Without Order of Court.—When such provision has been made, or any property directed to be sold, the executor [or] administrator with the will annexed may proceed to sell without the order of the court; but he shall be bound as an administrator to give notice of the sale, and to proceed in making the sale in all respects as if he were under the order of the court, unless there are special directions given in the will, in which case he shall be governed by such directions; but in no [all] cases he shall make return of the sale to the court, which shall vacate such sale unless the same shall appear in all respects to be made according to law, in like manner as upon sales made by administrator. [Cf. L. '54, p. 288, § 125; Cd. '81, § 1515; L. '91, p. 388, § 32; 2 H. C., § 1027.]

§ 1521. Debts and Expenses When Provisions of Will Insufficient.—If the provision made by the will or the estate appropriated be not sufficient to pay the debts and expenses of administration and family expenses, such part of the estate as shall not have been disposed of by the will, if any, shall be appropriated for that purpose, according to the provisions of this chapter. [L. '54, p. 288, § 126; Cd. '81, § 1516; 2 H. C., § 1028.]

§ 1522. Estate Given by Will Subject to Debts and Expenses.—The estate, real and personal, given by the will to any legatees or devisees, shall be held liable for the payment of the debts, the expenses of administration and of the family, in proportion to the value or amount of the several devises or legacies, if there shall not be other sufficient estate, except that specific devises or legacies may be exempted, if it appear to the court necessary to carry into effect the intention of the testator. [Cf. L. '54, p. 288, § 127; L. '73, p. 249, § 204; Cd. '81, § 1517; 2 H. C., § 1029.]

§ 1523. All Devisees and Legatees to Contribute.—When the estate given by any will has been sold for the payment of debts and expenses, all the devisees and legatees shall be liable to contribute according to their respective interests, to any devisee or legatee from whom the estate devised to him may be taken for the

payment of the debts or expenses; and the court, when distribution is made, shall, by decree for that purpose, settle the amount of the several liabilities, and decree how much each person shall contribute. [L. '54, p. 289, § 128; Cd. '81, § 1518; 2 H. C., § 1030.]

§ 1524. Contract Interest of Deceased in Land may be Sold.—If the deceased person at the time of his death was possessed of a contract for the purchase of lands, his interest in such lands under such contract may be sold on the application of his executor or administrator, in the same manner as if he had died seised of such lands; and the same proceedings may be had for that purpose as are prescribed in this chapter, in respect to lands of which he died seised, except as hereinafter provided. [L. '54, p. 289, § 129; Cd. '81, § 1519; 2 H. C., § 1031.]

§ 1525. Sale Subject to Unmatured Debts—Confirmation—Bond. Such sale shall be made subject to all payments that may thereafter become due on such contract; and if there be any such payments thereafter to become due, such sale shall not be confirmed by the court until the purchaser shall have executed a bond to the executor or administrator for his benefit and indemnity, and for the benefit and indemnity of the persons entitled to the interest of the deceased in lands so contracted for, in double the whole amount of the payments thereafter to become due on such contract, with such sureties as the court shall approve. [L. '54, p. 289, § 130; Cd. '81, § 1520; 2 H. C., § 1032.]

§ 1526. Conditions of Bond.—Such bond shall be conditioned that the purchaser will make all payments for such land as shall become due after the date of such sale, and will fully indemnify the executor or administrator and the person so entitled against all demands, costs, and charges and expenses, by reason of any covenant or agreement contained in such contract; but if there be no payments thereafter to become due on such contract, no bonds shall be required of the purchaser. [L. '54, p. 289, § 131; Cd. '81, § 1521; 2 H. C., § 1033.]

§ 1527. Assignment of Contract, Effect of.—Upon the confirmation of such sale, the executor or administrator shall execute to the purchaser an assignment of the contract, which assignment shall vest in the purchaser, his heirs and assigns, all the right, title, and interest of the persons entitled to the interest of the deceased in the land sold at the time of the sale; and such purchaser shall have the same rights and remedies against the vendor of such lands as the deceased would have had if living. [L. '54, p. 289, § 132; Cd. '81, § 1522; 2 H. C., § 1034.]

§ 1528. Redemption of Mortgaged Property.—If any person die, having mortgaged any real or personal estate, and shall not have devised the same, or provided for the redemption thereof by will, the court, upon the application of any person interested, may order the executor or administrator to redeem the estate out of the personal assets, if it should appear to the satisfaction of the court that such redemption would be beneficial to the estate, and not injurious to creditors. [L. '54, p. 289, § 133; Cd. '81, § 1523; 2 H. C., § 1035.]

Cited in 1 Wash. 181, 183; 3 Wash. 364, 366; 4 Wash. 168; 8 Wash. 323, 324, 327; 10 Wash. 196.

§ 1529. Sale of Other Property in Lieu of That Mortgaged.—If it shall be made to appear to the satisfaction of the court that it will be to the interest of the estate of any deceased person to sell other personal estate or to sell or mortgage other real estate of the decedent than that mortgaged by him, to redeem the real estate so mortgaged, the court may order the sale of any personal estate, or the sale or mortgaging of any real estate of the decedent which it may deem expedient to be sold or mortgaged for such purpose, which sale or mortgaging shall be conducted in all respects as other sales or mortgages of like property ordered by the court. [Cf. L. '88, p. 185, § 1; 2 H. C., § 1036; L. '95, p. 399, § 11.]

Cited in 8 Wash. 323; 10 Wash. 196.

§ 1530. Where Redemption not Expedient.—Procedure.—If such redemption be not deemed expedient, the court shall order such property to be sold at public sale, which sale shall be with the same notice, and conducted in the same manner, as required in other cases of real estate provided for in this chapter, and the executor or administrator shall thereupon execute a conveyance thereof to the purchaser, which conveyance shall be effectual to convey to the purchaser all the right, title, and interest which the deceased would have had in the property had not the same been mortgaged by him, and the purchase money, after paying the expenses of the sale, shall first be applied to the payment and discharge of such mortgage, and the residue in due course of administration. If said sale of the mortgaged premises shall be insufficient to secure the mortgage debt, the mortgagee shall file a claim for balance, authenticated as other claims, and payable in due course of administration. [Cf. L. '54, p. 290, § 134; L. '73, p. 296, § 211; Cd. '81, § 1524; 2 H. C., § 1037.]

Cited in 1 Wash. 181, 183; 3 Wash. 364, 366, 369; 4 Wash. 168; 56 Wash. 170.

§ 1531. Liability for Neglect, etc., in Sales or Mortgages.—If there should be any neglect or misconduct in the proceedings of the executor or administrator in relation to any sale or mortgage

by which any person interested in the estate shall suffer damages, the party injured may recover the same in a suit upon the bond of the executor or administrator, as the case may appear. [Cf. L. '54, p. 290, § 135; Cd. '81, § 1525; 2 H. C., § 1038; L. '95, p. 399, § 12.]

Cited in 10 Wash. 594; 15 Wash. 294; 42 Wash. 351, 353.

§ 1532. Liability for Fraudulent Sale of Realty.—Any executor or administrator who shall fraudulently sell or mortgage any real estate of his testator or intestate, contrary to the provisions of this chapter, shall be liable in double the value of the land sold or mortgaged, as damages, to be recovered in an action by the person or persons having an estate of inheritance therein. [Cf. L. '54, p. 290, § 136; Cd. '81, § 1526; 2 H. C., § 1039; L. '95, p. 399, § 13.]

§ 1533. Sale Under Will—Void Unless Confirmed.—When property is directed by will to be sold, or authority is given in the will to sell property, the executor may sell any property of the estate without the order of the court, and either at public or private sale, and with or without notice, as the executor may determine; but the executor must make return of such sales as in other cases; and if directions are given in the will as to the mode of selling, or the particular property to be sold, such directions must be observed. In either case, no title passes unless the sale is confirmed by the court. [Cd. '81, § 1527; 2 H. C., § 1040.]

CHAPTER XIII.

Powers and Duties of Executors and Administrators.

§ 1534. Executor or Administrator to Take and Manage Estate.—The executor or administrator shall take into his possession all the estate of the deceased, real and personal, and collect all debts due to the deceased. [L. '54, p. 291, § 141; Cd. '81, § 1528; 2 H. C., § 1041.]

Cited in 2 Wash. 335; 4 Wash. 173, 501; 10 Wash. 599; 38 Wash. 265; 42 Wash. 351, 353; 79 Wash. 586.

§ 1535. Actions by and Against Administrators.—Actions for the recovery of any property, real or personal, or for the possession thereof, and all actions founded upon contracts, may be maintained by and against executors and administrators in all cases in which the same might have been maintained by or against their respective testators or intestates. [Cf. L. '54, p. 291, § 142; L. '60, p. 206, § 222; Cd. '81, § 1529; 2 H. C., § 1042.]

Cited in 63 Wash. 89.

§ 1536. Action by Administrator for Waste, Trespass, etc.—Executors and administrators may maintain actions against any per-

son who shall have wasted, destroyed, taken, carried away, or converted to his own use the goods of their testator or intestate in his lifetime; also may maintain actions for trespass committed on the estate of the deceased during his lifetime. [L. '54, p. 291, § 143; Cd. '81, § 1530; 2 H. C., § 1043.]

Cited in 64 Wash. 519.

§ 1537. Action Against Administrator for Waste, Trespass, etc. Any person, or his personal representatives, shall have an action against the executor or administrator of any estate or intestate who in his lifetime shall have wasted, destroyed, taken, or carried away, or converted to his own use, the goods and chattels of any such person, or committed any trespass on the real estate of such person. [L. '54, p. 291, § 144; Cd. '81, § 1531; 2 H. C., § 1044.]

Cited in 4 Wash. 173, 502.

§ 1538. Action by Administrator on Predecessor's Bond.—Any administrator may in his own name, for the use and benefit of all parties interested in the estate, maintain actions on the bond of an executor or of any former administrator of the same estate. [L. '54, p. 291, § 145; Cd. '81, § 1532; 2 H. C., § 1045.]

Cited in 80 Wash. 518.

§ 1539. Debts may be Compromised.—Whenever a debtor of a deceased person shall be unable to pay all his debts, the executor or administrator may, with the approbation of the court, compound with him and give him a discharge upon receiving a fair and just dividend of his effects. [L. '54, p. 291, § 146; Cd. '81, § 1533; 2 H. C., § 1046.]

§ 1540. Action to Recover Property Fraudulently Conveyed by Decedent.—When there shall be a deficiency of assets in the hands of an executor or administrator, and when the deceased shall in his lifetime have conveyed any real estate, or any right or interest therein, with intent to defraud his creditors or to avoid any right, duty, or debt of any person, or shall have so conveyed such estate, which deeds or conveyances by law are void as against creditors, the executor or administrator may, and it shall be his duty to, commence and prosecute to final judgment any proper action for the recovery of the same, and may recover for the benefit of the creditors all such real estate so fraudulently conveyed, and may also, for the benefit of the creditors, sue and recover all goods, chattels, rights and credits which may have been so fraudulently conveyed by the deceased in his lifetime, whatever may have been the manner of such fraudulent conveyance. [L. '54, p. 291, § 147; Cd. '81, § 1534; 2 H. C., § 1047.]

Cited in 65 Wash. 126, 127.

§ 1541. Such Action Brought, When.—No executor or administrator shall be bound to sue for such estate as mentioned in the preceding section for the benefit of the creditors, unless on application of the creditors of the deceased; and the creditors making such application shall pay such part of the costs and expenses, or give such security to the executor or administrator thereof, as the court shall direct. [Cf. L. '54, p. 292, § 148; L. '73, p. 298, § 221; Cd. '81, § 1535; 2 H. C., § 1048.]

§ 1542. Real Estate so Regained, How Disposed of.—The real estate so recovered shall be sold for the payment of debts, in the same manner as if the deceased had died seised thereof, upon obtaining an order therefor from the court, and the proceeds of all goods, chattels, rights, and credits so recovered shall be appropriated in payment of debts of the deceased, in the same manner as other property in the hands of the executor or administrator. [L. '54, p. 292, § 149; Cd. '81, § 1536; 2 H. C., § 1049.]

CHAPTER XIV.

Accounts of Executors and Administrators and Payment of Debts.

§ 1543. Administrator's Promise to Pay Debts Valid, When.—No executor or administrator shall be chargeable upon any special promise to answer damages, or to pay the debts of the testator or intestate out of his own estate, unless the agreement for that purpose, or some memorandum or note thereof, is in writing, and signed by such executor or administrator, or by some other person by him thereunto specially authorized. [L. '54, p. 295, § 160; Cd. '81, § 1537; 2 H. C., § 1050.]

§ 1544. Administrator Chargeable With Whole Estate.—Every executor or administrator shall be chargeable in his accounts with the whole estate of the deceased which may come into his possession, at the value of the appraisement contained in the inventory, except as provided in the following sections, and with the interest, profit, and income of the estate. [Cf. L. '54, p. 295, § 161; L. '60, p. 210, § 241; Cd. '81, § 1538; 2 H. C., § 1051.]

Cited in 17 Wash. 677; 38 Wash. 265.

§ 1545. Administrator not to Profit or Suffer Loss.—He shall not make profit by the increase nor suffer loss by the decrease or destruction, without his fault, of any part of the estate. He shall account for the excess when he shall have sold any part of the estate for more than the appraisement; and if any has been sold for less than the appraisement, he shall not be responsible for the loss if the sale has been unjustly made. [Cf. L. '54, p. 295, § 162; L. '60, p. 210, § 242; Cd. '81, § 1539; 2 H. C., § 1052.]

Cited in 15 Wash. 617.

§ 1546. Administrator not Accountable for Worthless Debts.—No executor or administrator shall be accountable for any debts due the estate, if it shall appear that they remain uncollected without his fault. [L. '54, p. 295, § 163; Cd. '81, § 1540; 2 H. C., § 1053.]

Cited in 15 Wash. 618.

§ 1547. Compensation and Expenses Allowed.—He shall be allowed all necessary expenses in the care, management, and settlement of the estate, and for his services such fees as the law provides, but when the deceased, by will, shall have made some other provision for the compensation of his executor, that shall be deemed a full compensation for his services, unless he shall, by a written instrument, filed in the court, renounce all claim for compensation provided by the will. [L. '54, p. 295, § 164; Cd. '81, § 1541; 2 H. C., § 1054.]

Cited in 30 Wash. 561; 38 Wash. 268.

§ 1548. Shall not Purchase Claim Against Estate.—No administrator or executor shall purchase any claim against the estate he represents; and if he shall have paid any claim for less than its nominal value, he shall only be entitled to charge in his account so much as he shall have actually paid. [L. '54, p. 295, § 165; Cd. '81, § 1542; 2 H. C., § 1055.]

§ 1549. Commissions Allowed.—When no compensation shall have been provided by will, or the executor shall renounce his claim thereto, he shall be allowed commission on the whole estate accounted for by him as follows: For the first one thousand dollars, at the rate of seven per cent; for all above that sum, and not exceeding two thousand dollars, at the rate of five per cent; for all above that sum, at the rate of four per cent; and the same commission shall be allowed to administrators. In all cases such further allowance may be made as the court shall deem just and reasonable for any extraordinary services not required of an executor or administrator in the common course of his duty: Provided, that the total amount of such allowance shall not exceed the amount of commission allowed in this section. [L. '54, p. 295, § 166; Cd. '81, § 1543; 2 H. C., § 1056.]

Cited in 17 Wash. 677; 26 Wash. 263; 38 Wash. 265; 42 Wash. 353; 55 Wash. 253.

§ 1550. Exhibit to be Rendered.—Within six months after his appointment, and thereafter at any time when required by the court, either upon its own motion or the application of any person interested in the estate, the executor or administrator shall render, for the information of the court, an exhibit under oath, showing the amount of money received and expended by him, the amount of all claims presented against the estate, and the names of the claimants,

and all other matters necessary to show the condition of its affairs. [L. 54, p. 296, § 167; Cd. '81, § 1544; 2 H. C., § 1057.]

§ 1551. Court may Require Exhibit.—If the executor or administrator fail to render an exhibit within six months, as required in the last preceding section, it shall be the duty of the court to issue a citation requiring him to appear and render it. [L. '54, p. 296, § 168; Cd. '81, § 1545; 2 H. C., § 1058.]

§ 1552. Interested Persons may Require Exhibit.—Any person interested in the estate may, at any time before the final settlement of accounts, present his petition to the court, praying that the executor or administrator be required to appear and render such exhibit, setting forth the facts showing that it is necessary and proper that such an exhibit shall be made. [L. '54, p. 296, § 169; Cd. '81, § 1546; 2 H. C., § 1059.]

§ 1553. Citation to Compel Exhibit.—If the court be satisfied, either from the oath of the applicant, or from any other testimony that may be offered, that the facts alleged are true, and shall consider the showing of the applicant sufficient, a citation shall be issued to the executor or administrator requiring him to appear on some day named in the citation, and render an exhibit as prayed for. [Cf. L. '54, p. 296, § 170; Cd. '81, § 1547; L. '91, p. 388, § 33; 2 H. C., § 1060.]

§ 1554. Objections to Exhibit.—When an exhibit is rendered by an executor or administrator, any person interested may appear, and, by objections in writing, contest any account or statement therein contained. The court may examine the executor or administrator, and if he has been guilty of negligence, or wasted, embezzled, or mismanaged the estate, his letters shall be revoked. [L. '54, p. 296, § 171; Cd. '81, § 1548; 2 H. C., § 1061.]

§ 1555. Attachment, etc., for Failure to Render Exhibit.—If any executor or administrator neglect or refuse to appear and render an exhibit after having been duly cited, an attachment may be issued against him, or his letters may be revoked, in the discretion of the court. [L. '54, p. 296, § 172; Cd. '81, § 1549; 2 H. C., § 1062.]

§ 1556. Annual Account — Proceedings on Default of.—Every executor or administrator shall render a full account of his administration at the expiration of one year from the time of his appointment. If he fail to present his account, it shall be the duty of the court to compel the rendering of such account by attachment, and any person interested in the estate may apply for and obtain an attachment, but no attachment shall issue unless a citation shall have been first issued and returned, requiring the executor or administra-

tor to appear and show cause why an attachment should not issue. [L. '54, p. 296, § 173; Cd. '81, § 1550; 2 H. C., § 1063.]

§ 1557. Citation to Account After Revocation of Authority.—Whenever the authority of an executor or administrator shall cease, or be revoked for any reason, he may be cited to account before the court, at the instance of the person succeeding to the administration of the estate, in like manner as he might have been cited by any person interested in the estate during the time he was administrator or executor. [Cf. L. '54, p. 296, § 174; L. '60, p. 212, § 254; L. '73, p. 304, § 247; Cd. '81, § 1551; 2 H. C., § 1064.]

§ 1558. Revocation of Letters for Failure to Account.—If the executor or administrator resides out of the county, or absconds or conceals himself so that the citation cannot be personally served, and shall neglect to render an account within thirty days after the time above prescribed, or if he shall neglect to render an account within thirty days after having been committed where the attachment has been executed, his letters shall be revoked. [Cf. L. '54, p. 297, § 175; L. '73, p. 304, § 248; Cd. '81, § 1552; 2 H. C., § 1065.]

See supra, § 1379, revocation of letters.
See supra, § 1415, suspension.

§ 1559. Vouchers to be Filed, etc.—In rendering his accounts the executor or administrator shall produce vouchers for the expenses and charges which he shall have paid, which vouchers shall be filed and remain in court; and he may be examined on oath touching such payments, and also touching any property and effects of the deceased, and the disposition thereof. [L. '54, p. 297, § 176; Cd. '81, § 1553; 2 H. C., § 1066.]

§ 1560. Voucher Unnecessary, When.—On the settlement of his account, he may be allowed any item of expenditure not exceeding twenty dollars for which no voucher is produced, if such item be supported by his own oath, positive to the fact of payment, specifying when, where, and to whom payment was made, if such oath be uncontradicted; but such allowances, in the whole, shall not exceed three hundred dollars for payment in behalf of any one estate. [Cf. L. '54, p. 297, § 177; L. '73, p. 304, § 250; Cd. '81, § 1554; 2 H. C., § 1067.]

§ 1561. Erection of Monument, When.—Executors and administrators of the estates of deceased persons are hereby authorized, by and with the consent of the court of the proper county, to expend a reasonable sum out of the estate of the decedent to erect a monument or tombstone, suitable to mark the grave of said decedent, and the expense thereof shall be paid as the expenses of administration are paid. [L. '75, p. 127, § 1; Cd. '81, § 1555; 2 H. C., § 1068.]

§ 1562. Final Hearing and Settlement — Notice of.—When the account is rendered for settlement, the court, or the judge thereof, shall appoint a day for the hearing and settlement of the same, and notice of such hearing and settlement shall be given by posting notices thereof in three of the most public places in the county, and publishing a similar notice for such time as the court or judge may order, in a newspaper published in the county, or if there be no newspaper published in the county, then in a newspaper published in the state, and of general circulation in the county. The notice shall set forth the name of the estate, of the executor or administrator and the day appointed for the settlement of account, which shall be on some day not more than six weeks after the filing of the account. [Cf. L. '54, p. 297, § 178; L. '73, p. 305, § 251; Cd. '81, § 1556; L. '91, p. 388, § 34; 2 H. C., § 1069.]

Cited in 70 Wash. 501.

§ 1563. Exceptions to Final Account—Contest.—On the day appointed, or on any subsequent day to which the hearing may have been adjourned by the court, any person interested in the estate may appear and file his exceptions in writing to the account, and contest the same. [L. '54, p. 297, § 179; Cd. '81, § 1557; 2 H. C., § 1070.]

§ 1564. Guardian for Minor — Compensation.—If there be any minor interested in the estate who has no legally appointed guardian, the court shall appoint some disinterested person to represent him, who, on behalf of the minor, may contest the account as any other person interested might contest it, and who shall be allowed by the court reasonable compensation for his services. [L. '54, p. 297, § 180; Cd. '81, § 1558; 2 H. C., § 1071.]

§ 1565. Hearing may be Adjourned.—The hearing and allegations of the respective parties may be adjourned from time to time as shall be necessary. [Cf. L. '54, p. 297, § 181; L. '60, p. 213, § 261; Cd. '81, § 1559; 2 H. C., § 1072.]

§ 1566. Settlement, When and When not Conclusive.—The settlement of the account and the allowance thereof by the court, [or upon appeal], shall be conclusive against all persons in any way interested in the estate, saving, however, to all persons laboring under any legal disability, the right to proceed against the executor or administrator, either individually or upon his bond, within two years after their respective disabilities shall have ceased; and in any action brought by any such person, the allowance and settlement of the account shall be deemed presumptive evidence of its correctness. [L. '54, p. 297, § 182; Cd. '81, § 1560; 2 H. C., § 1073.]

Cited in 64 Wash. 307.

§ 1567. Proof of Notice of Settlement. The account shall not be allowed by the court until it be first proven that notice has been given as required by this chapter, and the decree shall show that such proof was made to the satisfaction of the court, and shall be conclusive evidence of the fact. [L. '54, p. 298, § 183; Cd. '81, § 1561; 2 H. C., § 1074.]

§ 1568. Order of Payment of Debts.—The debts of the estate shall be paid in the following order:—

1. Funeral expenses;
2. Expenses of the last sickness;
3. Debts having preference by the laws of the United States;
4. Wages due for labor performed within ninety days immediately preceding the death of decedent;
5. Taxes or any debts or dues, owing to the state;
6. Judgments rendered against the deceased in his lifetime which are liens upon real estate on which execution might have issued at the time of his death, and debts secured by mortgages, in the order of their priority;
7. All other demands against the [e]state. [Cf. L. '54, p. 298, § 184; L. '60, p. 213, § 264; Cd. '81, § 1562; 2 H. C., § 1075; L. '97, p. 22, § 1.]

Cited in 2 Wash. 335; 25 Wash. 436, 543; 50 Wash. 396; 74 Wash. 528.

§ 1569. Extent of Mortgage Preference.—The preference given in the preceding section to a mortgage or judgment shall only extend to the proceeds of the property subject to the lien of such mortgage or judgment. [Cf. L. '54, p. 298, § 185; Cd. '81, § 1653; 2 H. C., § 1076; L. '97, p. 22, § 2.]

§ 1570. Estate Insufficient, Dividend to be Paid.—If the estate shall be insufficient to pay the debts of any one class, each creditor shall be paid a dividend in proportion to his claim, and no creditor of any one class shall receive any payment until all those of the preceding class shall have been fully paid. [L. '54, p. 298, § 186; Cd. '81, § 1564; 2 H. C., § 1077.]

Cited in 50 Wash. 396.

§ 1571. Funeral Expenses and Expenses of Last Sickness.—It shall be the duty of the executor or administrator, as soon as he may have sufficient funds in his hands, to pay the funeral expenses, and expenses of the last sickness, and the allowance made to the family of the deceased, and he may retain in his hands the necessary expenses of administration; but he shall not be obliged to pay any other debt or any legacy until, as prescribed by this chapter, the

payment has been ordered by the court. [L. '54, p. 298, § 187; Cd. '81, § 1565; 2 H. C., § 1078.]

Cited in 50 Wash. 396; 70 Wash. 501.

§ 1572. Payment of Debts on Annual Settlement.—Upon the settlement of the accounts of the executor or administrator at the end of the year, as required by this chapter, the court shall make an order for the payment of the debts, as the circumstances of the estate shall require. If there be not sufficient funds in the hands of the executors or administrators, the court shall specify in the decree the sum to be paid to each creditor. [L. '54, p. 298, § 188; Cd. '81, § 1566; 2 H. C., § 1079.]

§ 1573. Provisions for Disputed or Contingent Claims.—If there be any claim not due, or any contingent or disputed claim against the estate, the amount thereof, or such part thereof as the holder would be entitled to if the claim were due, established, or absolute, shall be paid into the court, where it shall remain, to be paid over to the party when he shall become entitled thereto; or if he fail to establish his claim, to be paid over or distributed, as the circumstances of the case may require: Provided, that if any creditor whose claim has been allowed, but is not yet due, shall appear and assent to a reduction therefrom of the legal interest for the time the claim has yet to run, he shall be entitled to be paid accordingly. [L. '54, p. 298, § 189; Cd. '81, § 1567; 2 H. C., § 1080.]

Cited in 21 Wash. 615.

§ 1574. Administrator Personally Liable to Creditors, When.—Whenever a decree shall have been made by the court for the payment of creditors, the executor or administrator shall be personally liable to each creditor for his claim, or the dividend thereon; and execution may be issued on such decree, as upon a judgment, in favor of each creditor. The executor or administrator shall also be liable on his bond to each creditor. [Cf. L. '54, p. 299, § 190; Cd. '81, § 1568; L. '91, p. 389, § 35; 2 H. C., § 1081.]

§ 1575. Claims not Included in Order for Payment, How Disposed of.—When the accounts of the executor or administrator have been settled, and an order made for the payment of the debts and distribution of the estate, no creditor whose name was not included in the order of payment shall have any right to call upon the creditors who have been paid, or upon the heirs, legatees, or devisees, to contribute for the payment of his claim; but if the executor or administrator shall have failed to give the notice to creditors as prescribed in this chapter, such creditor may recover on the bond of the executor or administrator the amount of his claim, or such part thereof as he would have been entitled to had it been allowed: Provided, that

this section shall not apply to any creditor whose claim was not due one year before the day of settlement, or whose claim was contingent, and did not become absolute one year before such day. [Cf. L. '54, p. 299, § 191; L. '60, p. 214, § 271; Cd. '81, § 1569; 2 H. C., § 1082.]

§ 1576. Order of Payment of Legacies—Extension of Time.—If all the debts shall have been paid by the first distribution, the court shall proceed to direct the payment of legacies and the distribution of the estate among the heirs, legatees, or other persons entitled; but if there be debts remaining unpaid, the court shall give such extension of time as may be reasonable for the final settlement of the same. [L. '54, p. 299, § 192; Cd. '81, § 1570; 2 H. C., § 1083.]

§ 1577. When Final Account is to be Rendered.—At the time designated, or sooner, if within that time all property of the estate shall have been sold, or there shall be sufficient funds in his hands to pay all the debts due by the estate, the executor or administrator shall render a final account and pray a settlement of the estate. [L. '54, p. 299, § 193; Cd. '81, § 1571; 2 H. C., § 1084.]

§ 1578. Neglect to Render Final Account — Proceedings.—If the executor or administrator neglect to render his final account, the same proceedings may be had as are prescribed in this chapter in regard to the first account to be rendered by him; and all the provisions of this chapter relative to the last mentioned account, and the notice and settlement thereof, shall apply to his account presented for final settlement. [Cf. L. '54, p. 299, § 194; Cd. '81, § 1572; L. '91, p. 389, § 36; 2 H. C., § 1085.]

CHAPTER XV.

Partition and Distribution of Estates.

§ 1579. Application for Payment of Legacies — Bond.—At any time after six months from the issuing letters testamentary or of administration, any heir, legatee, or devisee, may present his petition to the court that the legacy or share of the estate to which he is entitled may be given to him upon his giving bond, with security, for the payment of his proportion of the debts of the estate. [Cf. L. '54, p. 300, § 195; Cd. '81, § 1573; L. '91, p. 389, § 37; 2 H. C., § 1086.]

§ 1580. Notice of Application.—Notice of the application shall be given to the executor or administrator, and to all persons interested in the estate, in the same manner that notice is required to be given of the settlement of the account of the executor or administrator. [L. '54, p. 300, § 196; Cd. '81, § 1574; 2 H. C., § 1087.]

§ 1581. Who may Resist Application.—The executor, administrator, or any person interested in the estate, may appear and resist the application; or any other heir, legatee, or devisee may make a similar application for himself. [Cf. L. '54, p. 300, § 197; L. '60, p. 216, § 277; Cd. '81, § 1575; 2 H. C., § 1088.]

§ 1582. Decree for Payment of Legacies—Conditions of.—If, on the hearing, it appear to the court that the estate is but little in debt, and that the share of the parties applying may be allowed without injury to the creditors of the estate, the court shall make a decree in conformity with the prayer of the applicant or applicants: Provided, each one of them shall first execute and deliver to the executor or administrator a bond in such sum as shall be designated by the court, and with sureties to be approved by the judge thereof, to the executor or administrator, conditioned for the payment by the devisee or legatee, whenever required, of his proportion of the debts due from the estate. [L. '54, p. 300, § 198; Cd. '81, § 1576; 2 H. C., § 1089.]

Cited in 16 Wash. 18.

§ 1583. Decree, What may Contain.—Such decree may order the executor or administrator to deliver to the heir, devisee, or legatee the whole portion of the estate to which he may be entitled, or only a part thereof. [L. '54, p. 301, § 199; Cd. '81, § 1577; 2 H. C., § 1090.]

§ 1584. Partition may be Made When Necessary.—If, in execution of such decree, any partition be necessary between two or more of the parties interested, it shall be made in the manner hereinafter prescribed. [L. '54, p. 301, § 200; Cd. '81, § 1587; 2 H. C., § 1091.]

§ 1585. Applicant to Pay Costs.—The cost of the proceedings authorized by the preceding section shall be paid by the applicant, or if there be more than one, shall be equally apportioned among them. [Cf. L. '54, p. 301, § 201; L. '60, p. 216, § 281; Cd. '81, § 1579; 2 H. C., § 1092.]

§ 1586. Order for Payment of Bond, and Suit Thereon.—Whenever any bond has been executed and delivered under the provisions of the preceding sections, and the executor or administrator shall ascertain that it is necessary for the settlement of the estate to require the payment of any part of the money thereby secured, he shall petition the court for an order requiring the payment, and shall have a citation issued and served on the party bound, requiring him to appear and show cause why the order shall not be made. At the hearing, the court, if satisfied of the necessity of the payment, shall make an order accordingly, designating the amount and giving the

time within which it shall be paid; and if the money shall not be paid within the time allowed, an action may be maintained by the executor or administrator on the bond. [Cf. L. '54, p. 301, § 201; L. '60, p. 216, § 282; Cd. '81, § 1580; 2 H. C., § 1093.]

§ 1587. Distribution of Estate upon Final Settlement.—Upon the settlement of the account of the executor or administrator, or at any subsequent time upon the application of the executor or administrator, or any heir, devisee, or legatee, the court shall proceed to distribute the residue of the estate among the persons who are by law entitled. [Cf. L. '54, p. 301, § 202; L. '60, p. 217, § 283; Cd. '81, § 1581; 2 H. C., § 1094.]

Cited in 7 Wash. 651; 27 Wash. 183; 31 Wash. 646.

§ 1588. Decree of Distribution, What to Contain.—In the decree, the court shall name the person and the portion or part to which each shall be entitled; and such persons shall have the right to demand and recover their respective shares from the executor or administrator, or any person having the same in possession. [L. '54, p. 301, § 203; Cd. '81, § 1582; 2 H. C., § 1096.]

Cited in 4 Wash. 502; 7 Wash. 651.

§ 1589. Decree Made Only After Notice.—The decree may be made on the application of the executor or administrator, or of any person interested in the estate, and shall only be made after notice has been given in the manner required in regard to an application for the sale of land by an executor or administrator. The court may order such further notice to be given as it may deem proper. [L. '54, p. 301, § 204; Cd. '81, § 1583; 2 H. C., § 1096.]

Cited in 22 Wash. 628; 57 Wash. 365, 480; 74 Wash. 228; 78 Wash. 313; 83 Wash. 436.

§ 1590. Estate in Common may be Partitioned.—When the estate, real or personal, assigned to two or more heirs, devisees, or legatees, shall be in common and undivided, and the respective shares shall not be separated and distinguished, partition and distribution may be made by three disinterested persons, to be appointed commissioners for that purpose by the court, who shall be duly sworn to the faithful discharge of their duties, and the court shall issue a warrant to them for that purpose. [L. '54, p. 301, § 205; Cd. '81, § 1584; 2 H. C., § 1097.]

Cited in 4 Wash. 502.

§ 1591. Estate in Different Counties, How Partitioned.—If the real estate be in different counties, the court may, if it shall judge proper, appoint different commissioners for each county; and in such cases the estate in each county shall be divided separately, as if

there were no other estate to be divided, but the commissioners first appointed shall, unless otherwise directed by the court, make division of such real estate, wherever situated within the state. [L. '54, p. 302, § 206; Cd. '81, § 1585; 2 H. C., § 1098.]

§ 1592. Partition and Distribution After Notice.—Such partition and distribution may be ordered on the petition of any of the persons interested in the estate; but before any partition shall be ordered as directed in this chapter, notice shall be given to all persons interested who shall reside in this state, or to their guardians, and to agents, attorneys, or guardians, if there be any in this state, of such as reside out of the state, either personally or by public notice, as the court may direct. [L. '54, p. 302, § 207; Cd. '81, § 1586; 2 H. C., § 1099.]

Cited in 4 Wash. 502; 87 Wash. 141.

§ 1593. Partition Though Some Heirs have Parted With Their Interest.—Partition of the real estate may be made as provided in this chapter, although some of the original heirs, or devisees may have conveyed their shares to other persons, and such shares shall be assigned to the person holding the same, in the same manner as they otherwise would have been to such heirs or devisees. [L. '54, p. 302, § 208; Cd. '81, § 1587; 2 H. C., § 1100.]

Cited in 22 Wash. 628; 33 Wash. 206.

§ 1594. Shares to be Set Out by Metes and Bounds.—The several shares in the real and personal estate shall be set out to each individual in proportion to his right, by such metes, bounds, and descriptions that the same may be easily distinguished, unless two or more of the parties shall consent to have their shares set out so as to be held by them in common and undivided. [L. '54, p. 302, § 209; Cd. '81, § 1588; 2 H. C., § 1101.]

§ 1595. Assignment of Whole Estate to One—Compensation to Others.—When any such real estate cannot be divided without prejudice or inconvenience to the owners, the court may assign the whole to one or more of the parties entitled to share therein, who will accept it, providing the party so accepting the whole shall pay to the other parties interested their just proportion of the true value thereof, or secure the same to their satisfaction, and the true value of the estate shall be ascertained by the commissioners appointed by the court, and sworn for that purpose. [Cf. L. '54, p. 302, § 210; L. '73, p. 311, § 284; Cd. '81, § 1589; 2 H. C., § 1102.]

§ 1596. Equality for Inequality of Shares.—When any tract of land or tenement shall be of greater value than either party's share of the estate to be divided, and cannot be divided without injury

to the same, it may be set off, by the commissioners appointed to make partition, to either of the parties who will accept it, giving preference as prescribed in the preceding sections; provided the party so accepting shall pay or secure to one or more of the others such sums as the commissioners shall award to make the partition equal, and the commissioners shall make their award accordingly; but such partition shall not be established by the court until the sums so awarded shall be paid to the parties entitled to the same, or secured to their satisfaction. [L. '54, p. 302, § 211; Cd. '81, § 1590; 2 H. C., § 1103.]

§ 1597. Estate may be Sold and Proceeds Distributed, When.—When it cannot be otherwise fairly divided, the whole or any part of the estate, real or personal, may be recommended by the commissioners to be sold; and if the report be confirmed, the court may order a sale by the executor or administrator, and distribute the proceeds. [Cf. L. '54, p. 303, § 212; L. '60, p. 218, § 293; Cd. '81, § 1591; 2 H. C., § 1104.]

§ 1598. Duties of Commissioners Where Estate Held in Common. When partition of real estate among heirs or devisees shall be required, and such real estate shall be undivided and in common with the real estate of any other person, the commissioners shall first divide and sever the estate of the deceased from the estate with which it lies in common; and such division so made and established by the court shall be binding upon all the persons interested. [L. '54, p. 303, § 213; Cd. '81, § 1592; 2 H. C., § 1105.]

§ 1599. Notice to Guardians, etc., Before Partition.—Before any partition shall be made, or any estate divided, as provided in this chapter, guardians shall be appointed for all minors and insane persons interested in the estate to be divided; and some discreet persons shall be appointed to act as agent for such parties as reside out of the state, and notice of the appointment of such agent shall be given to the commissioners in their warrant, and notice shall be given to all persons interested in the partition, their guardians or agents, by the commissioners, of the time when they shall proceed to make partition. [L. '54, p. 303, § 214; Cd. '81, § 1593; 2 H. C., § 1106.]

Cited in 87 Wash. 139, 141.

§ 1600. To Make Report and Partition to be Recorded.—The commissioners shall make a report of their proceedings in writing, and the court may, for sufficient reasons, set aside such report and remit the same to the same commissioners or appoint others; and the report, when finally accepted and established, shall be recorded in the records of the court, and a certified copy thereof, under the seal of

the court, shall be recorded in the office of the county auditor of the county where the land lies. [Cf. L. '54, p. 303, § 215; Cd. '81, § 1594; L. '91, p. 389, § 38; 2 H. C., § 1107.]

§ 1601. When Commissioners Unnecessary.—When the court shall make a decree assigning the residue of any estate to one or more persons entitled to the same, it shall not be necessary to appoint commissioners to make partition or distribution of such estate, unless the parties to whom the assignment shall have been decreed, or some of them, shall request that such partition be made. [L. '54, p. 303, § 216; Cd. '81, § 1595; 2 H. C., § 1108.]

§ 1602. Advancements to Heirs.—All questions as to advancement made, or alleged to have been made, by the deceased to any heirs may be heard and determined by the court, and shall be specified in the decree assigning the estate, and in the warrant to the commissioners, and the final decree of the court, or in case of appeal, of [to] the supreme court, shall be binding on all parties interested in the estate. [L. '54, p. 303, § 217; Cd. '81, § 1596; 2 H. C., § 1109.]

§ 1603. Court may Appoint Agent to Take Possession of Absentee's Estate.—When any estate shall have been assigned by decree of the court, or distributed by commissioners, as provided in this chapter, to any person residing out of this state, and having no agent therein, and it shall be necessary that some person should be authorized to take possession and charge of the same for the benefit of such absent person, the court may appoint an agent for that purpose, and authorize him to take charge of such estate, as well as to act for such absentee in the partition and distribution. [L. '54, p. 303, § 218; Cd. '81, § 1597; 2 H. C., § 1110.]

Cited in 55 Wash. 280, 282, 284.

§ 1604. Agent to Give Bond, Compensation of.—Such agent shall give a bond to the state of Washington, to be approved by the court conditioned faithfully to manage and account for such estate, before he shall be authorized to receive the same, and the court appointing such agent may allow a reasonable sum out of the profits of the estate for his services and expenses. [Cf. L. '54, p. 304, § 219; L. '57, p. 24, § 3; Cd. '81, § 1598; 2 H. C., § 1111.]

Cited in 55 Wash. 283.

§ 1605. Unclaimed Estates, How Disposed of.—When the estate shall have remained in the hands of the agent unclaimed for one year, it shall be sold under order of the court, and the proceeds, deducting the expenses of the sale, to be allowed by the court, shall be paid into the county treasury. When the payment is made the agent shall take triplicate receipts, one of which he shall file with

the county auditor, and another with the court. [Cf. L. '54, p. 304, § 220; L. '57, p. 24, § 4; Cd. '81, § 1599; 2 H. C., § 1112.]

Cited in 55 Wash. 287.

§ 1606. Agent's Liability on Bond.—The agent shall be liable on his bond for the care and preservation of the estate while in his hands, and for the payment of the proceeds of sale as required by the preceding section, and may be sued thereon by any person interested. [L. '54, p. 304, § 221; Cd. '81, § 1600; 2 H. C., § 1113.]

Cited in 55 Wash. 283.

§ 1607. Auditor to Draw Warrant.—When any person shall appear and claim the money paid into the treasury, the court making the distribution, being first satisfied of his right, shall order the payment of such money, and, upon the presentation of a certified copy of the order to the county auditor, he shall draw his warrant on the county treasurer for the amount. [Cf. L. '54, p. 304, § 222; Cd. '81, § 1601; L. '91, p. 390, § 39; 2 H. C., § 1114.]

Cited in 55 Wash. 283.

§ 1608. Final Settlement, Decree and Discharge.—When the estate has been fully administered, and it shall have been shown by the executor or administrator, by the production of satisfactory vouchers, that he has paid all sums of money due from him, and delivered up, under order of the court, all property of the estate to the persons entitled, the court shall make a decree discharging him from all liability to be incurred thereafter. [L. '54, p. 304, § 223; Cd. '81, § 1602; 2 H. C., § 1115.]

§ 1609. Discovery of Further Property After Final Settlement—Proceedings.—The final settlement of the estate shall not prevent a subsequent issuance of letters of administration, should other property of the estate be discovered, or it should become necessary and proper from any cause that letters should be again issued. [L. '54, p. 304, § 224; Cd. '81, § 1603; 2 H. C., § 1116.]

CHAPTER XVI.

Specific Performance of Decedent's Contracts.

§ 1610. Decedent's Contract to Convey may be Enforced.—If any person, who is bound by contract, in writing, to convey any real property, shall die before making the conveyance, the superior court of the county in which such real estate or any portion thereof is situate may make a decree authorizing and directing his executor or administrator to convey such real property to the person entitled thereto. [Cf. L. '54, p. 292, § 150; L. '77, p. 130, § 626; Cd. '81, § 623; L. '91, p. 390, § 40; 2 H. C., § 1117.]

Cited in 5 Wash. 381; 10 Wash. 594; 46 Wash. 185, 189; 59 Wash. 477.

§ 1611. Petition for Executor to Make Conveyance and Notice of Hearing.—On filing and presentation of a petition of any person claiming to be entitled to such conveyance under such contract, setting forth the facts upon which such claim is predicated, the court, or the judge thereof, shall make an order appointing a time for hearing, to be published four successive weeks next before such hearing, in such newspaper in the state as the court shall designate; and in case such deceased person was an inhabitant of this state at the time of his death, or died in this state, and in all other cases in which an executor or administrator has been appointed in this state, the court shall further order that the notice be personally served upon the executor or administrator, by delivery to him of a copy of the same, together with a copy of the petition. [Cf. L. '54, p. 292, § 151; L. '77, p. 130, § 627; Cd. '81, § 624; L. '91, p. 390, § 41; 2 H. C., § 1118.]

§ 1612. Proceedings at Hearing, Contest.—At the time appointed for such hearing, or at such other time as the same may be adjourned to, upon proof of the publication of the notice and of personal service thereof where personal service is required, the court shall proceed to a hearing, and all persons interested as creditors, heirs, devisees, or personal representatives may appear and resist such petition, by filing their objections in writing, and the court shall examine, on oath, the petitioners, and all witnesses who may be produced on the hearing, by an interested party, for that purpose. [Cf. L. '54, p. 293, § 152; Cd. '81, § 625; L. '91, p. 340, § 42; 2 H. C., § 1119.]

§ 1613. Decree for Conveyance.—After a full hearing, upon such petition and objections, of the facts and circumstances of the claim, if the court is satisfied that the petitioner is entitled, in equity, to a conveyance of the real estate described in the petition, of any part thereof, or any interest therein, the court shall make a decree authorizing and directing the execution and delivery of a conveyance to the petitioner. [Cf. L. '54, p. 293, § 153; L. '77, p. 130, § 629; Cd. '81, § 626; 2 H. C., § 1120.]

§ 1614. Conveyance, by Whom Executed.—Such conveyance shall be executed by the executor or administrator of the estate of the deceased, if the deceased was a resident of or had his place of abode at the time of his death in this state, or if he died therein, or if an executor or administrator has been appointed therein; but in such case no decree for conveyance shall be made, unless the executor or administrator shall have been served with a copy of the said petition and the notice provided for in section 1611, at least twenty days prior to the time appointed for the hearing. [Cf. L. '77, p. 130, § 630; Cd. '81, § 627; L. '91, p. 391, § 43; 2 H. C., § 1121.]

§ 1615. Proceedings Where There is No Executor or Administrator.—If the deceased died out of the state, and was not an inhabitant thereof at the time of his death, and no executor or administrator shall have been appointed in the state, such conveyance shall be executed by a commissioner to be appointed by the court, in the decree, for that purpose; but in such case, in addition to the notice provided in section 1611, it shall appear to the satisfaction of the court at the hearing, that the executor or administrator of such deceased duly appointed in another state, territory, or country, or his heirs or devisees, shall have had reasonable notice personally of the pendency of said petition, and of the time and place appointed for such hearing. And such foreign executor or administrator shall have the same right to file objections and resist the claim of the petitioners as an executor or administrator appointed under the laws of this state would have; and it shall not be necessary, in such case, that an administration of the estate of the deceased be had in the state, to authorize the decree of conveyance prayed for. [Cf. L. '77, p. 131, § 631; Cd. '81, § 628; L. '91, p. 391, § 44; 2 H. C., § 1122.]

§ 1616. Form and Effect of Such Conveyance.—A conveyance executed under the provisions of this chapter shall so refer to the decree authorizing the conveyance that the same may be readily found, but need not recite the record in the case generally, and the conveyance made in pursuance of a decree shall pass to the grantee all the estate, right, title, and interest contracted to be conveyed by the deceased, as fully as if the contracting party himself were still living and executed the conveyance in pursuance of such contract. [L. '77, p. 131, § 632; Cd. '81, § 629; 2 H. C., § 1123.]

Cited in 10 Wash. 594.

§ 1617. Appeal from Decree—Recording, Effect of.—Any party interested may appeal therefrom to the supreme court, in the same manner as appeals are taken and prosecuted from final decrees or judgments in equity causes; but if no appeal be taken from such decree within the time limited therefor, or if such decree be affirmed on appeal, it shall be the duty of the executor, administrator, or commissioner to execute and deliver the conveyance according to the directions contained in the decree; and a certified copy of the decree shall be recorded with the deed in the office of the auditor of the county where the lands lie, and shall be conclusive evidence of the correctness of the proceedings and of the authority of the executor, administrator, or commissioner to make such conveyance. [Cf. L. '54, p. 293, § 154; L. '73, p. 300, § 227; L. '77, p. 131, § 633; Cd. '81, § 630; L. '91, p. 391, § 45; 2 H. C., § 1124.]

Cited in 10 Wash. 598.

§ 1618. Effect of Recording Copy of Decree.—A copy of the decree for conveyance, made by the court, and duly certified, and recorded in the office of the auditor of the county wherein the land is situate, shall, after affirmance upon appeal, or after expiration of the time for taking an appeal in case no appeal be taken, give to the person entitled to the conveyance a right to the immediate possession of the land contracted for, and of holding the same according to the terms of the intended conveyance, in like manner and with like effect as if they had been conveyed in pursuance of the decree. [Cf. L. '54, p. 293, § 157; L. '77, p. 131, § 634; Cd. '81, § 631; L. '91, p. 392, § 46; 2 H. C., § 1125.]

§ 1619. Proceedings Where Party to Whom Conveyance is Made Dies.—If the person to whom the conveyance was to be made shall die before the commencement of the proceedings according to the provisions of this chapter, or before the completion of the conveyance, any person who would have been entitled to the conveyance under him, as heir, devisee, or otherwise, in case the conveyance had been made according to the terms of the contract, or the executor or administrator of such deceased person, for the benefit of persons entitled, may commence such proceedings, or prosecute the same if already commenced; and the conveyance shall be so made as to vest the estate in the persons who would have been entitled to it, or in the executor or administrator for their benefit. [Cf. L. '54, p. 299, § 159; Cd. '81, § 532; L. '91, p. 392, § 47; 2 H. C., § 1126.]

§ 1620. Depositions on Hearing.—The testimony of witnesses in support of the claim of the petitioner may be taken by deposition whenever the deposition of such witnesses might be taken to be used in the trial of a civil action; but notice of the time and place of taking such deposition shall be published by the petitioner, in the paper required to be designated by section 1611, for three successive weeks prior to taking the same, which notice shall also state the name of the officer before whom the deposition is to be taken, and the name[s] of the witnesses whose testimony is proposed to be taken at such time and place, and shall also be served personally in all cases wherein personal service of the notice is required by the provisions of section 1611. Any party interested in the estate may appear and cross-examine such witnesses, and the manner of examination and the form of such deposition shall be in conformity with the statute regulating depositions of witnesses in civil actions. Any party interested in the estate, and resisting the claim of the petitioner, may, after filing his objections, take the testimony of witnesses in his behalf in like manner as in civil actions. [Cf. L. '77, p. 132, § 636; Cd. '81, §§ 633, 634; L. '91, p. 392, § 48; 2 H. C., § 1127.]

CHAPTER XVII.

Guardianship of Infants and of the Insane.

§ 1621. Guardians for Minors Appointed, When.—The superior court of each county, when it shall become necessary, may appoint guardians to minors resident in said county, who have no guardian appointed by will; or who may reside out of the state, having estate within the county. [Cf. L. '55, p. 15, § 1; L. '73, p. 314, § 299; Cd. '81, § 1604; 2 H. C., § 1128.]

Cited in 24 Wash. 128.

Only the next four sections of this chapter (§§ 1622–1625) and §§ 1638 to 1640, inclusive, relate to the guardianship of the insane: See § 1654 et seq.

§ 1622. Petition for Appointment.—When a petition is presented to the superior court verified by the petitioner, and showing that a person, resident of the county where the petition is filed, is a minor, or is insane, or mentally incompetent, and that such person has property needing care and attention and praying for the appointment of a guardian for such minor, insane or mentally incompetent person's property, the court shall thereupon make an order setting a time for the hearing on said petition, and directing the clerk of the court to issue a notice stating that such a petition has been filed, and the time and place of the hearing thereon and stating that all persons interested shall appear at the time and place of the hearing and show cause if any there be, why a guardian should not be appointed for the estate of such minor, insane, or mentally incompetent person. [L. '09, p. 408, § 1. Cf. L. '03, p. 242, §§ 1–5.]

Cited in 59 Wash. 540, 541, 542, 548; 85 Wash. 192.

§ 1623. Notice, How Served.—The notice of the hearing shall be served upon such minor personally if over fourteen years of age, or such insane or incompetent person, and also upon the head of the family with whom such minor, insane or incompetent person resides, and if such minor, insane or incompetent person is in the care and custody of an officer, or institution, then upon such officer or head of such institution, at least ten days prior to the time set for the hearing; and proof of such service shall be made and filed in the same manner as proof of the service of a summons: Provided, however, that in case that the person making application for the appointment of such guardian, is the parent of a minor under fourteen years of age, then the notice herein provided for shall be dispensed with and the court may make the order appointing the parent as such guardian upon his or her petition being presented. [L. '09, p. 408, § 2. Cf. L. '03, pp. 242, 243, §§ 2, 3.]

Cited in 59 Wash. 541, 542.

§ 1624. Prosecuting Attorney to Appear for Ward.—Before the hearing the petition or a copy thereof shall be submitted to the prosecuting attorney who shall appear for such minor, insane or incompetent person at said hearing, and if the prosecuting attorney desires further time in which to make an investigation, the court shall at his request continue the hearing to some certain day, and the court may on its own motion or at the request of the prosecuting attorney, direct that the minor, insane or mentally incompetent person, be brought into court in person, and for this purpose may make an order directing the sheriff to bring him or her into court.

In case the prosecuting attorney or his deputy is unable to attend at the hearing, the court may appoint some suitable person to act in his place: Provided, however, that nothing herein shall prevent the minor, insane or mentally incompetent person from appearing by an attorney selected by himself, or by some one on his behalf, in which case it will not be necessary for the prosecuting attorney to appear at the hearing. [L. '09, p. 409, § 3. Cf. L. '03, p. 243, § 4.]

Cited in 59 Wash. 541, 542; 64 Wash. 139.

§ 1625. Service on Nonresidents — Publication.—When a minor, insane or mentally incompetent person, resides out of the state of Washington, and has property within the state requiring the care of a guardian, and a petition is filed in the county where such minor, insane or mentally incompetent person has property, the petitioner shall make an affidavit stating the fact of the nonresidence of such minor, insane or mentally incompetent person, and then the notice provided for in section 1622 shall be served by publication in some newspaper printed and of general circulation in the county where the petition is filed for four weeks, to wit; for five successive weekly issues of such paper prior to the time set for the hearing and proof of such publication shall be made and filed, as in the case of a summons by publication, and thereafter the same proceedings shall be had as hereinbefore provided. [L. '09, p. 409, § 4. Cf. L. '03, p. 243, § 5.]

Cited in 59 Wash. 541, 542, 547; 85 Wash. 192.

See infra, § 1674 et seq., appointment of guardian for nonresident insane.

§ 1626. Who may Nominate—Disqualifications.—If the minor is under fourteen years of age, the judge may nominate and appoint his guardian; if said minor be over fourteen years of age, he or she may nominate the guardian, who, if approved by the superior court, shall be appointed accordingly: Provided, that no judicial officer, excepting justice of the peace, no person of unsound mind, or a party convicted of felony, or a misdemeanor involving moral turpitude, shall be appointed guardian, and when a guardian shall incur

either of the foregoing disabilities, he shall be displaced. If a guardian becomes superior judge, the superior court of the proper [adjoining] county shall appoint his successor. [Cf. L. '55, p. 15, § 2; L. '60, p. 225, § 322; L. '73, p. 314, § 300; Cd. '81, § 1605; 2 H. C., § 1129.]

§ 1627. Appointment must be Approved by Court.—If the guardian nominated by the minor be not approved by the judge, or if the minor shall reside out of the state, or if, after being duly cited by the court he shall neglect for ten days to nominate a suitable person, the court may appoint the guardian in the same manner as if the minor were under the age of fourteen years. [L. '60, p. 226, § 323; Cd. '81, § 1606; 2 H. C., § 1130.]

§ 1628. Guardian not to be Removed Without Cause.—When a guardian has been appointed for any minor under the age of fourteen, such guardian shall not be removed when such minor arrives at the age of fourteen, except for good cause shown. [L. '55, p. 15, § 3; Cd. '81, § 1607; 2 H. C., § 1131.]

§ 1629. Who Entitled to Guardianship.—The father of the minor if living, and in case of his decease the mother, being themselves respectively competent to transact their own business, shall be entitled to the guardianship of a minor. [Cf. L. '60, p. 226, § 235; L. '73, p. 315, § 303; Cd. '81, § 1608; 2 H. C., § 1132.]

§ 1630. Guardian to have Custody of Ward, When.—If the minor have no father or mother living, and competent to have the custody and care of the education of such minor, the guardian so appointed shall have the custody and tuition of his ward. [L. '60, p. 226, § 326; Cd. '81, § 1609; 2 H. C., § 1133.]

Cited in 45 Wash. 50, 51.

§ 1631. Guardianship Terminates, When.—Every guardian appointed as aforesaid shall have the custody and tuition of the minor, and the care and management of the estate of such minor, except as hereinafter provided, until he or she shall have attained the age of majority; and males shall be deemed of full and legal age when they shall be twenty-one years old, and females shall be deemed of full and legal age when they shall be eighteen years old, or at any age under eighteen, when, with the consent of the parent or guardian, or other person under whose care or government they may be, they shall have been lawfully married. [Cf. L. '55, p. 16, § 6; L. '60, p. 326, § 327; L. '73, p. 315, § 305; Cd. '81, § 1610; 2 H. C., § 1134.]

Cited in 50 Wash. 476.

§ 1632. Bond of Guardian.—The court shall take of each guardian appointed under this act a bond, with approved security pay-

able to the state of Washington, in the sum of not less than twice the value of the personal property and twice the estimated value of the annual rents, profits and issues of the real property belonging to the estate, conditioned as follows: The condition of this obligation is such that if the above-bound A. B., who has been appointed guardian for C. D. shall faithfully discharge the office and trust of such guardian according to law, and shall render a fair and just account of his said guardianship to the superior court for the county of —— from time to time as he shall thereto be required by said court, and comply with all orders of said court, lawfully made relative to the goods, chattels and moneys of such minor, and render and pay to such minor all moneys, goods and chattels, title papers and effects which may come into the hands or possession of such guardian belonging to such minor, when such minor shall thereto be entitled, or to any subsequent guardian, should such court so direct, this obligation shall be void, or otherwise to remain in full force and virtue. Which bond shall be for the use of such minor, and shall not become void upon the first recovery, but may be put in suit from time to time against all or any one or more of the obligors, in the name and for the use and benefit of any person entitled by a breach thereof, until the whole penalty shall be recovered thereon. The judge may require an additional bond whenever a sale of real estate belonging to a minor is ordered by him, but no such additional bond must be required when it satisfactorily appears to the court that the penalty of the bond given before receiving letters, or of any bond given in place thereof is equal to twice the value of the personal property remaining in or that may come into the possession of the guardian, including the annual rents, profits and issues of real estate and twice the probable amount to be realized on the sale of the property ordered to be sold. [L. '05, p. 33, § 1. Cf. L. '60, p. 226, § 329; Cd. '81, § 1612; 2 H. C., § 1136.]

Cited in 23 Wash. 151.

§ 1633. Provisions Applicable to Bond of Guardian.—All the provisions of chapter eight of this title relative to bonds given by executors and administrators shall apply to bonds taken of guardians. [L. '60, p. 228, § 334; Cd. '81, § 1617; 2 H. C., § 1141.]

§ 1634. Discharge of Sureties.—Sureties in the bond of any guardian may be discharged from liability therein, under the same rule and regulation prescribed for the discharge of the sureties in the bond of executors and administrators, and the provisions of the chapter regulating the same shall apply to guardians, and guardians' bonds and sureties. [Cf. L. '55, p. 19, § 26; L. '60, p. 229, § 346; Cd. '81, § 1629; 2 H. C., § 1153.]

§ 1635. Court may Require Accounting and Further Security.—Superior courts shall have power, in their respective counties, with or without previous complaint, by an order duly made and served, to oblige all guardians of minors, from time to time, to render their respective accounts, upon oath, touching their guardianship, to said courts for adjustment, and shall have power to compel such guardian to give supplementary security, whenever it shall judge proper, and in default thereof, to remove such guardian. [L. '60, p. 227, § 330; Cd. '81, § 1613; 2 H. C., § 1137.]

Cited in 48 Wash. 428.

§ 1636. Duties of Guardian.—It shall be the duty of the guardian of any minor,—

1. To make out and file, within three months after his appointment, a full inventory, verified by oath, of the real and personal estate of his ward, with the value of the same, and failing so to do, it shall be the duty of the court to remove him and appoint a successor;

2. To manage the estate for the best interest of his ward;

3. To render on oath to the proper court an account of his receipts and of his expenditures, with vouchers therefor, at least once in every two years, and whenever cited so to do, and failing so to do, he shall receive no allowances for services, and be liable to said ward on his bond in damages for ten per cent of the whole amount of the estate, both real and personal, in his hands belonging to such ward;

4. At the expiration of his trust fully to account for and pay over to the proper person all the estate of said ward remaining in his hands;

5. To pay all just debts due from such ward out of the estate in his hands, and to collect all debts due such ward, and in case of doubtful debts, to compound the same, and to appear for and defend, or cause to be defended, all suits against such ward;

6. When any ward has no father or mother, or such father or mother is unable or fails to educate such ward, it shall be the duty of his guardian to provide for him such education as the amount of his estate may justify. [Cf. L. '55, p. 16, § 9; L. '60, p. 227, § 331; Cd. '81, § 1614; 2 H. C., § 1138; L. '95, p. 65, § 1.]

Cited in 27 Wash. 257; 74 Wash. 644; 86 Wash. 517.

See infra, §§ 1660–1664, duty of guardians of insane persons.

§ 1637. Guardian may Prosecute and Defend for Ward.—Guardians, by virtue of their office as such, shall be allowed in all cases to prosecute and defend for their wards. [L. '60, p. 226, § 328; Cd. '81, § 1611; 2 H. C., § 1135.]

Cited in 27 Wash. 257.

§ 1638. Compromise of Suits by Guardian.—Every minor, imbecile or insane person, having a cause of action against him, or in his favor, shall be bound by any compromise or settlement thereof to the same extent as a person not under legal disability would be bound; providing such compromise is made by the guardian of such minor, imbecile or insane person by and with the advice of the court, by whom such guardian was appointed. Before making a compromise, the guardian shall file in the court wherein he is appointed, and to which he is accountable, a petition briefly stating the nature of the claim, together with the reasons for the making of such compromise. In case the ward is a minor more than fourteen years of age, a copy of the petition with a notice of the time of hearing, shall be served upon the ward. The guardian shall call to the attention of the court all facts pertaining to said matter, and if the court, after such hearing, directs a compromise to be made, the guardian is hereby authorized to make and accept acquittances which shall be forever binding upon his ward. [L. '03, p. 153, § 1.]

§ 1639. Presentation of Claim to Guardian.—No holder of a claim, demand or judgment against an estate of a person under guardianship shall maintain an action thereon or enforce the same, unless the claim, demand or judgment shall have been first presented to such guardian and by him rejected in whole or in part. A failure or neglect to allow a claim for thirty days after the same is presented, shall be deemed a rejection thereof. [L. '97, p. 203, § 1.]

The title of this act relates to the insane as well as to minors.

§ 1640. Judgments to be Presented for Allowance.—No judgment entered against the estate or person of a ward, except for the foreclosure of a mortgage or lien, shall be a lien against or upon the estate of such ward, but such judgment shall be presented and paid as other claims of the same class or grade. [L. '97, p. 203, § 2.]

See note to last section.

§ 1641. Court may Change Investment.—The court may, on the application of a guardian or any other person, said guardian having due written notice thereof, order and decree any change to be made in the investment of the estate of any ward that may to such court seem advantageous to such estate. [Cf. L. '55, p. 17, § 10; L. '60, p. 227, § 332; Cd. '81, § 1615; 2 H. C., § 1139.]

§ 1642. Removal of Guardian and Proceedings Thereafter.—The court in all cases shall have power to remove guardians for good and sufficient reasons, which shall be entered of record, and to appoint others in their place or in the place of those who may die, who shall give bond and security for the faithful discharge of their duties as heretofore prescribed in this chapter; and when any

guardian shall be removed or die, and a successor be appointed, the court shall have power to compel such guardian to deliver up to such successor all goods, chattels, moneys, title papers, or other effects belonging to such minor which may be in the possession of such guardian so removed, or of the executors or administrators of a deceased guardian, or of any other person or persons who have the same, and upon failure, to commit the party offending to prison, until he, she, or they comply with the order of the court. [Cf. L. '55, p. 17, § 11; L. '60, p. 227, § 333; Cd. '81, § 1616; 2 H. C., § 1140.]

§ 1643. Testamentary Guardian, Appointment and Bond of.—The father of every legitimate child, who is a minor, may, by his last will in writing, appoint a guardian or guardians for his minor children, whether born at the time of making such will or afterward, to continue during the minority of such child, or for any less time, and every such testamentary guardian shall give bond in like manner and with like condition as hereinbefore required, and he shall have the same powers and perform the same duties with regard to the person and estate of the ward as a guardian appointed as aforesaid. [L. '60, p. 228, § 335; Cd. '81, § 1618; 2 H. C., § 1142.]

§ 1644. Court may Appoint Guardian ad Litem.—Nothing contained in this chapter shall affect or impair the power of any court to appoint a guardian to defend the interests of any minor interested in any suit or matter pending therein, or to commence and prosecute any suit in his behalf. [Cf. L. '60, p. 228, § 336; L. '73, p. 318, § 314; Cd. '81, § 1619; 2 H. C., § 1143.]

Cited in 23 Wash. 151; 24 Wash. 128; 86 Wash. 517; 87 Wash. 140.

§ 1645. Estate may be Sold Under Order of Court, When.—Whenever necessary for the education, support, or payment of the just debts of any minor, or for the discharge of any liens on the real estate of such minor, or whenever the real estate of such minor is suffering unavoidable waste, or a better investment of the value thereof can be made, the court may, on the application of such guardian, order the same or a part thereof to be sold. [L. '55, p. 17, § 14; Cd. '81, § 1620; 2 H. C., § 1144.]

Cited in 39 Wash. 687.

See infra, § 1683 et seq., private sales of real property.

§ 1646. Requisites of Petition.—Such application shall be by petition, verified by the oath of the guardian, and shall substantially set forth:—

1. The value and character of all personal estate belonging to such ward that has come to the knowledge or possession of such guardian;

2. The disposition made of such personal estate;

3. The amount and condition of the ward's personal estate, if any, dependent upon the settlement of any estate, or the execution of any trust;

4. The annual value of the real estate of the ward;

5. The amount of rent received and the application thereof;

6. The proposed manner of reinvesting the proceeds of the sale, if asked for that purpose;

7. Each item of indebtedness, or the amount and character of the lien, if the sale is prayed for the liquidation thereof;

8. The age of the ward, where and with whom residing;

9. All other facts connected with the estate and condition of the ward necessary to enable the court fully to understand the same. If there is no personal estate belonging to such ward, in possession or expectancy, and none has come into the hands of such guardian, and no rents have been received the fact shall be stated in the application. [Cf. L. '55, p. 17, § 15; L. '60, p. 228, § 338; Cd. '81, § 1621; 2 H. C., § 1145.]

§ 1647. Manner and Terms of Sale.—If it shall appear to the court from such petition, and from the hearing thereon, that it is necessary or would be beneficial to the ward that such real estate or some part of it should be sold, the court may authorize the said guardian to sell the same at public sale, on the same terms and notice required for sales of real estate by executors and administrators. [Cf. L. '60, p. 229, § 339; L. '73, p. 319, § 317; Cd. '81, § 1622; 2 H. C., § 1146.]

§ 1648. Provisions Applicable to Sales by Guardians.—All the provisions of the chapter regulating sales by executors and administrators shall be applicable to sales made by guardians. [L. '60, p. 229, § 340; Cd. '81, § 1623; 2 H. C., § 1147.]

§ 1649. Report of Sale.—Within thirty days after such sale, such guardian shall make report thereof to the court, and produce the proceeds of such sale, and the notes or obligations or other securities taken to secure the payment of the purchase money. [L. '60, p. 229, § 341; Cd. '81, § 1624; 2 H. C., § 1148.]

Cited in 23 Wash. 151.

§ 1650. Confirmation of Sale.—The court, in confirming such sale and directing a conveyance, shall be governed by the law regulating the confirming of sales of real estate made by executors or administrators, and the making of conveyances on such sales. [L. '60, p. 229, § 343; Cd. '81, § 1625; 2 H. C., § 1149.]

§ 1651. Powers of Guardian in Partition.—The guardian of any minor may join in and assent to the partition of the real estate of

such minor, under the direction of the court, upon a petition for partition. [L. '55, p. 19, § 24; Cd. '81, § 1626; 2 H. C., § 1150.]

§ 1652. Compensation and Expenses.—Every guardian shall be allowed by the court, on settling his accounts, the amount of all reasonable expenses incurred in the execution of his trust, and also such compensation for his services as the court shall deem reasonable. [L. '55, p. 19, § 25; Cd. '81, § 1627; 2 H. C., § 1151.]

§ 1653. Nonresidents may Remove Ward's Property, When.—When the guardian and ward are both nonresidents, and the ward is entitled to property in this state, which may be removed to another state or territory, without conflict to any restriction or limitation thereupon, or impairing the right of the ward thereto, such property may be removed to the state or territory in which such ward may reside, upon the application of the guardian to the judge of the superior court of the county in which the estate of the ward, or the principal part thereof, may be, in the manner following: The guardian so applying must produce a transcript from the records of a court of competent jurisdiction, certified according to the laws of this state, showing his appointment as guardian of the ward in the state or territory in which he and the said ward reside; that he has qualified as such according to the laws thereof, and given bond, with sureties for the performance of his trust; and must also give thirty days' notice to the resident executor, administrator, guardian, agent, or trustee, if there be such, of the applications. Thereupon, if no objection be made, or if no good cause be shown to the contrary, the judge of the court shall make an order granting such guardian leave to remove the property of said ward to the state or territory in which he or she may reside; which order shall be full and complete authority to said guardian to sue for and receive the same in his own name, for the use and benefit of said ward. [L. '73, p. 320, § 323; Cd. '81, § 1628; 2 H. C., § 1152.]

Cited in 42 Wash. 369.

CHAPTER XVIII.

The Guardianship of Idiots and Insane Persons.

§ 1654. Guardians for Idiots, Insane and Other Persons.—The several superior courts [in their respective counties] shall have power to appoint guardians to take the care, custody, and management of all idiots, insane persons, and all who are incapable of conducting their own affairs; and of their estates, real and personal; the maintenance of themselves and families, and the education of their children. [Cf. L. '60, p. 231, § 348; L. '73, p. 321, § 326; Cd. '81, § 1631; 2 H. C., § 1154.]

Cited in 2 Wash. 273, 275, 278; 13 Wash. 630; 85 Wash. 192; 86 Wash. 515.

See supra, §§ 1622–1625, procedure for appointment of guardian.
See infra, § 1674, estates of nonresident insane.

§ 1655. Court to Appoint Guardian, When.—If it be found by the court that the person so brought before the court is of unsound mind and incapable of managing his own affairs, the court shall appoint a guardian for the estate of such insane person. [Cf. L. '60, p. 231, § 350; L. '73, p. 322, § 330; Cd. '81, § 1635; 2 H. C., § 1155.]

Cited in 6 Wash. 274, 276; 85 Wash. 192.

§ 1656. Costs Taxed Against Prosecuting Witness, When.—If the person alleged to be insane shall be discharged, and it shall be thought by the court that there were no grounds for such impression of insanity, then the cost shall be paid by the person at whose instance the proceeding was had, and execution may issue for the same. [Cf. L. '60, p. 231, § 352; L. '73, p. 322, § 332; Cd. '81, § 1637; 2 H. C., § 1156.]

Cited in 6 Wash. 274; 85 Wash. 192.

§ 1657. Bond.—Every such guardian so appointed shall, before entering upon the duties assigned him, enter into bond to the board of county commissioners, in such sum and with such security as the court shall approve, conditioned that he will take proper care of such insane person, and manage and minister his effects to the best advantage, according to law; and that he will faithfully discharge all duties as such guardian which may by law, or by the order, sentence, or decree of any court of competent jurisdiction, devolve upon him; which bond shall be filed in the office of the clerk of the superior court. A copy thereof, duly certified, shall be evidence in all respects as the original. [L. '60, p. 231, § 353; Cd. '81, § 1638; 2 H. C., § 1157.]

Cited in 26 Wash. 560; 85 Wash. 192.

§ 1658. Notice of Appointment to be Published.—It shall be the duty of every such guardian, within twenty days after his appointment, to cause notice thereof to be published in some newspaper printed in this state, or otherwise publish such notice, at such time and place and in such manner as the court shall decide. [Cf. L. '60, p. 231, § 354; L. '73, p. 323, § 334; Cd. '81, § 1639; 2 H. C., § 1158.]

Cited in 85 Wash. 192.

§ 1659. Custody of Ward's Estate.—It shall be the duty of such guardian to collect and take into his possession the goods, chattels, moneys, effects, and other evidences of debt, and all writings touching the estate, real and personal, of the person under his guardianship. [L. '60, p. 232, § 356; Cd. '81, § 1640; 2 H. C., § 1159.]

Cited in 75 Wash. 375; 85 Wash. 192.

§ 1660. Guardian to File Inventory.—Within forty days after his appointment, such guardian shall make out, and file in the office of the clerk of the superior court by which he was appointed, a just and true inventory of the real and personal estate of his ward, stating the income and profits thereof, and the debts, credits and effects, as the same shall have come to his knowledge. And if, after having filed such inventory, it shall be found that there is other property belonging to said estate, it shall be the duty of such guardian to make out and file an additional inventory, containing a just and full account of the same, from time to time, as the same may be discovered. [Cf. L. '60, p. 232, §§ 357, 358; L. '73, p. 323, § 336; Cd. '81, § 1641; 2 H. C., § 1160.]

Cited in 85 Wash. 192.

§ 1661. Inventory to be Witnessed and Verified.—All such inventories shall be made in the presence of and attested by two credible witnesses in the neighborhood, and shall be verified by the oath of the guardian. [L. '60, p. 232, § 359; Cd. '81, § 1642; 2 H. C., § 1161.]

Cited in 85 Wash. 192.

§ 1662. Guardian to Prosecute and Defend Actions for Ward.—It shall be the duty of every such guardian to prosecute all actions commenced at the time of his appointment, or thereafter to be commenced, by or on account of his ward, and to defend all actions [pending or] which may be brought against such ward. [L. '60, p. 232, § 360; Cd. '81, § 1643; 2 H. C., § 1162.]

Cited in 29 Wash. 421; 86 Wash. 516.

§ 1663. Guardian to Collect Dues, and Pay Debts.—Every such guardian is authorized and required to collect all debts due to his ward, and give acquittances and discharges thereof and adjust, settle and pay all demands due and becoming due from his ward, so far as his estate and effects will extend. [L. '60, p. 232, § 361; Cd. '81, § 1644; 2 H. C., § 1163.]

Cited in 75 Wash. 357.

§ 1664. Power of Court Over Person and Estate.—The superior court shall have power to make orders for the restraint, support and safekeeping of such person, for the management of his estate, and the support and maintenance of his family, and education of his children, out of the proceeds of his estate; to set apart and reserve, for the use of such family, all property, real or personal, not necessary to be sold for the payment of debts; and to let, sell or mortgage any part of such estate, real or personal, when necessary for the payment of debts, the maintenance of such insane person or his

family, or the education of his children; and to order the sale of any property when a better investment can be made of the proceeds. [L. '07, p. 73, § 1. Cf. L. '60, p. 232, § 362; L. '73, p. 324, § 340; Cd. '81, § 1645; 2 H. C., § 1164.]

§ 1665. Sale, Mortgage, or Lease of Real Estate.—When cause shall exist therefor it shall be the duty of such guardian to lay the same before the superior court by whom he was appointed, setting forth the particulars relative to the estate, real and personal, of such person, and all the debts by him owing, or the reasons why a better investment can be made accompanied by a correct and true account of his doings therewith; whereupon, if the court shall find in the exercise of its sound discretion that it is necessary for the payment of debts to dispose of such estate, real or personal, or a portion thereof, or that a better investment of such estate or a portion thereof can be made, it shall be the duty of such court to make an order directing the mortgage, lease or sale at his discretion, of the whole or such part of the real estate as may be necessary. [L. '07, p. 73, § 2. Cf. L. '60, p. 232, § 363; Cd. '81, § 1646; 2 H. C., § 1165.]

§ 1666. Order of Sale and Proceedings.—The court making such order shall direct the time and terms of such sale, mortgage, or lease of such estate, and the manner in which the proceeds shall be applied; and shall give due notice thereof, together with a full description of the property to be thus disposed of, at which time and place it shall be the duty of the guardian to execute the order of said court, and to make a full report of his doings therein, which report shall be accompanied by the affidavit of the guardian verifying the report, and stating that such guardian did not directly or indirectly become the purchaser thereof; or if otherwise disposed of, that he is not directly or indirectly interested personally in the agreement. [L. '60, p. 233, § 364; Cd. '81, § 1647; 2 H. C., § 1166.]

§ 1667. Execution of Instruments by Guardian.—When any such sale, mortgage or lease is approved by the court ordering the same, as having been executed according to law, and not under such circumstances as to operate prejudicially to the interest of such ward, it shall be the duty of the guardian to execute a deed, mortgage or other instrument of writing, which shall be as valid and effective in law as if executed by such ward when of sound mind and discretion. In case of the sale of community property the same member of the community may either join in the conveyance by the guardian or execute a separate conveyance for the property. [L. '07, p. 74, § 3. Cf. L. '60, p. 233, § 365; L. '73, p. 324, § 343; Cd. '81, § 1648; 2 H. C., § 1167.]

§ 1668. Proceedings may be Set Aside.—If such proceedings be disapproved by said court, the court may set them aside, and pro-

ceed in like manner as if no sale had been made. [Cf. L. '60, p. 233, § 366; L. '73, p. 325, § 344; Cd. '81, § 1649; 2 H. C., § 1168.]

§ 1669. Guardian to Account, When.—Every such guardian, as often as required by the court appointing him, shall render a true and perfect account of his guardianship. [L. '60, p. 233, § 367; Cd. '81, § 1650; 2 H. C., § 1169.]

§ 1670. Ward Exempt from Process.—No such ward shall be held to bail, or his body be taken in execution, in any civil action; and in all actions commenced against him the process shall be served upon his guardian, and in all judgments against such ward (or his guardian as such) the execution shall be against the property of the ward only, and in no case against his body, nor against that of his guardian, nor the property of said guardian, unless he shall have rendered himself liable thereunto. [Cf. L. '60, p. 233, § 368; L. '73, p. 325, § 346; Cd. '81, § 1651; 2 H. C., § 1170.]

Cited in 13 Wash. 630; 74 Wash. 599; 86 Wash. 514.

§ 1671. Proceedings in Case Ward Recovers His Reason.—Whenever the court shall receive information that such ward has recovered his reason, he shall immediately inquire into the facts, and if he finds that such ward is of sound mind, he shall forthwith discharge such person from care and custody; and the guardian shall immediately settle his accounts and restore to such person all things remaining in his hands belonging or appertaining to such ward. [L. '60, p. 233, § 369; Cd. '81, § 1652; 2 H. C., § 1171.]

Cited in 69 Wash. 577; 80 Wash. 345.

§ 1672. Death of Ward, Effect of.—In case of the death of any such ward while under guardianship, the power of the guardian shall cease, and the estate descend and be disposed of in the same manner as if said ward had been of sound mind; the guardian shall immediately settle his accounts and deliver the estate and the effects of such ward to his legal representatives. [Cf. L. '60, p. 234, § 370; L. '73, p. 326, § 351; Cd. '81, p. 1656; 2 H. C., § 1172.]

§ 1673. Removal of Guardian, When.—The several superior courts shall have the power to remove any such guardian at any time, for neglect of duty, mismanagement, or of disobedience to any lawful order, and appoint another in his place, whereupon such guardian shall immediately settle his account and render to his successor the estate and effects of his ward. [L. '60, p. 234, § 371; Cd. '81, § 1657; 2 H. C., § 1173.]

Cited in 86 Wash. 515.

CHAPTER XIX.

Estates of Nonresident Persons of Unsound Mind.

§ 1674. Nonresident Guardian — Letters, How Obtained.—Whenever any insane person or person non compos mentis who resides without this state, and who shall have no guardian within this state, or, if he or she has a foreign guardian, the said guardian may file an authenticated copy of his letters of guardianship in the office of the clerk of the superior court of any county in this state in which there may be property of his ward, and upon the filing of such authenticated copy of his letters of guardianship as aforesaid, the court shall order him to enter into a good and sufficient bond, in such sum as the court may require, conditioned and subject to all the provisions of law concerning the bonds of guardians of minors in this state, with sufficient freehold surety resident in said county. After said bond is duly approved by the court said guardian shall be considered for all purposes as a domestic guardian. [L. '93, p. 286, § 1.]

See supra, § 1625, procedure for appointment of guardian for person residing out of this state, a later enactment.

§ 1675. Other Persons may Obtain Letters, When.—Should the said foreign guardian fail to file a duly authenticated copy of his said letters of guardianship and the bond required by section 1674 of this chapter within ninety days after his appointment as such foreign guardian, or within ninety days after such insane person or person non compos mentis shall become the owner of any real estate or personal property within this state, or, should said insane person or person non compos mentis have no guardian without this state, any creditor or other person interested in the property or estate of such insane person or person non compos mentis may apply by petition, to the superior court of any county in this state where any of the real estate or personal property of such insane person or person non compos mentis may be situated, for letters of guardianship for the estate and property of such insane person or person non compos mentis. [L. '93, p. 287, § 2.]

§ 1676. Hearing—Appointment.—Upon the hearing of such petition, on a day to be fixed by the court, and upon proof of the insanity of such person, or that such person is non compos mentis, the court may appoint the petitioner or some other suitable person possessing all of the qualifications necessary or requisite for the guardianship of a minor of this state as such guardian, who, upon the filing and approval of a bond as is provided herein for foreign guardians, shall be the duly constituted guardian of the estate of such ward in this state: Provided, nothing herein shall annul the

appointment of any ancillary guardians heretofore appointed by any court of this state, which appointments are hereby ratified, and all such ancillary guardians shall hereafter be subject to all the provisions of this chapter. [L. '93, p. 287, § 3.]

§ 1677. Notice to Creditors.—It shall be the duty of the guardian who has been appointed as hereinbefore provided, to cause to be published in a newspaper published in the county in which he was appointed, if any there be, and if there be no newspaper published in said county, then in a newspaper to be designated by the court, a notice to the creditors of the said ward requiring them to present their claims, with the necessary vouchers, within a time to be fixed by the court, at a place of residence or business of such guardian, to be specified in the notice; such notice shall be published as often as the court shall deem necessary, not less than once a week for four successive weeks. [L. '93, p. 287, § 4.]

§ 1678. Duties of Guardian.—It shall be the duty of every such guardian,—

1. To make and file wthin thirty days after his appointment a full inventory, verified by his oath, of all the real or personal property of such ward, with the value of the same, and on failure so to do it shall be the duty of the court to remove him and appoint a successor;

2. To manage the personal and real estate of his said ward to the best interest of said ward;

3. To render under oath to the said court an account of his receipts and expenditures as such guardian, verified by vouchers or proofs, at least once in every two years, or whenever cited by the court to do so. On failure to so account he shall be in contempt of court and subject to such penalties as the court may fix;

4. To pay all just debts due from said ward and collect all debts due said ward by action or otherwise and in case of doubtful debts, under the order of the court, to compound the same, and to appear for and defend or cause to be defended all suits against said ward. [L. '93, p. 288, § 5.]

§ 1679. Community Realty, How Disposed of to Pay Debts, etc.—In all cases where guardians have been or may hereafter be appointed for insane persons or persons non compos mentis, under the provisions of this chapter; and who own or may hereafter own community real estate, the husband or wife of such insane person or person non compos mentis, under the order of the court, may join with the guardian in the execution of deeds or mortgages for the disposition or encumbrance of such estate, and the guardian shall, upon application to the court for that purpose, be authorized to sell

or mortgage the estate or interest of the said insane person or person non compos mentis for the purpose of paying the debt or providing for the support or maintenance of such ward or the wife of such ward or for the better investment of the proceeds of such estate. [L. '93, p. 288, § 6.]

§ 1680. Proceedings on Failure of Spouse to Join in Conveyance, etc.—In all cases where community debts exist and the husband or wife of any insane person or person non compos mentis, under guardianship, shall fail or refuse for sixty days after an order of the court, to join the said guardian in a sale or conveyance or mortgage of the said community property of the said insane person or person non compos mentis, found necessary by the court for the payment of such community debts, any creditor may commence his action by attachment against any such insane person or person non compos mentis, and the husband or wife of the said insane person or person non compos mentis and the guardian provided for in this chapter: Provided, that any suit or suits which may have heretofore or may hereafter be brought for the purpose of subjecting the property of such insane person or person non compos mentis to the payment of the debts of such insane person or person non compos mentis, shall be consolidated, and in case the writs of attachment levied in such actions shall not have been levied upon all community property of such insane person or person non compos mentis, alias writs of attachment may issue and successive levies may be made of them to cover and bring into court all of the property of such insane person or person non compos mentis and the husband or wife of either. Such action may be brought only in the court granting the letters of guardianship, and writs of attachment may issue to any county in this state where the said insane person or person non compos mentis may have any property. All known creditors, whether secured by mortgage or otherwise, shall be made parties to such action, and all suits or actions brought for the purpose of enforcing any mortgage or lien shall be consolidated with said action. All creditors shall be made parties to such action and the same shall be prosecuted for the benefit of all creditors, whether they may be made parties or not, and the person so bringing the action herein provided for shall share pro rata with all other creditors, and upon the trial of such action the court may, upon proofs, render such judgment as may be necessary for the protection of all parties, and shall settle and decree the priorities between creditors. The guardian may employ counsel in any such action, and the compensation of such counsel shall be fixed by the court and taxed as a part of the cost in such action. After judgment the court shall order the community property of such insane person or person non

compos mentis sold, and under the order of sale in such action the separate property of such insane person or person non compos mentis shall also be sold if the same shall be found by the court to be necessary to pay the debts of such insane person or person non compos mentis, and the proceeds of such sale shall be paid into court for distribution according to the priorities as decreed by the court, and any residue or overplus remaining in the court after paying all the debts found due shall be paid over to the guardian. This chapter shall not suspend or abrogate the existing liens of any attachment, mortgage or other lien, and all such liens shall merge into the judgment of the court rendered in such action according to the priority of each. The court may order all or such part of the community and separate property of the said insane person or person of unsound mind, as it may deem necessary for the payment of the judgment rendered, to be sold, and successive sales may be made under such judgment until an amount sufficient to pay such judgment is realized. All such sales shall be confirmed by the court as in cases of mortgage or other sales, and the court may, if it deem the amount bid at any sale inadequate, order a resale of any property sold under said order. [L. '93, p. 289, § 7.]

§ 1681. Surplus Moneys, How Disposed of.—When it shall appear to the court that all the real and personal property of such ward has been sold and the debts herein authorized to be paid have been satisfied, and that there are moneys and property in the hands of such guardian, upon the foreign guardian of such ward filing with the clerk of said court a duly certified copy of his appointment as such guardian, by a court of competent jurisdiction in any state or territory where said ward resides, with a copy of his bond, the sufficiency of which shall be certified by the said court, the court shall order all money and property in the hands of the said guardian in this state to be paid and turned over to the said foreign guardian upon his receipting therefor, and upon the filing of the said receipt by the said guardian with the clerk of the court, said guardian and his sureties shall be released from all liabilities for all money and property so paid and turned over, and should said guardian fail or refuse to pay or turn over such money or property as provided in said order, the said foreign guardian is hereby empowered as such guardian to sue for and recover the same. [L. '93, p. 290, § 8.]

§ 1682. Discharge of Sureties.—The sureties on the bond of any such guardian appointed in this state may be discharged from all liability thereunder under the same rules and regulations as are prescribed for the discharge of the sureties upon the bonds of executors and administrators in this state. [L. '93, p. 291, § 9.]

See references to § 1634, supra.

CHAPTER XX.

Private Sales of Real Property of Estates.

§ 1683. Private Sales of Real Property of Estates Generally.—Real property belonging to the estates of decedents, minors, idiots and insane persons may be sold at private sale according to the following provisions. [Cf. L. '91, p. 168, § 1; 2 H. C., § 1174; L. '93, p. 85, § 1.]

Cited in 39 Wash. 687.

§ 1684. Showing Necessary—Extent of Order.—When the court is satisfied after a full hearing upon the petition and an examination of the proof and allegations of the parties interested, that a sale of the whole or some portion of the real estate is necessary for any of the causes specified in the laws of the state of Washington, or if such sale be assented to by all the persons interested in a decedent's estate, an order must be made to sell the whole or so much and such parts of the real estate described in the petition as the court shall judge necessary or beneficial at either public or private sale. [Cf. L. '91, p. 168, § 2; 2 H. C., § 1175; L. '93, § p. 85, § 2.]

"Public sale": the title of this act relates only to "private sales."

§ 1685. Order of Sale—Procedure Under.—The order of sale must describe the lands to be sold and the terms of sale, which may be for cash or on a credit not exceeding three years, payable in gross or in installments, and in such kind of money, with interest, as the court may direct. The land may be sold in one parcel or in subdivisions, as the executor, administrator or guardian shall judge the most beneficial to the estate, unless the court otherwise specially directs. Every such sale must be ordered to be made at public auction, unless in the opinion of the court it would benefit the estate to sell the whole or some part of such real estate at private sale. The court may, if the same is asked for in the petition, order or direct such real estate or any part thereof to be sold at either public or private sale, as the executor, administrator or guardian shall judge most beneficial for the estate. If the executor, administrator or guardian objects or refuses to make a sale under the order and as directed therein, he may be compelled to sell by order of the court made on motion after due notice by any party interested. [L. '91, p. 168, § 3; 2 H. C., § 1176; L. '93, p. 85, § 3.]

"Public auction": See note to last section.

§ 1686. Notice—Bids, etc.—When a sale of real estate is ordered to be made at private sale, notice of the same must be posted up in three of the most public places in the county in which the land is situated, and published in a newspaper if there is one printed in the same county; if none then in such paper as the court or a

judge thereof may direct, for two weeks successively next before the day on which the sale is to be made, in which the lands and tenements to be sold must be described with common certainty. The notice must state a day on or after which the sale will be made, and a place where offers or bids will be received. The day last referred to must be at least fifteen days from the first publication of notice and the sale must not be made before that day, but must be made within six months thereafter. The bids or offers must be in writing, and may be left at the place designated in the notice, or delivered to the executor or administrator personally, or may be filed in the office of the clerk of the court to which the return of sale must be made, at any time after the first publication of the notice and before the making of the sale. If it be shown that it will be for the best interests of the estate the court or judge may, by an order, shorten the time of notice, which shall not, however, be less than one week, and may provide that the sale may be made on or after a day less than fifteen, but not less than eight days from the first publication of the notice of sale, and the sale may be made to correspond with such order. [Cf. L. '91, p. 169, § 4; 2 H. C., § 1177; L. '93, p. 86, § 4.]

§ 1687. Sale, Price Necessary to Obtain.—No sale of real estate at private sale shall be confirmed by the court unless the sum offered is at least ninety per cent of the appraised value thereof, nor unless such real property has been appraised within one year of the time of such sale. If it has not been so appraised, or if the court is satisfied that the appraisement is too high or low, appraisers may be appointed, and they must make an appraisement thereof in the same manner as in case of an original appraisement of an estate; this may be done at any time before the sale or the confirmation thereof. [Cf. L. '91, p. 169, § 5; 2 H. C., § 1178; L. '93, p. 86, § 5.]

§ 1688. Security on Credit Sales.—The executor, administrator, or guardian must, when the sale is made upon a credit, take the notes of the purchaser for the purchase money with a mortgage on the property to secure their payment. [Cf. L. '91, p. 169, § 6; 2 H. C., § 1179; L. '93, p. 86, § 6.]

§ 1689. Return of Sale—Hearing—Vacation of.—The executor, administrator or guardian after making such sale of real property must make a return of his proceedings to the court, which must be filed in the office of the clerk within ten days. A hearing upon the return of the proceedings may be asked for by any interested party by petition, and thereupon the court or judge must fix the day for a hearing, of which notice of at least ten days must be given by the clerk, by notices posted in three public places in the county or by publication in a newspaper, or both, as the court or

judge shall direct, and must briefly indicate the land sold, the sum for which it was sold, and must refer to the return for further particulars. Upon the hearing the court must examine the return and witnesses in relation to the same, and if the proceedings were unfair or the sum bid disproportionate to the value, and if it appear that a sum exceeding such bid at least ten per cent, exclusive of the expenses of a new sale, may be obtained, the court may vacate the sale and direct another to be had, of which notice must be given and the sale in all respects conducted as if no private sale had taken place. If an offer of ten per cent more in amount than that named in the return be made to the court in writing by a responsible person, it is in the discretion of the court to accept such offer and confirm the sale to such person or to order a new sale. [Cf. L. '91, p. 170, § 7; 2 H. C., § 1180; L. '93, p. 87, § 7.]

§ 1690. Objections to Confirmation.—When the return of the sale is made and filed, any person interested in the estate may file written objections to the confirmation thereof and may be heard thereon when the return is heard by the court or judge, and may produce witnesses in support of his objections. [Cf. L. '91, p. 170, § 8; 2 H. C., § 1181; L. '93, p. 87, § 8.]

§ 1691. Confirmation—Conveyance.—If it appears to the court that the sale was legally made and fairly conducted, and that the sum bid was not disproportionate to the value of the property sold, and that a greater sum, as above specified, cannot be obtained, or if the increased bid in section 1689 of this chapter be made and accepted by the court, the court must make an order confirming the sale and directing conveyances to be executed. [Cf. L. '91, p. 170, § 9; 2 H. C., § 1182; L. '93, p. 87, § 9.]

§ 1692. Other Provisions Applicable.—In all other respects such sale shall be governed by the laws of the state of Washington now in force governing the sale of real property belonging to such estates. [Cf. L. '91, p. 171, § 10; 2 H. C., § 1183; L. '93, p. 88, § 10.]

See references to § 1683, supra.

CHAPTER XXI.

The Validity of Sales of Estates.

§ 1693. Sales not Void on Account of Irregularity.—In case of an action relating to any estate sold by an executor, administrator, or guardian, in which an heir or person claiming under the deceased, or in which the ward or any person claiming under him, shall contest the validity of the sale, it shall not be voided on account of any irregularity in the proceedings: Provided, it appears,—

1. That the executor, administrator, or guardian was ordered to make the sale by the probate or superior court having jurisdiction of the estate;

2. That he gave a bond which was approved by the probate or superior judge, in case a bond was required upon granting the order;

3. That he gave notice of the time and place and sale, as in the order and by law prescribed; and

4. That the premises were sold accordingly, by public auction, and the sale confirmed by the court, and that they are held by one who purchased them in good faith. [L. '90, p. 82, § 2; 1 H. C., § 3066.]

Cited in 7 Wash. 380, 381; 8 Wash. 105; 23 Wash. 192; 27 Wash. 134; 34 Wash. 311, 312.

§ 1694. Conveyance Valid if Sale Authorized by Court.—If the validity of a sale is drawn in question by a person claiming adversely to the title of the deceased, or the ward, or claiming under a title that is not derived from or through the deceased or ward, the sale shall not be void on account of any irregularity in the proceedings, if it appears that the executor, administrator, or guardian was licensed to make the sale by a probate or superior court having jurisdiction of the estate, and that he did, accordingly, execute and acknowledge, in legal form, a deed for the conveyance of the premises. [L. '90, p. 82, § 3; 1 H. C., § 3067.]

Cited in 56 Wash. 171.

§ 1695. Chapter Applies to Past as Well as Future Sales.—This chapter shall apply to sales heretofore as well as hereafter made, and all sales heretofore made in conforming with the provisions of this chapter are declared valid. [L. '90, p. 82, § 4; 1 H. C., § 3068.]

CHAPTER XXII.

The Adoption of Children.

§ 1696. Petition for Leave to Adopt.—Any inhabitant of this state, not married, or any husband and wife jointly, may petition the superior court of their proper county for leave to adopt and change the name if desired, of any child under the age of twenty-one years, but a written consent must be given to such adoption by the child, if of the age of fourteen years, and by each of his or her living parents who is not hopelessly insane or a confirmed drunkard. If there be no such parents, or if the parents be unknown, or shall have abandoned such child, or if such parents, or either of them, are hopelessly insane, or a confirmed drunkard, then by the legal guardian; if there be no such guardian, then by a discreet and suitable person appointed by said court to act in the proceedings as

the next friend of such child: Provided, however, that if the parents are living separate and apart, the consent of both is not required, but such consent may be given by the parent having the care, custody and control of such child; And provided further, that either spouse may adopt a child of the other. [L. '05, p. 296, § 1. Cf. L. '75, pp. 110-112; L. '79, p. 136, § 1; Cd. '81, § 1667; 1 H. C., § 1418; L. '97, p. 46, § 1.]

Cited in 14 Wash. 246; 42 Wash. 414; 43 Wash. 189; 78 Wash. 579; 85 Wash. 619.

§ 1697. Separate Examination of Wife.—If the petition be filed by husband and wife, the court shall examine the wife separate and apart from her husband, and shall refuse leave for such adoption, unless the court shall be satisfied, from such examination, that the wife, of her own free will and accord, desire such adoption. [L. '79, p. 136, § 2; Cd. '81, § 1668; 1 H. C., § 1419.]

§ 1698. Order Confirming Adoption.—Upon the compliance with the foregoing provisions, if the court shall be satisfied of the ability of the petitioner or petitioners to bring up and educate the child properly, having reference to the degree and condition of the child's parents, and shall be satisfied of the fitness and propriety of such adoption, the court shall make an order setting forth the facts and declaring that from that date such child, to all legal intents and purposes, is the child of the petitioner or petitioners, and that the name of the child is hereby changed. [L. '79, p. 136, § 3; Cd. '81, § 1669; 1 H. C., § 1420.]

Cited in 60 Wash. 520.

§ 1699. Effect of Adoption—Descent of Property.—By such order the natural parents shall be divested of all legal rights and obligations in respect to such child, and the child shall be free from all legal obligations of obedience and maintenance in respect to them, and shall be, to all intents and purposes, the child and legal heir of his or her adopter or adopters, entitled to all rights and privileges and subject to all the obligations of a child of the adopter or adopters begotten in lawful wedlock: Provided, that on the decease of parents who have adopted a child or children under this chapter, and the subsequent decease of such child or children without issue, the property of such adopting parents shall descend to their next of kin, and not to the next of kin of such adopted child or children. [L. '79, p. 137, § 4; Cd. '81, § 1670; 1 H. C., § 1421.]

Cited in 38 Wash. 389; 45 Wash. 50, 51.

CHAPTER XXIII.

Protection of Orphan, Homeless, or Neglected Children.

§ 1700. Adoption by Incorporated Societies.—Any benevolent or charitable society incorporated under the laws of this state for the purpose of receiving, caring for or placing out for adoption, or improving the condition of orphan, homeless, neglected or abused minor children of this state shall have authority to receive, control, and dispose of children under eighteen (18) years of age under the following provisions:

(a) When the father and mother or the person or persons legally entitled to act as guardian of the person of any minor child shall, in writing, surrender such child to the charge and custody of said society, such child shall thereafter be in the legal custody of such society for the purposes herein provided.

(b) In case of death or legal incapacity of a father or his abandonment or neglect to provide for his family, the mother shall have authority to make such surrender, and in case of the death or legal incapacity of a mother, or her abandonment of such child, then the father shall have authority to make such surrender.

(c) In all cases where the person or persons legally authorized to make such surrender are not known, any judge of superior court may cause a notice of hearing to be published in any newspaper of general circulation printed and published in the county, and if he deems it best for such orphan, homeless, neglected or abused child, he may surrender it to any benevolent or charitable society incorporated under the laws of Washington and having for its object the care of such children.

(d) When any child shall have been surrendered in accordance with any of the preceding clauses and such child shall have been accepted by such society, then, (but not otherwise), the rights of its natural parents or of the guardian of its person (if any) shall cease and such corporation shall become entitled to the custody of such child, and shall have authority to care for and educate such child or place it either temporarily or permanently in a suitable private home in such manner as shall best secure its welfare. Such corporation shall have authority when any such child has been surrendered to it in accordance with any of the preceding provisions, and it is still in its control, to consent to its adoption under the laws of Washington. The custody or control of any such child by any such corporation or by any other corporation, institution, society or person may be inquired into, and, in the discretion of the court, terminated at any time by the superior court of the county where the child may be, upon the complaint of any person, and a showing

that such custody is not in the interest of the child. [L. '03, p. 58, § 1.]

See L. '99, pp. 9–12, repealed by this act, § 9.

§ 1701. Issue of Warrant for Taking Child into Custody—Proceedings.—Upon complaint of any person in writing other than an officer or agent of such society or corporation to any judge of the superior court giving the names and residences of the parents, guardian (if any) or the next of kin of such child, so far as known, and alleging that the father of such minor child is dead, or has abandoned his family or is an habitual drunkard or is a man of notoriously bad character, or is imprisoned for crime, or has grossly abused or neglected such child, and that the mother of such child is an habitual drunkard or imprisoned for crime, or an inmate of a house of ill-fame, or a woman of notoriously bad character or is dead, or has abandoned her family, or has grossly abused or neglected such child, and alleging that the welfare of such child requires that legal steps be taken to provide for its care and custody, a warrant shall issue directing the proper officer, to take such child into custody and care for or dispose of it as such judge shall direct, until a hearing can be had, such proceedings shall have precedence of other causes, of which hearing not less than five days' notice shall be given to such parents, guardian or next of kin and such judge shall hear the allegations of the complaint and all testimony offered for or against the same and determine whether in his judgment there is cause for a change in the care and custody of such child. If the judge shall decide to change the care and custody of such child, he may commit the child to the care and custody of any such benevolent society contemplated in this act which is willing to receive it, and such commitment shall carry with it the same powers and authority as above provided in case of voluntary surrender, or he may enter in such findings and transmit the papers and a transcript of his proceedings to the county commissioners of the county in which the case arises and surrender such child to the care and custody of such commissioners and it may be disposed of without further notice to the parents, guardian or next of kin. [L. '03, p. 60, § 2.]

Cited in 60 Wash. 15, 16.

§ 1702. County Charges—Surrender to Society.—When any minor is a county charge, the board of county commissioners, if they think the welfare of the child demands it, may surrender such child to the care and custody of any benevolent society or corporation without the consent of its parents unless within twenty days after the notice of the intention of such commissioners so to do, given in

writing to parents, guardian or next of kin of such child so far as known, to said commissioners, such parents, guardian or next of kin shall provide for such child and relieve the county thereof and when any child has been so surrendered by the county commissioners, it may be disposed of as herein provided for the disposition of other children. [L. '03, p. 60, § 3.]

§ 1703. Investigation of Neglect — Duty of Police.—When any officer or agent of any such society shall request a police officer or other peace officer, to investigate or assist in the investigation of any alleged case of any such neglected or abused child, such officer shall immediately make or assist in such investigation and if he deem it proper shall forthwith take such child into custody without warrant, taking such child and reporting such case at once to the judge of the superior court for such proceedings as may be proper under the provisions of this chapter. [L. '03, p. 61, § 4.]

§ 1704. Minor Convicted of Offense—Rights of Parent.—When any minor under eighteen years of age shall be convicted on any charge, the punishment for which may be imprisonment or confinement in the reform school, the judge of the superior court, if he finds that the good of such minor demands it, and such minor is an orphan, or a homeless, neglected or abused minor within the terms of this act, or is a county charge, or the parents or guardian of such minor consent thereto, may suspend sentence and surrender the custody of such minor to any society, as is contemplated in this act, when such society is willing to receive such minor, until such minor shall attain the age of majority, or for a term of years to be fixed in the order of surrender, and such society may find a home for such minor and surrender his custody to the person providing such home for the term fixed in said order of surrender, which surrender by the society shall be approved by an order of said court: Provided, that nothing in this section shall be held to affect the natural rights of said minor or of his parents or guardian, except in the matter of his custody: and provided further, that if said minor shall fail to conform to the order of court fixing his custody, he may be apprehended and brought before the court, and the court may sentence said minor as provided by law, or resurrender him as the court may deem best for the interests of said minor. [L. '03, p. 61, § 5.]

§ 1705. Society not to Act as Guardian.—Nothing in this chapter shall entitle any such society to act as guardian or to have control of the estate of any minor child. [L. '03, p. 62, § 6.]

§ 1706. Hearing on Habeas Corpus—Evidence.—Upon the hearing of any writ of habeas corpus for the custody of any such child,

if it appears that such child has been surrendered to any such corporation under the provisions of this chapter, such surrender shall be taken as prima facie evidence that such child was legally and properly surrendered to such corporation and that such corporation is entitled to the custody and control of such child under the provisions of this chapter. [L. '03, p. 62, § 7.]

Cited in 60 Wash. 17.

§ 1707. County Charges—County to Pay Expenses.—The board of county commissioners shall pay the expenses of bringing the child before the court and caring for it pending a hearing under this act; when a child is surrendered to a benevolent society under the provisions of this act by the superior court, the county shall pay such society a reasonable compensation for the temporary care of such child until it is placed in a family but not to exceed fifty [$50] dollars in each case. No clerk, sheriff, police officer, member of the board of county commissioners or agent of any such society shall charge or be allowed to charge any costs whatever in these proceedings, except where a complaint shall be adjudged to be without sufficient cause and malicious, in which event all costs shall be taxed against the complainant: Provided, that the provisions of this section shall not apply to cases under section 1704. [L. '03, p. 62, § 8.]

CHAPTER XXIV.

Habitual Drunkards.

§ 1708. Who may be Adjudged an Habitual Drunkard.—Any person addicted to the use of intoxicating liquors may, upon complaint thereof, or upon certificate of a justice of the peace, as hereinafter provided, be adjudged an habitual drunkard. [Cf. L. '79, p. 113, § 1; Cd. '81, § 1673; L. '83, p. 32, § 1; 1 H. C., § 2523.]

§ 1709. Complaint, Who may Make.—Either the father, husband, mother, wife, son or daughter of any person addicted to the excessive use of intoxicating liquors or any person in the interest of the relative aggrieved, or of the general public, may make complaint to the superior court of the county, wherein such person so addicted resides, that the person complained of is an habitual drunkard, and that in consequence thereof, such person is squandering his earnings or property, or that he neglects his business, or that he abuses or maltreats his family, which complaint must be verified by the oath of the complainant to the effect that the same is true. And every justice of the peace in whose court any person shall have been convicted twice on a charge of being drunk, or drunk and disorderly, shall certify to the superior court of the county in which he resides, that said person has thus twice been convicted. [Cf.

L. '79, p. 113, § 2; L. '81, p. 13, § 1; Cd. '81, § 1674; L. '83, p. 32, § 1; 1 H. C., § 2524.]

§ 1710. Summons—Hearing.—Upon filing of the complaint, duly verified, the superior judge shall cause a copy thereof to be served upon the accused forthwith, and shall summon him to appear and answer, giving at least ten days' notice; and if upon the hearing of the evidence the allegations of the complaint are sustained, or upon filing a certificate of a justice of the peace, as above provided, such judge shall, in open court, declare the accused to be an habitual drunkard, and shall cause the proceeding to be entered in full upon the records of the court. [Cf. L. '79, p. 114, § 3; L. '81, p. 13, § 2; Cd. '81, § 1672; L. '83, p. 32, § 1; 1 H. C., § 2525.]

§ 1711. Fees of Officers—Costs.—The same fees shall be allowed to the superior court, justice of the peace, and the sheriff or constable, in all proceedings under the foregoing section [§ 1710] of this chapter, as are allowed by law for like processes and services, and like fees for witnesses, as in civil cases before justice of the peace; and if the complaint is not sustained, the person making the complaint shall pay the costs; and in case the complaint is sustained, the person accused shall pay the costs. [Cf. L. '79, p. 114, § 4; L. '81, p. 13, § 3; Cd. '81, § 1673; L. '83, p. 32, § 1; 1 H. C., § 2526.]

§ 1712. Penalty for Selling Liquor to Habitual Drunkard.—Any person who shall sell or give any intoxicating liquors to any habitual drunkard, as defined in the foregoing section [§ 1708] of this chapter, shall be deemed guilty of a misdemeanor, and on conviction thereof, by any court having criminal jurisdiction, shall be fined in any sum not less than fifty dollars or more than three hundred dollars, or be imprisoned in the county jail not less than one or more than six months, at the discretion of the court. [L. '79, p. 114, § 5; Cd. '81, § 1674; 1 H. C., § 2527.]

§ 1713. Liability for Furnishing Liquor to Habitual Drunkard.—Any person who shall be injured in person or property or means of support by any habitual drunkard, as defined by this chapter, while in a state of intoxication, or in consequence of such intoxication, shall have a right of action in his or her own name, severally or jointly against any person or persons who shall, by selling or giving intoxicating liquors to such habitual drunkard, have caused his intoxication, in whole or in part, and such person selling or giving such intoxicating liquors as aforesaid shall be liable severally or jointly for all damages sustained, and the same may be recovered in a civil action. A married woman may bring such action in her own name, and all damages recovered by her shall inure to her

separate use, and all damages recovered by a minor under this chapter shall be paid either to such minor or to such person in trust for him or her as the court may direct. [L. '79, p. 114, § 6; Cd. '81, § 1675; 1 H. C., § 2528.]

Compare §§ 6289–6291, civil remedies against liquor dealers.

§ 1714. List of Habitual Drunkards to be Posted.—It shall be the duty of the superior judge of each county to furnish a list of the names of all persons adjudged habitual drunkards, to all parties licensed to sell, by retail, intoxicating liquors in such county, and such retail dealer shall keep posted up in some conspicuous place in his place of business a list of such habitual drunkards. A person failing to keep such list so posted shall forfeit his license, and if he thereafter sells intoxicating liquors, he shall be punished as if selling without a license. [Cf. L. '81, p. 14, § 4; Cd. '81, § 1676; L. '83, p. 32, § 1; L. '86, p. 160, § 1; 1 H. C., § 2529.]

§ 1715. Order, How Vacated.—Any person so declared to be an habitual drunkard may, at any time after the expiration of two years from the time he was so declared to be such, by a petition addressed to the judge of the court in which he was so adjudged, have a hearing in such court, upon a day which shall be by such court set, which day shall not be more than ten days after the filing of such petition in such court, which petition may contain a statement of facts tending to show the improved condition and habits of such petitioner and to establish his character for sobriety, and a prayer that the order on record so declaring him to be such habitual drunkard be vacated and he be released from the effects thereof; which petition shall be duly verified by the petitioner. And if upon the hearing of such petition, and the evidence in support thereof, it appear to the judge that such petitioner is entitled to have such record vacated and be so released, then he shall make an order so declaring that such record be vacated and annulled, and that the petitioner be thereafter released from the effects thereof. [L. '81, p. 14, § 4; Cd. '81, § 1677; 1 H. C., § 2530.]

CHAPTER XXV.

Estates of Absentees.

§ 1715–1. Petition—Notice—Hearing—Appointment of Trustee.—Whenever it shall be made to appear by petition to any judge of the superior court of any county that there is property in such county, either real or personal, that requires care and attention, or is in such a condition that it is a menace to the public health, safety or welfare, or that the custodian of such property appointed by the owner thereof is either unable or unwilling to continue longer in the

care and custody thereof, and that the owner of such property has absented himself from the county and that his whereabouts is unknown and cannot with reasonable diligence be ascertained, which petition shall state the name of the absent owner, his approximate age, his last known place of residence, the circumstances under which he left and the place to which he was going, if known, his business or occupation and his physical appearance and habits so far as known, the judge to whom such petition is presented shall set a time for hearing such petition not less than six weeks from the date of filing, and shall by order direct that a notice of such hearing be published for three successive weeks in a newspaper published in the county where such petition is filed and in such other counties and states as will in the judgment of the court be most likely to come to the attention of the absentee or of persons who may know his whereabouts, which notice shall state the object of the petition and the date of hearing, and set forth such facts and circumstances as in the judgment of the court will aid in identifying the absentee, and shall contain a request that all persons having knowledge concerning the absentee shall advise the court of the facts. If it shall appear at such hearing that the whereabouts of the absentee is unknown, but there is reason to believe that upon further investigation and inquiry he may be found, the judge may continue the hearing and order such inquiry and advertisement as will in his discretion be liable to disclose the whereabouts of the absentee, but when it shall appear to the judge at such hearing or any adjournment thereof that the whereabouts of the absentee cannot be ascertained, he shall appoint a suitable person resident of the county as trustee of such property, taking into consideration the character of the property and the fitness of such trustee to care for the same, preferring in such appointment the husband or wife of the absentee to his presumptive heirs, the presumptive heirs to kin more remote, the kin to strangers, and creditors to those who are not otherwise interested, provided they are fit persons to have the care and custody of the particular property in question and will accept the appointment and qualify as hereinafter provided. [L. '15, p. 132, § 1.]

§ 1715–2. Inventory and Appraisal—Bond.—The trustee so appointed shall make, subscribe and file in the office of the clerk of the court an oath for the faithful performance of his duties, and shall, within such time as may be fixed by the judge, prepare and file an inventory of such property, and the judge shall thereupon appoint three disinterested and qualified persons to appraise such property, and report their appraisement to the court within such time as the court may fix. Upon the coming in of the inventory and appraisement, the judge shall fix the amount of the bond to be given

by the trustee, which bond shall in no case be less than the appraised value of the personal property and the annual rents and profits of the real property, and the trustee shall thereupon file with the clerk of the court a good and sufficient bond in the amount fixed and with surety to be approved by the court, conditioned for the faithful performance of his duties as trustee, and for accounting for such property, its rents, issues, profits and increase. [L. '15, p. 134, § 2.]

§ 1715–3. Reports of Trustee.—The trustee shall, at the expiration of one year from the date of his appointment and annually thereafter and at such times as the court may direct, make and file a report and account of his trusteeship, setting forth specifically the amounts received and expended and the conditions of the property. [L. '15, p. 134, § 3.]

§ 1715–4. Sale of Property—Application of Income.—If the property or any part thereof be personal property of a perishable nature or property likely to deteriorate in value, or if necessary to pay debts against the absentee which have been duly approved and allowed in the same form and manner as provided for the approving and allowing of claims against the estate of a deceased person the trustee may sell the same under order of the court so to do, at public or private sale, and upon such terms and notice as the court may direct, and shall hold the proceeds of such sale, after deducting the necessary expenses thereof, subject to the order of the court. The trustee is authorized and empowered to, by order of the court, expend the proceeds received from the sale of such property, and also the rents, issues and profits accruing therefrom in the care, maintenance and upkeep of the property, so long as the trusteeship shall continue, and the trustee shall receive out of such property such compensation for his services as may be fixed by the court. [L. '15, p. 134, § 4.]

§ 1715–5. Removal or Resignation of Trustee—Final Account.—The court shall have the power to remove or to accept the resignation of such trustee and appoint another in his stead. At the termination of his trust, as hereinafter provided or in case of his resignation or removal, the trustee shall file a final account, which account shall be settled in the manner provided by law for settling the final accounts of administrators and guardians. [L. '15, p. 135, § 5.]

§ 1715–6. Period of Trusteeship.—Such trusteeship shall continue until such time as the owner of such property shall return or shall appoint a duly authorized agent or attorney in fact to care for such property, or until such time as the property shall be provisionally distributed to the presumptive heirs, or to the devisees and legatees of the absentee as hereinafter provided, or until such time as the

property shall escheat to the state as hereinafter provided. [L. '15, p. 135, § 6.]

§ 1715–7. Distribution to Heirs — Notice of Hearing — Will.— Whenever the owner of such property shall have been absent from the county for the space of five years and his whereabouts are unknown and cannot with reasonable diligence be ascertained, his presumptive heirs at law may apply to the court for an order of provisional distribution of such property, and to be let into provisional possession thereof: Provided, that such provisional distribution may be made at any time prior to the expiration of five years, when it shall be made to appear to the satisfaction of the court that there are strong presumptions that the absentee is dead; and in determining the question of presumptive death, the court shall take into consideration the habits of the absentee, the motives of and the circumstances surrounding the absence, and the reasons which may have prevented the absentee from being heard of. Notice of hearing upon application for provisional distribution shall be published in like manner as notices for the appointment of trustees are published. If the absentee left a will in the possession of any person such person shall present such will at the time of hearing of the application for provisional distribution and if it shall be made to appear to the court that the absentee has left a will and the person in possession thereof shall fail to present it, a citation shall issue requiring him so to do, and such will shall be opened, read, proven, filed and recorded in the case, as are the wills of decedents. [L. '15, p. 135, § 7.]

§ 1715–8. Provisional Distribution — Bond of Distributees.—If it shall appear to the satisfaction of the court upon the hearing of the application for provisional distribution that the absentee has been absent and his whereabouts unknown for the space of five years, or there are strong presumptions that he is dead, the court shall enter an order directing that the property in the hands of the trustee shall be provisionally distributed to the presumptive heirs, or to the devisees and legatees under the will, as the case may be, upon condition that such heirs, devisees and legatees respectively give and file in the court bonds with good and sufficient surety to be approved by the court, conditioned for the return of or accounting for the property provisionally distributed in case the absentee shall return and demand the same, which bonds shall be respectively in twice the amount of the value of the personal property distributed, and in ten times the amount of estimated annual rents, issues and profits of any real property so provisionally distributed. [L. '15, p. 136, § 8.]

§ 1715–9. Final Distribution—Notice of Application.—Whenever the owner of such property shall have been absent from the county for a space of fifteen years and his whereabouts are unknown and cannot with reasonable diligence be ascertained, his presumptive heirs at law or the legatees and devisees under the will, as the case may be, to whom the property has been provisionally distributed, may apply to the court for a decree of final distribution of such property and satisfaction, discharge and exoneration of the bonds given upon provisional distribution. Notice of hearing of such application shall be given in the same manner as notice of hearing of application for the appointment of trustee and for provisional distribution and if at the final hearing it shall appear to the satisfaction of the court that the owner of the property has been absent and unheard of for the space of fifteen years and his whereabouts are unknown, the court shall exonerate the bonds given on provisional distribution and enter a decree of final distribution, distributing the property to the presumptive heirs at law of the absentee or to his devisees and legatees, as the case may be. [L. '15, p. 136, § 9.]

§ 1715–10. Final Settlement — Escheat.—Whenever the owner of such property for which a trustee has been appointed under the provisions of this act shall have been absent and unheard of for a period of fifteen years and no presumptive heirs at law have appeared and applied for the provisional distribution of such property and no will of the absentee has been presented and proven, the trustee appointed under the provisions of this act shall apply to the court for a final settlement of his account and upon the settlement of such final account the property of the absentee shall be escheated in the manner provided by law for escheating property of persons who die intestate leaving no heirs. [L. '15, p. 137, § 10.]

TITLE XI.

APPEALS TO THE SUPREME COURT.

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§ 1716. When Allowed.—Any party aggrieved may appeal to the supreme court in the mode prescribed in this title from any and every of the following determinations, and no others, made by the superior court, or a judge thereof, in any action or proceeding.

(1) From the final judgment entered in any action or proceeding, and an appeal from any such final judgment shall also bring up for

review any order made in the same action or proceeding either before or after the judgment, in case the record sent up on the appeal, or any supplementary record sent up before the hearing thereof, shall show such order sufficiently for the purposes of a review thereof.

(2) From any order refusing to vacate an order of arrest in a civil action.

(3) From an order granting or denying a motion for a temporary injunction, heard upon notice to the adverse party, and from any order vacating or refusing to vacate a temporary injunction: Provided, that no appeal shall be allowed from any order denying a motion for a temporary injunction, or vacating a temporary injunction unless the judge of the superior court shall have found upon the hearing, that the party against whom the injunction was sought was insolvent.

(4) From any order discharging or refusing to discharge an attachment.

(5) From any order appointing or removing, or refusing to appoint or remove, a receiver.

(6) From any order affecting a substantial right in a civil action or proceeding, which either, (1) in effect determines the action or proceeding and prevents a final judgment therein; or (2) discontinues the action; or (3) grants a new trial; or (4) sets aside or refuses to affirm an award of arbitrators, or refers the cause back to them.

(7) From any final order made after judgment, which affects a substantial right; and an appeal from any such order shall also bring up for review any previous order in the same action or proceeding which involves the merits and necessarily affects the order appealed from, in case the record sent up on the appeal, or any supplementary record sent up before the hearing thereof, shall show such previous order sufficiently for the purposes of a review thereof. But an appeal shall not be allowed to the state in any criminal action, except when the error complained of is in setting aside the indictment or information, or in arresting the judgment on the ground that the facts stated in the indictment or information do not constitute a crime, or is some other material error in law not affecting the acquittal of a prisoner on the merits. [L. '93, p. 119, § 1; L. '01, p. 28, § 1.]

Cited in 6 Wash. 261; 7 Wash. 751; 8 Wash. 231; 10 Wash. 13, 42, 66, 153, 163; 12 Wash. 2, 555, 560, 631, 661, 662; 14 Wash. 112; 16 Wash. 442, 445; 17 Wash. 676; 18 Wash. 362, 451, 462, 483, 652; 19 Wash. 119, 196, 355, 629; 20 Wash. 109, 541; 21 Wash. 20, 105, 254, 261, 407; 23 Wash. 249, 722; 24 Wash. 77, 78, 243; 25 Wash. 183, 424; 26 Wash. 42, 281, 299, 331, 434, 435; 28 Wash. 406, 620; 29 Wash. 320; 30 Wash. 45, 384; 31 Wash. 314, 342; 32 Wash. 153, 404, 695; 34 Wash.

58, 647; 35 Wash. 137; 37 Wash. 485; 39 Wash. 374; 40 Wash. 577; 42 Wash. 689; 43 Wash. 22, 36, 113, 560; 45 Wash. 261; 46 Wash. 91, 92; 47 Wash. 184, 186; 49 Wash. 407; 50 Wash. 455; 52 Wash. 552; 54 Wash. 226, 294; 55 Wash. 94, 394; 56 Wash. 68; 57 Wash. 88; 58 Wash. 117, 306; 60 Wash. 222, 278, 613; 61 Wash. 691; 68 Wash. 351; 69 Wash. 441; 71 Wash. 402; 72 Wash. 119, 519; 74 Wash. 690, 692; 76 Wash. 305; 77 Wash. 630; 78 Wash. 661, 673, 674; 80 Wash. 189; 82 Wash. 231, 333, 478; 86 Wash. 177.

§ 1717. Designation of Parties.—The party appealing shall be known as the appellant, and the adverse party as the respondent, and they shall be so designated in all papers in the cause after the notice of appeal shall have been given or served; but the title of the cause shall in other respects remain unchanged. [L. '93, p. 120, § 2.]

Cited in 27 Wash. 177; 49 Wash. 407.

§ 1718. Time of Taking.—In civil actions and proceedings an appeal from any final judgment must be taken within ninety days after the date of the entry of such final judgment; and an appeal from any order, other than a final order, from which an appeal is allowed by this act, within fifteen days after the entry of the order, if made at the time of the hearing, and in all other cases within fifteen days after the service of a copy of such order, with written notice of the entry thereof, upon the party appealing, or his attorney. In criminal causes, an appeal must be taken within ninety days after the entry of final judgment. [L. '15, p. 301, § 3; L. '13, p. 350, § 3; L. '93, p. 120, § 3; L. '95, p. 81, § 1.]

Cited in 10 Wash. 380; 12 Wash. 232, 555; 13 Wash. 225; 15 Wash. 29; 17 Wash. 597; 20 Wash. 541; 21 Wash. 18; 26 Wash. 43, 230, 308; 27 Wash. 28, 317; 32 Wash. 168; 35 Wash. 67; 42 Wash. 688, 689; 49 Wash. 407; 50 Wash. 263, 455; 55 Wash. 395, 597; 56 Wash. 207; 74 Wash. 693; 76 Wash. 305; 84 Wash. 93, 94; 86 Wash. 180; 87 Wash. 449.

§ 1719. Notice of.—A party desiring to appeal to the supreme court under the provisions of this title may, by himself or his attorney, give notice in open court or before the judge, if the judgment or order appealed from is rendered or made at chambers, at the time when such judgment or order is rendered or made, that he appeals from such judgment or order to the supreme court, and thereupon the court or judge shall direct the clerk to make an entry of such notice in the journal of the court. If the appeal be not taken at the time when the judgment or order appealed from is rendered or made, then the party desiring to appeal may, by himself or his attorney, within the time prescribed in section 1718, serve written notice on the prevailing party or his attorney that he appeals from such judgment or order to the supreme court, and within five days after the service of such notice he shall file with the clerk of the superior court the original or a copy of such notice, with proof or

the written admission of the service thereof, and thereupon the clerk shall enter such notice, with the proof or admission of service thereof, in the journal of the court. The giving or service of a notice of appeal as prescribed in this section shall effect the appeal, but the same shall become ineffectual if an appeal bond for costs and damages be not given as required by section 1721 of this title. Two or more appealable orders with or without the judgment may be embraced in one appeal: Provided, that the time allowed in this title for appealing from each of such orders has not expired. The appellant in his notice of appeal shall designate with reasonable certainty from what judgment or orders, whether one or more, the appeal is taken, and if from part of any judgment or order, from what particular part. [L. '93, p. 120, § 4.]

Cited in 9 Wash. 665; 10 Wash. 380; 17 Wash. 366, 609; 18 Wash. 361; 20 Wash. 540, 690, 716; 22 Wash. 22, 695; 23 Wash. 251, 722; 24 Wash. 668; 25 Wash. 183; 26 Wash. 224; 27 Wash. 113; 30 Wash. 312; 32 Wash. 531; 34 Wash. 177, 514, 657; 37 Wash. 457; 42 Wash. 78; 43 Wash. 385; 45 Wash. 134; 48 Wash. 420; 49 Wash. 303, 407; 50 Wash. 587, 588, 592, 593; 57 Wash. 438, 638; 63 Wash. 445; 74 Wash. 688; 82 Wash. 309; 83 Wash. 60; 84 Wash. 458.

§ 1720. Who may Join in Notice.—All parties whose interests are similarly affected by any judgment or order appealed from may join in the notice of appeal whether it be given at the time when such judgment or order is rendered or made, or subsequently; and any such party who has not joined in the notice may at any time within ten days after the notice is given or served, serve an independent notice of like appeal, or join in the appeal already taken by filing with the clerk of the superior court a statement that he joins therein or in some part thereof, specifying in what part. Any such party who does not so join shall not derive any benefit from the appeal unless from the necessity of the case; nor can he independently appeal from any judgment or order already appealed from, more than ten days after service upon him of written notice of the former appeal, unless such former appeal be afterward dismissed. All parties who so join in an appeal after the notice is given or served shall be liable for the expenses thereof, and for costs and damages to the same extent and upon the same conditions as if they had originally joined in the notice. When the notice of appeal is not given at the time when the judgment or order appealed from is rendered or made, it shall be served in the manner required by law for the service of papers in civil actions and proceedings, upon all parties who have appeared in the action or proceeding: Provided, that where the record and files in the cause do not disclose the address of a party on whom notice should be made, or of his attorney, and neither such party nor his attorney can be found within the county in which the judgment or order appealed from was rendered

or made (of which fact a return by the sheriff that they cannot be so found shall be proof), the notice of appeal need not be served on such party, but the appeal may be taken by filing the notice and such sheriff's return with the clerk. Service on an attorney who was the attorney of record for a party in the cause at the time when the judgment or order appealed from was rendered or made, shall be deemed service on such party in all cases where service is required by this title. [L. '93, p. 121, § 5.]

Cited in 4 Wash. 643; 9 Wash. 115; 10 Wash. 153; 11 Wash. 211; 13 Wash. 39; 14 Wash. 277; 15 Wash. 437; 16 Wash. 331; 17 Wash. 366, 575; 18 Wash. 94, 680; 19 Wash. 347; 21 Wash. 516; 24 Wash. 612, 668; 30 Wash. 312; 34 Wash. 156, 514; 37 Wash. 456; 39 Wash. 259; 43 Wash. 132, 384; 49 Wash. 407; 50 Wash. 586–588, 592, 593, 595; 57 Wash. 437, 438; 60 Wash. 516; 76 Wash. 562; 77 Wash. 347; 78 Wash. 559, 600; 81 Wash. 308; 84 Wash. 93, 94; 85 Wash. 556; 87 Wash. 394.

§ 1721. Bond for Costs.—An appeal in a civil action or proceeding shall become ineffectual for any purpose unless at or before the time when the notice of appeal is given or served, or within five days thereafter, an appeal bond to the adverse party conditioned for the payment of costs and damages as prescribed in section 1722, be filed with the clerk of the superior court, or money in the sum of two hundred dollars be deposited with the clerk in lieu thereof. But no bond or deposit shall be required when the appeal is taken by the state, or by a county, city, town or school district thereof, or by a defendant in a criminal action. [L. '93, p. 122, § 6.]

Cited in 11 Wash. 78, 479; 12 Wash. 563; 14 Wash. 323, 403; 15 Wash. 266; 16 Wash. 201; 17 Wash. 367, 702; 20 Wash. 130, 540, 716, 182; 21 Wash. 503; 24 Wash. 126, 613; 26 Wash. 199, 308; 28 Wash. 262, 627; 29 Wash. 582; 30 Wash. 268; 32 Wash. 148, 168; 34 Wash. 642; 36 Wash. 407, 408; 39 Wash. 134; 43 Wash. 384, 481; 45 Wash. 134; 49 Wash. 262; 60 Wash. 645; 65 Wash. 580; 66 Wash. 145; 82 Wash. 309, 363; 84 Wash. 262; 86 Wash. 157, 158.

§ 1722. Bond—Execution, Conditions and Effect of.—The appeal bond must be executed in behalf of the appellant by one or more sufficient sureties, and shall be in a penalty of not less than two hundred dollars in any case; and in order to effect a stay of proceedings as in this section provided, the bond, where the appeal is from a final judgment for the recovery of money, shall be in a penalty double the amount of the damages and costs recovered in such judgment and in other cases shall be in such penalty, not less than two hundred dollars, and sufficient to save the respondent harmless from damages by reason of the appeal, as a judge of the superior court shall prescribe. It shall be conditioned that the appellant will pay all costs and damages that may be awarded against him on the appeal, or on the dismissal thereof, not exceeding two hundred dollars. An appeal shall not stay proceedings on the judgment or order ap-

pealed from or on any part thereof, unless the original or a subsequent appeal bond be further conditioned that the appellant will satisfy and perform the judgment or order appealed from in case it shall be affirmed, and any judgment or order which the supreme court may render or make, or order to be rendered or made by the superior court, and (where such condition is applicable) shall pay all rents of or damages to property accruing during the pendency of the appeal, out of the possession of which any respondent shall be kept by reason of the appeal. If the bond is intended to stay proceedings on only a part of the judgment or order it shall be varied so as to secure the part stayed alone. When such bond, further conditioned as hereinabove prescribed, has been filed the appeal shall operate so long as it shall remain effectual under the provisions of this title to stay proceedings upon the judgment or order appealed from; but in case of an appeal from an order other than an order granting a new trial, no appeal or appeal bond shall operate to stay proceedings in the cause except proceedings upon the order appealed from; and no appeal or stay shall vacate or affect any part of a judgment or order not appealed from and where an appeal is taken from an order vacating a temporary injunction, the appellant cannot proceed further in the cause in the superior court during the pendency of the appeal, except so far as may be rendered necessary by proceedings of an adverse party. [L. '93, p. 122, § 7.]

Cited in 11 Wash. 78, 367; 14 Wash. 52, 366; 15 Wash. 266, 344; 17 Wash. 99; 18 Wash. 237; 20 Wash. 130; 21 Wash. 362, 504; 22 Wash. 104; 25 Wash. 629; 28 Wash. 362; 29 Wash. 622; 30 Wash. 233, 330; 26 Wash. 199, 308; 32 Wash. 637, 697; 34 Wash. 125; 35 Wash. 413; 37 Wash. 446; 38 Wash. 190; 42 Wash. 168; 43 Wash. 385; 46 Wash. 319; 48 Wash. 23, 421; 49 Wash. 407; 56 Wash. 92; 59 Wash. 162; 60 Wash. 645, 664; 62 Wash. 169; 66 Wash. 349; 70 Wash. 332, 336, 338, 522; 82 Wash. 363; 86 Wash. 52, 157, 158.

§ 1723. Temporary Injunction to Remain in Force, When.—In all cases where a final judgment shall be rendered by any superior court of this state in a cause wherein a temporary injunction has been granted, and the party at whose instance such injunction was granted shall appeal from such judgment, such injunction shall remain in force during the pendency of such appeal, if, within five days after service on him of notice of the entry of the final judgment, such appellant shall file with the clerk of the superior court a bond, with one or more sufficient sureties, in a penalty to be fixed by said court, conditioned that the appellant shall pay to the respondent all costs and damages that may be adjudged against the appellant on the appeal, and all costs and damages that may accrue to the respondent by reason of the injunction remaining in force. [L. '93, p. 123, § 8.]

Cited in 15 Wash. 269; 30 Wash. 202; 43 Wash. 229; 56 Wash. 22; 70 Wash. 522; 71 Wash. 5.

§ 1724. Injunction Where Appeal to United States Supreme Court.—In all cases where a final judgment shall be rendered by the supreme court of this state in a cause wherein a temporary or final injunction has been granted and the party at whose instance such injunction was granted shall appeal from such judgment to the supreme court of the United States, such injunction shall remain in force during the pendency of such appeal, if, within sixty days after the rendition of such judgment of the supreme court of this state, such appellant shall file with the clerk of the supreme court a bond, with one or more sufficient sureties, in a penalty to be fixed by said court, conditioned that the appellant shall pay to the respondent all costs and damages that may be adjudged against the appellant on appeal, and all costs and damages that may accrue to the respondent by reason of the injunction remaining in force. [L. '93, p. 124, § 9.]

§ 1725. Justification of Sureties.—An appeal bond, whether conditioned so as to effect a stay of proceedings or not, shall be of no force unless accompanied by the affidavit of the surety or sureties therein attached thereto, in which each surety shall state that he is a resident of this state and is worth a certain sum mentioned in such affidavit, over and above all debts and liabilities, in property within this state, exclusive of property exempt from execution, and which sums so sworn to by the surety or sureties, shall be at least equal to the penalty named in the bond if there be but one surety, or shall amount in all to at least twice such penalty if there be more than one surety. [L. '93, p. 124, § 10.]

Cited in 12 Wash. 563; 18 Wash. 658; 33 Wash. 88; 65 Wash. 568.
See infra, § 6240, bonds by surety companies.

§ 1726. Exception to Surety — Certificate — New Bond.—Any respondent may except to the sufficiency of the surety or sureties in an appeal bond, within ten days after the service on him of the notice of appeal or within five days after the service on him of the bond or written notice of the filing thereof, by serving on the appellant a notice stating that he so excepts, and specifying a place at the county seat, and a time, not less than three nor more than ten days distant, at which the surety or sureties are required to attend before the superior court in which the judgment or order appealed from was rendered or made, or before a judge thereof, and to justify their sufficiency as sureties. At the time and place named in such notice, or to which the proceedings may be thence adjourned by the court or judge, the surety or sureties must attend before the court or judge, and may be then and there examined in detail, under oath, as to their property and other qualifications as sureties, by any respondent or by the judge, or by both. If the judge upon such examination is satisfied that the surety or sureties are qualified as

such, to the extent to which they are required by section 1723 of this title to make affidavit, then he shall make a certificate to that effect indorsed upon or attached to the bond, which shall thereupon stand as a sufficient appeal bond to the effect expressed in the condition thereof; but if he is not so satisfied, or if the sureties fail to attend and justify, then the judge shall in like manner certify to that effect, and thereupon the bond shall become void: Provided, that in such case the appellant may, within five days after the making of such certificate, file a new appeal bond, in conformity with the requirements of this title, and subject to the requirement of justification of the sureties therein, as hereinabove provided; but in case such new appeal bond be found insufficient, no new bond can thereafter be filed in lieu thereof. In case the original or new appeal bond be not conditioned so as to effect a stay of proceedings, however, an additional appeal bond may be filed at any time thereafter when the appellant desires to effect a stay as provided in this title, during the pendency of the appeal. The examination of the sureties taken upon their justification shall be reduced to writing and subscribed by the sureties, if either party so requires, and attached to the certificate made thereon. [L. '93, p. 125, § 11.]

Cited in 11 Wash. 70; 12 Wash. 23, 683; 17 Wash. 110; 18 Wash. 668; 20 Wash. 304; 21 Wash. 433; 24 Wash. 613; 25 Wash. 146; 27 Wash. 381; 28 Wash. 262; 33 Wash. 198; 34 Wash. 511; 60 Wash. 646.

§ 1727. Execution Countermanded, When.—When an appeal bond is conditioned so as to effect a stay of proceedings if execution has issued the clerk shall on demand of the appellant, issue to the sheriff a certificate that proceedings have been stayed, which shall countermand the execution; and thereupon the sheriff shall release any property levied on and not already sold, and return the execution into court. [L. '93, p. 126, § 12.]

§ 1728. Application for New Bond.—If any respondent shall have cause to believe, after any appeal bond shall have been filed and the sureties therein have justified or the time for requiring their justification has expired, that the sureties have since become disqualified as such, so that the bond is no longer an adequate security, he may apply by motion to the supreme court to require a new or additional bond; and upon the hearing of such motion the court may receive evidence in support of and in opposition to the motion in such manner, and may make such order thereon, as it shall deem proper. [L. '93, p. 126, § 13.]

Cited in 48 Wash. 428.

§ 1729. Record — What Constitutes — Duties of Clerk.—Within ninety days after an appeal shall have been taken by notice as provided in this title, the clerk of the superior court shall prepare, cer-

tify and file in his office, at the expense of the appellant (except in criminal appeals prosecuted in forma pauperis, and in such cases at the expense of the county), a transcript containing a copy of so much of the record and files as the appellant shall deem material to the review of the matters embraced within the appeal, said transcript to be so prepared, certified and filed, in the office of the clerk, at or before the time when the appellant shall serve and file his opening brief, as hereinafter provided. Within four months after said appeal shall have been taken by notice as aforesaid, the clerk of the superior court shall at the expense of appellant, send up to the supreme court said transcript together with the original briefs on appeal filed in his office. The papers and copies so sent up together with any thereafter sent up as hereinbelow provided, shall constitute the record on appeal. Any bill of exceptions or statement of facts on file when the record is so sent up shall be sent up as a part thereof, unless the superior court or a judge thereof has not yet passed on an application for the settlement and certifying of such bill or statement. In case any bill of exceptions or statement of facts shall be filed or certified, or any other addition to the records or files shall be made after the record on appeal shall have been sent up, a supplementary record on appeal embracing so much thereof as the appellant deems material, or a copy thereof may be prepared, certified and sent up at any time prior to the hearing of the appeal. And in case the respondent deems any part of the files or record not already sent up to be material to the review of the matters embraced within the appeal, he may cause the clerk, in like manner, at his expense, to prepare, certify and send up a supplementary record on appeal embracing such omitted files or records, or copies thereof, at any time prior to the hearing of the appeal. Any such supplementary record or records, if filed in the supreme court prior to the hearing of the appeal, shall be considered by the court as part of the record on appeal, so far as the same may be material to a review of the matters embraced within the appeal. When the review of an original paper in the cause may be important to a correct decision of the appeal, the court or judge may order the clerk to transmit the same to the clerk of the supreme court and the same shall be transmitted accordingly, and shall be under the control of the supreme court. [L. '93, p. 126, § 14; L. '01, p. 29, § 2.]

Cited in 8 Wash. 393; 11 Wash. 142; 16 Wash. 274; 20 Wash. 407; 23 Wash. 261; 26 Wash. 494; 30 Wash. 159; 31 Wash. 537; 32 Wash. 695; 34 Wash. 529, 531; 38 Wash. 575; 48 Wash. 7; 63 Wash. 410; 82 Wash. 309.

§ 1730. Time for Filing and Serving Briefs.—Within ninety days after an appeal shall have been taken by notice as provided in this title, the appellant shall serve on the respondent three copies and

shall file with the clerk of the superior court fifteen copies, together with proof or written admission of service, as aforesaid, of a printed brief on the appeal upon his part, which brief shall clearly point out each error that the appellant relies on for a reversal, and shall conform to such regulations of its contents in other respects, and its form and size, as the supreme court by its rules may have prescribed. Within thirty days after the service of the appellant's brief, the respondent shall likewise serve and file with the clerk of the superior court, with like proof of service, the like numbers of copies of a printed brief on the appeal upon his part which shall likewise conform to the rules of the supreme court. Not less than ten days prior to the hearing the appellant may also serve and file either with the clerk of the superior court or in the supreme court like printed brief or briefs, strictly in reply to respondent's brief. The time for service and filing of briefs, as in this section prescribed, may be extended by order of the superior court for good cause shown, or by stipulation of the parties concerned; and if the time for filing any statement of facts shall be extended by order or stipulation, the time herein prescribed for serving and filing the appellant's opening brief shall thereby be correspondingly extended. Either party may after the filing of his briefs and not less than one day prior to the hearing of the appeal submit to the supreme court and to the adverse party a written or printed statement of any additional authorities, with suitable comment thereon strictly in support of the position taken in his brief hereinabove required to be filed. But the appellant shall not be permitted to urge in any such reply brief or statement of additional authorities, or on the hearing, any grounds for reversal not clearly pointed out in his original brief. [L. '93, p. 127, § 15; L. '01, p. 30, § 3.]

Cited in 12 Wash. 387, 390; 16 Wash. 321; 30 Wash. 58; 34 Wash. 532; 38 Wash. 575; 39 Wash. 33; 42 Wash. 604; 80 Wash. 6.

§ 1730–1. Abstracts of Record—Cost.—The appellant shall, at or before the time when he is required by rule or statute to serve his opening brief, cause to be typewritten and served upon the opposite party an abstract of so much of the record and statement of facts as he may deem necessary to the proper hearing of his assignments of error: Provided, that in all cases in which no testimony is sent up with the record, or in which the statement of facts does not exceed one hundred (100) pages of double space, typewritten evidence, no abstract of record shall be required. Said abstract, in so far as it sets out testimony, shall be condensed into narrative form, without the questions and answers except when necessary for the discussion of evidence. It shall be prepared without notice or hearing thereon, and if the opposite party be not satisfied with it, he

may cause to be typewritten and served, without notice, either before or at the time of serving his answering brief, so much of the record and statement of facts, condensed as above, as he for his part may deem proper for the correction or supplementing of his opponent's abstract. Each party shall pay the cost of typewriting his abstract, and the prevailing party shall be entitled to recover his disbursements therefor as other costs. For any abuse in typewriting excessive or unnecessary matter in the abstract, the supreme court, without regard to which party may prevail, may impose the costs thereof upon the party committing such abuse. The supreme court shall also provide by rule the form of abstracts, the number thereof to be typewritten, and for other particulars thereof, including the time and place of filing the same. [L. '15, p. 300, § 1; L. '13, p. 349, § 1.]

Cited in 78 Wash. 529; 80 Wash. 2, 471, 700; 81 Wash. 133; 82 Wash. 147.

§ 1730-2. Effect of Act.—Nothing in this act contained shall alter in any respect the present manner of settling and certifying statements of fact and bills of exceptions, and such statements and bills shall be transmitted to the supreme court to be referred to in any controversy concerning the accuracy of the abstracts, as well as for reference to exhibits, and for such other uses as the supreme court may find proper in consideration of all matters on appeal. [L. '15, p. 301, § 2; L. '13, p. 350, § 2.]

Cited in 77 Wash. 112.
"Act" refers to §§ 1718, 1730-1 to 1730-9.

§ 1730-4. Extension of Time for Opening Brief.—In all cases in which the abstract of record which, by the terms of this act, is to be served upon the opposite party by the appellant is served within the time limited by existing law, or by any law hereafter passed, for the service of appellant's opening brief, the time for serving appellant's opening brief shall be, by such service of such abstract of record, extended for and until ten days after the service of such abstract of record, providing that the time for serving such opening brief would otherwise have expired within said ten days, and this section shall not be construed to shorten the time for serving of appellant's opening brief. [L. '15, p. 301, § 4.]

§ 1730-5. Extension of Time for Respondent's Brief.—In all cases in which the opposite party is not satisfied with the abstract of record as furnished by the appellant, and in which such opposite party shall serve so much of a record and statement of facts as he shall deem proper for correcting or supplementing of his opponent's abstract, the service thereof shall extend the time as limited by existing law, or by any law hereafter passed for the service of the oppo-

site party's brief for a period of ten days from and after the service of said correcting and supplementing abstract by the opponent, but this section shall not be construed to shorten the time for the serving of the opponent's brief. [L. '15, p. 302, § 5.]

§ 1730–6. Insufficient Abstract—Amendment—Dismissal.—In case the appellant serves an abstract of record and statement of facts within the time limited by this act, and it is found that the same is insufficient and defective under the terms of this act or the rules of the supreme court, the appeal shall not be dismissed by reason thereof, but the appellant may be allowed to file an amended or supplementary abstract as may be required by the facts of the case within such time and upon such terms as may be fixed by the order of the supreme court, and if the appellant fails to comply with the order of the court in regard thereto, then the appeal may be dismissed by reason and because of such failure to comply with the order of the supreme court in regard thereto. [L. '15, p. 302, § 6.]

§ 1730–7. Order of Filing and Serving Immaterial.—Whenever any statute heretofore or hereafter enacted requires a motion for a new trial, statement of facts, bill of exceptions, notice of appeal or other documents concerning appeals or constituting a part of the record of appeals to the supreme court, or to any other tribunal having appellate jurisdiction, to be filed and served or served and filed, the serving and filing shall be equally valid and effective whether the document shall be filed or served first and no appeal shall be dismissed because of the order of the filing and serving. [L. '15, p. 302, § 7.]

§ 1730–8. Extension of Time — Filing Abstract or Statement of Facts.—In case of a failure of the appellant to serve an abstract of record and statement of facts, or the one served is insufficient, the supreme court shall, if such failure is found to be excusable, allow the appellant a reasonable time, upon such terms as the court may impose, in which to supply such abstract of record and statement of facts. [L. '15, p. 303, § 8.]

§ 1730–9. Defects in Appeal Bond — New Bond.—When a notice of appeal to the supreme court shall have been served and filed in due time and an appeal bond shall have been given within the time required by law, no appeal shall be dismissed because of any defect in the appeal bond, nor because an appeal bond which is given both as a cost bond and as a bond on supersedeas shall be insufficient by reason of the amount, but the appellant shall in all cases be allowed to give a new bond within such time and upon such terms as the court may order. [L. '15, p. 303, § 9.]

§ 1731. Jurisdiction, Effect of Appeal upon.—Upon the taking of an appeal by notice as provided in this title, and the filing of a bond to render the appeal effectual, the supreme court shall acquire jurisdiction of the appeal for all necessary purposes, and shall have control of the superior court and of all inferior officers in all matters pertaining thereto, and may enforce such control by a mandate or otherwise, and, if necessary, by fine and imprisonment, which imprisonment may be continued until obedience shall be rendered to the mandate of the supreme court. But the superior court shall, nevertheless, retain jurisdiction for the purpose of all proceedings by this act provided to be had in such court, and for the purpose of settlement and certifying the bills of exceptions and statements of facts, and for all purposes in so far as the cause is not affected by the appeal. [L. '93, p. 128, § 16.]

Cited in 12 Wash. 565; 26 Wash. 124; 29 Wash. 621; 56 Wash. 23; 64 Wash. 142; 71 Wash. 76, 398; 80 Wash. 110; 83 Wash. 673.

§ 1732. Calendar, How Prepared.—All appeals in which the record shall have [been] filed in the supreme court at least ten days before the beginning of any stated session of the court, shall be placed on the calendar of the court for hearing at such session; and the subsequent filing of a supplementary record shall not affect the position of the appeal on the calendar. But the hearing of an appeal may at any time be postponed by the court or continued for the session, of its own motion or for good cause shown, and on such terms as may be just. [L. '93, p. 128, § 17.]

§ 1733. Motion to Dismiss.—Any respondent may move the supreme court, at such time and in such manner as the court by its rules may have prescribed, to dismiss an appeal either on the ground that the court has no jurisdiction of an appeal from the judgment or order from which the appeal was taken, or that the notice of appeal was not served or filed within the time limited by law, or is insufficient, or that the appeal bond was not filed within the time limited by law, or is not in form or substance such as to render the appeal effectual, or that the appellant's brief has not been served or filed, or that the record on appeal has not been sent up, or that the appeal has not been diligently prosecuted or on any ground going to the merits of the further prosecution of the appeal, or on any two or more of the grounds hereinabove mentioned; and there may be combined with a motion to dismiss a motion to affirm the judgment or order appealed from, or a motion for damages on the ground that the appeal was taken merely for delay, or was manifestly unauthorized by law, or both such motions. A general appearance in the

supreme court shall not be a waiver of the right to make any motion herein authorized. [L. '93, p. 129, § 18.]

Cited in 9 Wash. 657; 11 Wash. 78, 480; 27 Wash. 178; 29 Wash. 621; 60 Wash. 645; 80 Wash. 110.

§ 1734. Hearing and Disposition of Motion.—If the supreme court on the hearing of any such motion or motions shall find the grounds or any thereof alleged, for the same, to be well taken and true in effect, the court may grant the same in whole or in part, but when any such motion does not go to the substance of the appeal, or to the right of appeal, and the court shall be of the opinion that the moving party can be compensated in costs, or by the imposition of other terms for any delay of the appellant which is made the ground of any such motion (except a failure to take the appeal within the time limited by law) the court, in its discretion, may deny the motion on such terms as may be just. The court shall upon like terms allow all amendments in matters of form, curative of defects in proceedings to the end that substantial justice be secured to the parties, and no appeal shall be dismissed for any informality or defect in the notice of appeal, the appeal bond, or the service of either thereof, or for any defect of parties to the appeal if the appellant shall forthwith, upon order of the supreme court, perfect the appeal. [L. '93, p. 129, § 19; L. '99, p. 79, § 1.]

Cited in 12 Wash. 565; 20 Wash. 691; 26 Wash. 224; 27 Wash. 178; 50 Wash. 586-595, 597; 66 Wash. 146; 67 Wash. 127; 78 Wash. 600; 80 Wash. 489.

§ 1735. Second Appeal.—No withdrawal of an appeal, and no dismissal which does not go to the substance of or the right to the appeal, shall preclude any party from taking another appeal in the same cause, within the time limited by law. [L. '93, p. 130, § 20.]

Cited in 9 Wash. 658; 28 Wash. 702; 40 Wash. 451, 580; 84 Wash. 93.

§ 1736. What may be Reviewed.—Upon an appeal from a judgment, the supreme court may review any intermediate order or determination of the court below which involves the merits and materially affects the judgment, appearing upon the record sent up from the superior court. Any questions of fact or of law, decided upon trials by the court or by referees, in either legal or equitable causes, may be reviewed, when exceptions to the findings of fact or to the conclusions of law, or both, have been duly taken, by either party and sent up in the record on appeal; and in actions legal or equitable, tried by the court below without a jury, wherein a statement of facts or bill of exceptions shall have been certified, the evidence of facts shown by such bill of exceptions or statement of facts shall be examined by the supreme court de novo, so far as the findings of fact or a refusal to make findings based thereon shall have been

excepted to, and the cause shall be determined by the record on appeal, including such exceptions or statement. [L. '93, p. 130, § 21.]

Cited in 9 Wash. 300; 10 Wash. 154; 11 Wash. 395, 403, 553; 12 Wash. 68, 113, 188, 252; 13 Wash. 35; 22 Wash. 293; 24 Wash. 610; 28 Wash. 615; 29 Wash. 42; 33 Wash. 195, 655; 34 Wash. 94; 53 Wash. 390; 70 Wash. 227; 74 Wash. 476; 75 Wash. 84; 76 Wash. 596, 624; 77 Wash. 397; 82 Wash. 559; 83 Wash. 380; 85 Wash. 362; 86 Wash. 514.

§ 1737. Powers of Supreme Court.—Upon an appeal from a judgment or order, or from two or more orders with or without the judgment, the supreme court may affirm, reverse or modify any such judgment or order appealed from, as to any or all of the parties, and may direct the proper judgment or order to be entered, or direct a new trial or further proceedings to be had; and, if the appeal is from a part of a judgment or order, may affirm, reverse or modify as to the part appealed from. The decision of the court shall be given in writing, and no cause shall be deemed decided until the decision in writing is filed with the clerk. In giving its decision, if a new trial is granted, the court shall pass upon and determine all the questions of law involved in the cause presented upon such appeal and necessary to the final determination of the cause. [L. '93, p. 130, § 22.]

Cited in 23 Wash. 722; 43 Wash. 132; 44 Wash. 368; 49 Wash. 407; 53 Wash. 514; 70 Wash. 215; 71 Wash. 356.

§ 1738. Damages may be Awarded, When.—Upon the affirmance of any judgment or order for the payment of money, the collection of which, in whole or in part, has been stayed by an appeal bond, as in this title provided, the court may award to the respondent damages upon the amount superseded; and, if satisfied by the record that the appeal was taken for delay only, the court must so award such damages not exceeding fifteen per cent of the sum by such judgment or order recovered or directed to be paid, as will effectually tend to prevent the taking of appeals for delay only. [L. '93, p. 131, § 23.]

Cited in 13 Wash. 140; 16 Wash. 679; 51 Wash. 447; 56 Wash. 12.

§ 1739. Judgment Against Appellant and Sureties.—Upon the affirmance of a judgment or [on] appeal for the payment of money, the supreme court shall render judgment against both the appellant and his sureties in the appeal bond for the amount of the judgment appealed from (in case the bond was conditioned so as to support such judgment) and for the damages and costs awarded on the appeal; and in any other case of affirmance the supreme court shall likewise render judgment against both the appellant and his sureties in the appeal bond for the amount recoverable according to the condition of the bond, in case such amount can be ascertained by the court without an issue and trial. [L. '93, p. 131, § 24.]

Cited in 9 Wash. 603, 657; 11 Wash. 480; 18 Wash. 70; 28 Wash. 196, 473; 29 Wash. 258, 315; 43 Wash. 385; 48 Wash. 23; 54 Wash. 37; 86 Wash. 52.

§ 1740. Rehearing, Limitation on—Remittitur.—If a petition for rehearing or an appeal be filed within thirty days after the filing of the decision of the supreme court, the remittitur upon the appeal shall not be sent down to the lower court till such petition shall have been acted upon by the supreme court. But at the expiration of thirty days after the filing of the decision of any cause on appeal in case no petition for rehearing shall be filed, or in case such a petition is filed and is denied by the court, then forthwith upon such denial the clerk of the supreme court shall send down to the superior court from which the appeal was taken a remittitur in the cause, which shall consist of the judgment of the supreme court, and a certified copy of the opinion of the court in case any judgment or order appealed from was reversed or modified thereby. [L. '93, p. 131, § 25.]

Cited in 87 Wash. 378.

§ 1741. Effect of Judgment—Execution Under.—If the supreme court affirm or modify any judgment or order appealed from, it may remand the cause to the court below with directions to carry the same into effect, or it may itself issue the necessary process for that purpose to the sheriff of the proper county, as it may deem advisable. If the cause is remanded to the court below to have such judgment or order carried into effect, the decision of the supreme court, and its order entered thereon, upon being certified to the court below and entered on its records, shall have the same force and effect therein as if made and entered by the court below during its session. Executions issued from the supreme court shall be similar to those from the superior court, and of like force and effect, and returnable in the same time. [L. '93, p. 131, § 26.]

Cited in 28 Wash. 196; 76 Wash. 525.

§ 1742. Effect of Reversal—Writ of Restitution.—If by a decision of the supreme court the appellant becomes entitled to a restoration of any part of the money or property that was taken from him by means of the judgment or order appealed from, either the supreme court or the court below may direct an execution or writ of restitution to issue for the purpose of restoring to the appellant his property, or the value thereof. But property acquired by a purchaser in good faith, under a judgment subsequently reversed, shall not be affected by such reversal. [L. '93, p. 132, § 27.]

Cited in 18 Wash. 437; 31 Wash. 503; 84 Wash. 294, 302.

§ 1743. Death of Party not to Affect Appeal.—The death of a party after the rendition of a final judgment in the superior court

shall not affect any appeal taken, or the right to take an appeal; but the proper representatives in personalty or realty of the deceased party, according to the nature of the case, may voluntarily come in and be admitted parties to the cause, or may be made parties at the instance of another party, as may be proper, as in case of death of a party pending an action in the superior court, and thereupon the appeal may proceed or be taken as in other cases; and the time necessary to enable such representatives to be admitted or brought in as parties shall not be computed as part of the time in this act limited for taking an appeal, or for taking any step in the progress thereof. [L. '93, p. 132, § 28.]

Cited in 82 Wash. 671.

§ 1744. Costs of Appeal.—Costs shall be allowed in the supreme court, irrespective of any costs taxed in the case in the court below, to the prevailing party in the supreme court, on any appeal in any civil action or proceeding as follows: The fees of the clerk of the supreme court paid by the prevailing party, the fees of the clerk of the court below for preparing, certifying and sending up the records on appeal, or any supplementary record, paid by the prevailing party, and twenty-five dollars attorneys' fees, besides his necessary disbursements for the printing of briefs, and any sum actually paid or incurred by the prevailing party as stenographer's fees, not exceeding ten cents a folio, for making a transcript of the evidence or any part thereof included in the bill of exceptions or statement of facts; but when the judgment of the court below shall be affirmed in part and reversed in part, or affirmed as to some of the parties and reversed as to others, or modified, the costs shall be in the discretion of the court, and when the judgment is reversed and a new trial ordered, the court may in its discretion direct that costs of the prevailing party shall abide the result of the action. When in the opinion of the supreme court a brief of the prevailing party shall be unnecessarily long, or improper in substance, the court may in its discretion order the disallowance as costs of any part or the whole of the disbursements for printing the same. [L. '93, p. 132, § 29.]

Cited in 11 Wash. 480; 34 Wash. 182; 39 Wash. 693, 699, 700; 40 Wash. 10, 454; 63 Wash. 244; 74 Wash. 155.

§ 1745. Effect of Appeal in Criminal Actions.—An appeal by a defendant in a criminal action shall stay the execution of the judgment of conviction. In case the defendant has been convicted of a felony, and has been unable to furnish the bail bond required by section 1747 pending the appeal, the time during which he remains in the jail of the county from which the appeal is taken shall be deducted from the term for which he was theretofore sentenced

to the penitentiary, if judgment against him be affirmed. [L. '93, p. 133, § 30.]

Cited in 2 Wash. 552; 7 Wash. 356; 26 Wash. 324; 30 Wash. 330; 56 Wash. 92.

§ 1746. Same — Date of Commencement of Sentence.—In the event no appeal be taken from the judgment of conviction of a felony, the term of sentence imposed upon such judgment shall commence to run from the date of the imposition thereof. In the event an appeal be taken from such judgment of conviction, and upon such appeal the judgment be affirmed, the term of sentence shall commence to run from the date upon which the remittitur shall be filed in the lower court. [L. '03, p. 39, § 1.]

§ 1747. In What Cases Bail Authorized.—In all criminal actions, except capital cases in which the proof of guilt is clear or the presumption great, upon an appeal being taken from a judgment of conviction, the court in which the judgment was rendered, or a judge thereof, must, by an order entered in the journal or filed with the clerk, fix and determine the amount of bail to be required of the appellant; and the appellant shall be committed until a bond to the state of Washington in the sum so fixed be executed on his behalf by at least two sureties possessing the qualifications required for sureties on appeal bonds by section 1725 of this title, such bond to be conditioned that the appellant shall appear whenever required, and stand to and abide by the judgment or orders of the appellate court, and any judgment and order of the superior court that may be rendered or made in pursuance thereof. If the appellant be already at large on bail, his sureties shall be liable to the amount of their bond, in the same manner and upon the same conditions as if they had executed the bond prescribed by this section; but the court may by order require a new bond in a larger amount or with new sureties, and may commit the appellant until the order be complied with. [L. '93, p. 133, § 31.]

Cited in 2 Wash. 552; 37 Wash. 259; 64 Wash. 141.

§ 1748. Personal Appearance not Necessary.—Personal appearance of any party in the supreme court shall not be necessary on appeal in either civil or criminal actions. In criminal actions the defendant shall be entitled to close the argument. [L. '93, p. 134, § 32.]

§ 1749. Proceedings in Case of Reversal in Criminal Cases.—When in a criminal action the judgment against the defendant is reversed and it appears that no offense whatever has been committed, the supreme court must direct that the defendant be discharged; but if it appear that the defendant is guilty of an offense, although

defectively charged in the indictment or information, the supreme court, if the defendant is in prison, must direct the keeper of the place of confinement to cause the prisoner to be returned to the sheriff of the proper county, there to abide the order of the superior court thereof; and such keeper shall be entitled to the usual fees therefor. [L. '93, p. 134, § 33.]

Cited in 36 Wash. 445; 84 Wash. 120, 121.

§ 1750. Imprisonment Pending Appeal to be Deducted.—If a defendant who has been in prison during the pendency of an appeal, upon a new trial ordered by the supreme court, shall be again convicted, the period of his former imprisonment shall be deducted by the superior court from the period of imprisonment to be fixed on the last verdict of conviction. [L. '93, p. 134, § 34.]

§ 1751. Transcript of Judgment, Effect of.—A transcript of any order or judgment, or both, of the supreme court, certified under the seal of the court, shall be sufficient authority to any court, or to any officer on whom it may be served, to proceed according to its mandate. [L. '93, p. 134, § 35.]

§ 1752. Appeals to be Heard on Merits.—The supreme court shall hear and determine all causes removed thereto in the manner hereinbefore provided, upon the merits thereof, disregarding all technicalities, and shall upon the hearing consider all amendments which could have been made as made. [L. '93, p. 134, § 36.]

Cited in 21 Wash. 333; 22 Wash. 25, 293; 24 Wash. 199, 221; 26 Wash. 342; 30 Wash. 409, 626; 32 Wash. 372; 35 Wash. 267; 38 Wash. 612; 48 Wash. 240; 50 Wash. 363; 51 Wash. 445; 53 Wash. 634; 56 Wash. 124; 60 Wash. 207; 65 Wash. 69; 67 Wash. 588; 70 Wash. 77; 71 Wash. 411; 78 Wash. 7, 153; 79 Wash. 545; 81 Wash. 376; 82 Wash. 694; 85 Wash. 464, 512; 87 Wash. 303.

§ 1753. Rules and Regulations.—The supreme court is hereby authorized to make all needful rules and regulations not inconsistent with law concerning practice and procedure in cases appealed to the supreme court. [L. '93, p. 135, § 37.]

§ 1754. Method Herein Provided Exclusive.—The mode provided by this title for appealing cases to the supreme court, and for securing a revision of the same therein, shall be exclusive and shall supersede all other methods heretofore provided. But no rights acquired under statutes which are abrogated by this title shall be lost by reason of the passage of this title, and all appeals pending when this title takes effect may be prosecuted to their determination as if this title had not been passed. [L. '93, p. 135, § 38.]

Cited in 14 Wash. 663.

TITLE XII.

ACTIONS AND PROCEEDINGS IN JUSTICES' COURTS AND BEFORE MAGISTRATES.

See supra, §§ 43–49, justices' courts.
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CHAPTER I.

Commencement of Civil Actions in Justice's Court.

§ 1755. Civil Actions, How Commenced.—Civil actions in the several justices' courts of this state may be instituted either by the voluntary appearance and agreement of the parties, by the service of a summons, or by the service upon the defendant of a true copy of the complaint and notice, which notice shall be attached to the copy of the complaint, and cite the defendant to be and appear before the justice at the time and place therein specified, which shall not be less than six nor more than twenty days from the date of filing the complaint. [Cf. L. '60, p. 245; L. '73, p. 35, § 19; Cd. '81, § 1712; 2 H. C., § 1452.]

§ 1756. Venue of Actions—Precinct of Defendant's Residence.—All civil actions commenced in a justice court against a defendant or defendants residing in a city or town of more than three thousand inhabitants shall be brought in the justice court of the precinct in said city or town in which one or more of such defendants reside. [L. '99, p. 53, § 1; L. '01, p. 105, § 1.]

§ 1757. Jurisdiction—Coextensive With Limits of County.—The jurisdiction of justices of the peace in all civil actions, except as provided in the preceding section, shall be coextensive with the limits of the county in which they are elected or appointed, and no other or greater, but every justice of the peace shall continue to reside and perform all the duties of his office in the precinct for

which he was elected or appointed during his continuance in office. [L. '01, p. 105, § 2.]

§ 1758. Action by Summons, How Commenced—Form, etc.—A party desiring to commence an action before a justice of the peace for the recovery of a debt by summons shall file his claim with the justice of the peace, verified by his own oath, or that of his agent or attorney; and thereupon the justice of the peace shall, on payment of his fees, if demanded, issue a summons to the opposite party, which summons shall be in the following form, or as nearly as the case will admit, viz.:—

The State of Washington, }
—— County, } ss.

To the Sheriff or any Constable of said County.

In the name of the state of Washington, you are hereby commanded to summon ——, if he (or they) be found in your county, to be and appear before me at —— on —— day of ——, at —— o'clock, P. M. (or A. M.), to answer the complaint of ——, for a failure to pay him a certain demand, amounting to —— dollars and —— cents, upon (here state briefly the nature of the claim); and of this writ make due service and return.

Given under my hand this —— day of ——, 19—.

—— ——, Justice of the Peace.

And the summons shall specify a certain place, day, and hour for the appearance and answer of the defendant, not less than six nor more than twenty days from the date of filing plaintiff's claim with the justice, which summons shall be served at least five days before the time of trial mentioned therein, and shall be served by the officer delivering to the defendant, or leaving at his place of abode, with some person over twelve years of age, a true copy of such summons, certified by the officer to be such. [Cf. L. '60, p. 243, § 29; L. '73, p. 335, § 20; Cd. '81, § 1713; 2 H. C., § 1453.]

§ 1759. Action by Complaint and Notice—Form.—Any person desiring to commence an action before a justice of the peace by the service of a complaint and notice can do so by filing his complaint, verified by his own oath or that of his agent or attorney, with the justice, and when such complaint is so filed, upon payment of his fees, if demanded, the justice shall attach thereto a notice, which shall be substantially as follows:—

The State of Washington, }
—— County, } ss.

To ——.

In the name of the state of Washington, you are hereby notified to be and appear at my office in ——, on the —— day of ——, 18—,

at the hour of ——, — M., to answer the foregoing complaint, or judgment will be taken against you as confessed, and the prayer of the plaintiff granted.

Dated ——, 18—. —— ——, J. P.

[Cf. L. '60, p. 245, § 29; L. '73, p. 336, § 21; Cd. '81, § 1714; 2 H. C., § 1454.]

Cited in 11 Wash. 12.

§ 1760. Service of Process by Constable or Sheriff.—All process in actions and proceedings in justice courts, having a salaried constable, when served by an officer, shall be served by such constable or by the sheriff of the county or his duly appointed deputy; and all fees for such service shall be paid into the county treasury. [L. '09, p. 433, § 1.]

§ 1761. How Served.—The complaint and notice shall be served at least five days before the time mentioned in the notice for the defendant to appear and answer the complaint, by delivering to the defendant, or leaving at his place of abode, with some person over twelve years of age, a true copy of the complaint and notice, certified by the officer or person making the service to be such. [L. '73, p. 337, § 22; Cd. '81, § 1715; 2 H. C., § 1455.]

Cited in 11 Wash. 12; 31 Wash. 362.

§ 1762. Style of Process.—All process issued by justices of the peace shall run in the name of the state of Washington, be dated the day issued and signed by the justice granting the same, and all executions and writs of attachment or of replevin shall be served by the sheriff or some constable of the county in which the justice resides, but a summons or notice and complaint may be served by any citizen of the state of Washington over the age of twenty-one years and not a party to the action. [L. '03, p. 18, § 1. Cf. L. '73, p. 337, § 23; Cd. '81, § 1716; 2 H. C., § 1456; L. '93, p. 264, § 1; L. '95, p. 95, § 1.]

Cited in 71 Wash. 597.

§ 1763. Return of Process.—Every constable or sheriff serving process or complaint and notice shall return in writing, the time, manner and place of service and indorse thereon the legal fees therefor and shall sign his name to such return, and any person other than one of said officers serving summons or complaint and notice shall file with the justice his affidavit, stating the time, place and manner of the service of such summons or notice and complaint: Provided, that no fee shall be allowed for the service of a summons or notice and complaint by a person other than an officer. [L. '03, p. 19, § 2. Cf. L. '54, p. 229, § 31; L. '60, p. 246, § 37; L. '73, p. 337,

§ 24; Cd. '81, § 1717; 2 H. C., § 1457; L. '93, p. 264, § 2; L. '95, p. 195, § 2.]

§ 1764. Service by Person Appointed by Justice—Return.—Any justice may, by appointment in writing, authorize any person other than the parties to the proceeding, or action, to serve any subpoena, summons, or notice and complaint issued by such justice; and any such person making such service shall return on such process or paper, in writing, the time and manner of service, and shall sign his name to such return, and be entitled to like fees for making such service as a sheriff or constable, and shall indorse his fees for service thereon: Provided, it shall not be lawful for any justice to issue process or papers to any person but a regularly qualified sheriff or constable, in any precinct where such officers reside, unless from sickness or some other cause said sheriff or constable is not able to serve the same: Provided further, that it shall be lawful for notice and complaint or summons in a civil action in the justice court to be served by any person over the age of twenty-one years and not a party to the action in which the summons or notice and complaint shall be issued without previous appointment by the justice. [L. '03, p. 19, § 3. Cf. L. '73, p. 337, § 25; Cd. '81, § 1718; 2 H. C., § 1458.]

§ 1765. Proof of Service.—Proof of service in either of the above cases shall be as follows: When made by a constable or sheriff, his return signed by him and indorsed on the paper or process. When made by any person other than such officer, then by the affidavit of the person making the service. [L. 73, p. 337, § 26; Cd. '81, § 1719; 2 H. C., § 1459.]

§ 1766. Service by Publication—Form.—In case personal service cannot be had by reason of the absence of the defendant from the county in which the action is sought to be commenced, it shall be proper to publish the summons or notice, with a brief statement of the object and prayer of the claim or complaint, in some weekly newspaper published in the county wherein the action is commenced; or if there is no paper published in such county then in some newspaper published in the nearest adjoining county, which notice shall be published not less than once a week for three weeks prior to the time fixed for the hearing of the cause, which shall not be less than four weeks from the first publication of said notice. Said notice may be substantially as follows:—

The State of Washington,
County of ——, } ss.

In Justice's Court, —— Justice.

To ——.

In the name of the state of Washington, you are hereby notified that —— has filed a complaint (or claim, as the case may be) against you in said court, which will come on to be heard at my office in ——, in —— county, state of Washington, on the —— day of ——, A. D. 18—, at the hour of —— o'clock, — M., and unless you appear and then and there answer, the same will be taken as confessed, and the demand of the plaintiff granted. The object and demand of said claim (or complaint, as the case may be), is (here insert a brief statement).

Complaint filed ——, A. D. 18—. —— ——, J. P.

[L. '73, p. 337, § 27; Cd. '81, § 1720; 2 H. C., § 1460.]

Cited in 71 Wash. 667, 671, 672.

§ 1767. Proof of Service by Publication.—Proof of service, in case of publication, shall be the affidavit of the publisher, printer, foreman, or principal clerk, showing the same. [L. '73, p. 338, § 28; Cd. '81, § 1721; 2 H. C., § 1461.]

§ 1768. Written Admission Equivalent to Proof of Service.—The written admission of the defendant, his agent or attorney, indorsed upon any summons, complaint, and notice, or other paper, shall be complete proof of service in any case. [L. '73, p. 338, § 29; Cd. '81, § 1722; 2 H. C., § 1462.]

§ 1769. Jurisdiction, When Acquired.—The court shall be deemed to have obtained possession of the case from the time the complaint or claim is filed, after completion of service, whether by publication or otherwise, and shall have control of all subsequent proceedings. [L. '73, p. 338, § 30; Cd. '81, § 1723; 2 H. C., § 1463.]

See notes to § 44, supra, jurisdiction of justices.

§ 1770. Justice's Docket, Entries in.—Every justice of the peace shall keep a docket in a well-bound book, in which he shall enter,—

1. The title of all actions commenced before him;
2. The object of the action or proceeding, and if a sum of money be claimed, the amount of the demand;
3. The date of the notice and the time of its return; and if an order to arrest the defendant be made, the statement of the facts on which the order is issued;
4. The time when the parties, or either of them, appear, or their nonappearance, if default be made;
5. A brief statement of the nature of the plaintiff's demand, and the amount claimed; and if any setoff be pleaded, a similar state-

ment of the setoff and the amount estimated, and every motion, rule, order, and exception, with the decision of the court thereon;

6. Every continuance, stating at whose request, and for what time;

7. The demand for a trial by jury, when the same is made, and by whom made, the order for the jury, and the time appointed for the trial and return of the jury;

8. The names of the jury who appear and are sworn; the names of witnesses sworn, and at whose request;

9. The verdict of the jury, and when received; and if the jury disagree and are discharged, the fact of such disagreement and discharge;

10. The judgment of the court, and the time when rendered;

11. The time of issuing execution, and the name of the officer to whom delivered, and an account of the debt and costs, and the fees due to each person separately;

12. The fact of an appeal having been made and allowed, and the time when;

13. Satisfaction of the judgment, or any money paid thereon, and the time when;

14. And such other entries as may be material. [Cf. L. '54, p. 227, § 25; L. '73, p. 339, § 31; Cd. '81, § 1724; 2 H. C., § 1464.]

Cited in 74 Wash. 479.

§ 1771. Infant to Sue by Guardian or Next Friend.—No action shall be commenced by an infant plaintiff, except by his guardian or until a next friend for such infant shall have been appointed. Whenever requested, the justice shall appoint some suitable person, who shall consent thereto in writing, to be named by such plaintiff, to act as his next friend in such action, who shall be responsible for the costs therein. [L. '54, p. 230, § 40; Cd. '81, § 1753; 2 H. C., § 1465.]

Cited in 13 Wash. 165.

§ 1772. Appointment of Guardian ad Litem.—After service and return of process against an infant defendant, the action shall not be further prosecuted until a guardian for such infant shall have been appointed. Upon the request of such defendant, the justice shall appoint some person, who shall consent thereto in writing, to be guardian of the defendant in defense of the action; and if the defendant shall not appear on the return day of the process, or if he neglect or refuse to nominate such guardian, the justice may, at the request of the plaintiff, appoint any discreet person as such guardian. The consent of the guardian or next friend shall be filed with the justice; and such guardian for the defendant shall

not be liable for any costs in the action. [L. '54, p. 230, § 41; Cd. '81, § 1754; 2 H. C., § 1466.]

§ 1773. Time for Appearance.—The parties shall be entitled to one hour in which to make their appearance after the time mentioned in the summons or notice for appearance, but shall not be required to remain longer than that time, unless both parties appear, and the justice, being present, is actually engaged in the trial of another action or proceeding; in such case he may postpone the time of appearance until the close of such trial. [L. '54, p. 230, § 42; Cd. '81, § 1755; 2 H. C., § 1467.]

Cited in 1 Wash. 509.

§ 1774. Change of Venue.—If, previous to the commencement of any trial before a justice of the peace, the defendant, his attorney or agent, shall make and file with the justice an affidavit that the deponent believes that the defendant cannot have an impartial trial before such justice, it shall be the duty of the justice to forthwith transmit all papers and documents belonging to the case to the next nearest justice of the peace in the same county, who is not of kin to either party, sick, absent from the county, or interested in the result of the action, either as counsel or otherwise. The justice to whom such papers and documents are so transmitted shall proceed as if the suit had been instituted before him. Distance, as contemplated by this section, shall mean to be by the nearest traveled route. The costs of such change of venue shall abide the result of the suit. [Cf. L. 67, p. 88, §§ 2, 3; L. '81, p. 8, §§ 2, 3; Cd. '81, § 1938; 2 H. C., § 1468.]

Cited in 13 Wash. 573; 60 Wash. 240; 86 Wash. 200.

§ 1775. Change of Venue as in Superior Court.—Change of venue may be allowed for the same causes for which they are allowed in the superior court. [Cf. L. '60, p. 252, § 68; L. '63, p. 369, § 162; Cd. '81, § 1881.]

§ 1776. Penalty for False Return.—If any officer, without showing good cause therefor, fail to execute any process to him delivered, and make due return thereof, or make a false return, such officer, for every such offense, shall pay to the party injured ten dollars, and all damages such party may have sustained by reason thereof, to be recovered in a civil action. [Cf. L. '54, p. 230, § 39; L. '73, p. 343, § 51; Cd. '81, § 1752; 2 H. C., § 1469.]

§ 1777. Security of Nonresident for Costs.—Whenever the plaintiff is a nonresident of the county, the justice may require of him security for the costs in a sum not exceeding fifty dollars at the time of the commencement of the action: Provided, however, that

after an action has been commenced by an nonresident plaintiff and no security given for costs, the defendant may require such security by motion; when allowed all proceedings shall be stayed until such security has been given. [L. '05, p. 27, § 1. Cf. L. '54, p. 228, § 27; Cd. '81, § 1725; 2 H. C., § 1470.]

CHAPTER II.

Pleadings in Civil Actions in Justice's Court.

§ 1778. Pleadings, When to Take Place.—The pleadings in justice's court shall take place upon the appearance of the parties, unless they shall have been previously filed, or unless the justice shall, for good cause shown, allow a longer time than the time of appearance. [L. '54, p. 231, § 43; Cd. '81, § 1756; 2 H. C., § 1471.]

§ 1779. Pleadings, What Constitute.—The pleadings in the justice's court shall be,—

1. The complaint of the plaintiff, which shall state in a plain and direct manner the facts constituting the cause of action;

2. The answer of the defendant, which may contain a denial of the complaint, or any part thereof, and also a statement, in a plain and direct manner, of any facts constituting a defense;

3. When the answer sets up a setoff by way of defense, the reply of the plaintiff. [L. '54, p. 231, § 44; Cd. '81, § 1757; 2 H. C., § 1472.]

Cited in 1 Wash. 136, 510.

§ 1780. Pleadings may be Oral or Written.—The pleadings in justices' courts may be oral or in writing. [L. '54, p. 231, § 45; Cd. '81, § 1758; 2 H. C., § 1473.]

§ 1781. Pleadings Docketed or Filed—Form Immaterial.—When the pleadings are oral, the substance of them shall be entered by the justice in his docket. When in writing, they shall be filed in his office, and a reference made to them in his docket. Pleadings shall not be required to be in any particular form, but shall be such as to enable a person of common understanding to know what is intended. [L. '54, p. 231, § 46; Cd. '81, § 1759; 2 H. C., § 1474.]

§ 1782. Denial of Knowledge or Information.—A statement, in an answer or reply, that the party has not sufficient knowledge or information in respect to a particular allegation in the previous pleadings of the adverse party to form a belief shall be deemed equivalent to a denial. [L. '54, p. 231, § 47; Cd. '81, § 1760; 2 H. C., § 1475.]

§ 1783. Pleading Account or Instrument.—When the cause of action or setoff arises upon an account or instrument for the pay-

ment of money only, it shall be sufficient for the party to deliver the account or instrument, or a copy thereof, to the court, and to state that there is due to him thereon, from the adverse party, a specified sum, which he claims to recover or set off. The court may, at the time of pleading, require that the original account or instrument be exhibited to the inspection of the adverse party, with liberty to copy the same; or if not so exhibited, may prohibit its being given in evidence. [L. '54, p. 231, § 48; Cd. '81, § 1761; 2 H. C., § 1476.]

§ 1784. Pleadings to be Verified.—Every complaint, answer, or reply shall be verified by the oath of the party pleading; or if he be not present, by the oath of his attorney or agent, to the effect that he believes it to be true. The verification shall be oral or in writing, in conformity with the pleading verified. [L. '54, p. 232, § 49; Cd. '81, § 1762; 2 H. C., § 1477.]

§ 1785. Uncontroverted Allegations Deemed Admitted. — Every material allegation in a complaint, or relating to a setoff in an answer, not denied by the pleading of the adverse party, shall, on the trial, be taken to be true, except that when a defendant who has not been served with a copy of the complaint fails to appear and answer, the plaintiff cannot recover without proving his case. [L. '54, p. 232, § 50; Cd. '81, § 1763; 2 H. C., § 1478.]

§ 1786. Objections to Pleading, Amendment.—Either party may object to a pleading by his adversary, or to any part thereof, that is not sufficiently explicit for him to understand it, or that it contains no cause of action or defense, although it be taken as true. If the court deem the objection well founded, it shall order the pleading to be amended; and if the party refuse to amend, the defective pleading shall be disregarded. [L. '54, p. 232, § 51; Cd. '81, § 1764; 2 H. C., § 1479.]

§ 1787. Variance Immaterial, When. — A variance between the proof on the trial and the allegations in a pleading shall be disregarded as immaterial, unless the court be satisfied that the adverse party has been misled to his prejudice thereby. [L. '54, p. 232, § 52; Cd. '81, § 1765; 2 H. C., § 1480.]

§ 1788. Amendments.—The pleadings may be amended at any time before the trial, or during the trial, or upon appeal, to supply any deficiency or omissions in the allegations or denials necessary to support the action or defense, when by such amendment substantial justice will be promoted. If the amendment be made after the issue, and it be made to appear to the satisfaction of the court that a continuance is necessary to the adverse party in consequence of such amendment, a continuance shall be granted. The court may

also, in its discretion, require as a condition of an amendment the payment of costs to the adverse party. [L. '54, p. 232, § 53; Cd. '81, § 1766; 2 H. C., § 1481.]

Cited in 3 Wash. 709.

§ 1789. Setoff, How Pleaded.—To entitle a defendant to any setoff he may have against the plaintiff, he must allege the same in his answer; and the statutes regulating setoffs in the superior court shall in all respects be applicable to a setoff in a justice's court, if the amount claimed to be set off, after deducting the amount [found] due the plaintiff, be within the jurisdiction of the justice of the peace; judgment may, in like manner, be rendered by the justice, in favor of the defendant, for the balance found due the plaintiff. [L. '54, p. 232, § 54; Cd. '81, § 1767; 2 H. C., § 1482.]

See infra, § 1861, action when setoff exceeds jurisdiction.
See infra, § 1873, setoff of mutual judgments.

CHAPTER III.

Arrest and Bail in Justice's Court.

§ 1790. Warrant may Issue, When.—A justice of the peace shall issue a warrant of arrest in all such cases within his jurisdiction, and for such causes and upon such proof, as is provided for an order for a warrant in chapter VII of title 5, regulating civil actions. [L. '54, p. 229, § 32; Cd. '81, § 1746; 2 H. C., § 1484.]

Cited in 81 Wash. 397.

§ 1791. Bond for Warrant.—Before issuing the warrant of arrest, the justice shall require a bond on part of the plaintiff, with one or more sureties, to the effect that if the defendant recover judgment the plaintiff will pay all costs that may be awarded to the defendant, and all damages which may be sustained by reason of the arrest, not exceeding the sum specified in the bond, which shall be at least one hundred dollars. [L. '54, p. 229, § 33; Cd. '81, § 1747; 2 H. C., § 1485.]

§ 1792. Warrant, How Served.—The warrant shall be served by arresting the defendant, and taking him before the justice of the peace who issued the same; but if such justice, at the return thereof, be absent or unable to try the action, the officer shall immediately take the defendant to the nearest justice of the same county, who shall take cognizance of the action, and proceed thereon as if the warrant had been issued by himself. [L. '54, p. 229, § 34; Cd. '81, § 1748; 2 H. C., § 1486.]

§ 1793. Notice of Arrest to Plaintiff, etc.—The officer making the arrest shall immediately give notice to the plaintiff, his agent or

attorney, and indorse on the warrant the time of the arrest and the time of serving notice on the plaintiff. [L. '54, p. 229, § 35; Cd. '81, § 1749; 2 H. C., § 1487.]

§ 1794. Detention not to Exceed Twenty-four Hours.—When a defendant is brought before a justice on a warrant, he shall be detained in the custody of the officer until he shall be discharged according to law; but in no case shall the defendant be detained longer than twenty-four hours from the time he shall be brought before the justice, unless within that time the trial of the action shall be commenced, or unless it has been delayed at the instance of the defendant. [L. '54, p. 229, § 36; Cd. '81, § 1750; 2 H. C., § 1488.]

§ 1795. Continuance—Bond.—If the defendant, on his appearance, demand a continuance, the same may be granted on condition that he remain in custody or execute and file with the justice a bond, with one or more sufficient sureties, to be approved by the justice, to the effect that he will render himself amenable to the process of the court, or that the sureties will pay to plaintiff the amount of any judgment which he may recover in the action. On filing such bond, the justice shall order the defendant to be discharged from custody. [L. '54, p. 229, § 37; Cd. '81, § 1751; 2 H. C., § 1489.]

CHAPTER IV.

Replevin in Justice's Court.

§ 1796. Plaintiff may Claim Immediate Delivery.—The plaintiff in an action to recover the possession of personal property may, at the time of issuing such summons, or at any time before answer, claim the immediate delivery of such property as provided in this chapter. [L. '54, p. 242, § 109; Cd. '81, § 1809; 2 H. C., § 1490.]

See infra, § 1888, claim by third person of property levied upon.

§ 1797. Affidavit Where Delivery Claimed, Contents of.—When a delivery is claimed, an affidavit shall be made by the plaintiff, or by someone in his behalf, showing,—

1. That the plaintiff is the owner of the property claimed (particularly describing it), or is lawfully entitled to the possession thereof by virtue of a special property therein, the facts in respect to which shall be set forth;

2. That the property is wrongfully detained by the defendant;

3. The alleged cause of the detention thereof, according to his best knowledge, information, and belief;

4. That the same has not been taken for a tax, assessment, or fine, pursuant to a statute, or seized under an execution or attachment against the property of the plaintiff, or if so seized, that it is by statute exempt from such seizure; and

5. The actual value of the property. [L. '54, p. 242, § 110; Cd. '81, § 1810; 2 H. C., § 1491.]

§ 1798. Order for Delivery.—The justice shall thereon, by an indorsement in writing upon the affidavit, order the sheriff or any constable of the county to take the same from the defendant and deliver it to the plaintiff upon receiving a proper bond. [L. '54, p. 243, § 111; Cd. '81, § 1811; 2 H. C., § 1492.]

§ 1799. Execution of Order — Bond. — Upon the receipt of the affidavit and order, with a bond, executed by two or more sufficient sureties, approved by the sheriff or constable, to the effect that they are bound in double the value of the property as stated in the affidavit, for the prosecution of the action, for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may for any cause be recovered against the plaintiff, the sheriff or constable shall forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. He shall also, without delay, serve on the defendant a copy of the affidavit, order, and bond, by delivering the same to him personally if he can be found within the county, or to his agent from whose possession the property is taken, or if neither can be found in the county, by leaving them at the usual abode of either within the county, with some person of suitable age and discretion; or if neither have any known place of abode in the county by putting them into the post-office, directed to the defendant at the postoffice nearest to him. [L. '54, p. 243, § 112; Cd. '81, § 1810; 2 H. C., § 1493.]

§ 1800. Exceptions to Sureties.—The defendant may, within two days after the service of a copy of the affidavit, order, and bond, give notice to the officer that he excepts to the sufficiency of the sureties. If he fail to do so, he shall be deemed to have waived all objection to them. When the defendant excepts, the sureties shall justify upon one day's notice before the justice; and the officer shall be responsible for the sufficiency of the sureties until the objection to them is either waived, as above provided, or until they justify, or new sureties be substituted, and they justify. If the defendant except to the sureties, he cannot reclaim the property as provided in the next section. [L. '54, p. 243, § 113; Cd. '81, § 1813; 2 H. C., § 1494.]

Cited in 20 Wash. 544.

§ 1801. Return of Property on Giving Bond, etc.—At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof upon giving to the officer a bond, executed by two

or more sufficient sureties, to the effect that they are bound in double the value of the property as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may for any cause be recovered against the defendant. If a return of the property be not so required within two days after the taking and serving of notice to the defendant, it shall be delivered to the plaintiff, except as provided in this chapter. [L. '54, p. 243, § 114; Cd. '81, § 1814; 2 H. C., § 1495.]

§ 1802. Justification of Sureties.—The defendant's sureties, upon one day's notice to the plaintiff or his attorney, shall justify before the justice, and upon such justification the officer shall deliver the property to the defendant. The officer shall be responsible for the defendant's sureties until they justify, or until the justification is complete or expressly waived, and may retain the property until that time; but if they, or others in their place, fail to justify at the time appointed, he shall deliver the property to the plaintiff. [L. '54, p. 244, § 115; Cd. '81, § 1815; 2 H. C., § 1496.]

§ 1803. Officer may Break Open Building or Inclosure.—If the property, or any part thereof, be concealed in a building or inclosure, the officer shall publicly demand its delivery; and if it be not delivered, he shall cause the building or inclosure to be broken open and take the property into his possession. [L. '54, p. 244, § 116; Cd. '81, § 1816; 2 H. C., § 1497.]

§ 1804. Officer to Keep and Deliver Property.—When the officer shall have taken property as in this chapter provided, he shall keep it in a secure place, and deliver [it] to the party entitled thereto, upon receiving his lawful fees for taking and his necessary expenses for keeping the same. [L. '54, p. 244, § 117; Cd. '81, § 1817; 2 H. C., § 1498.]

Cited in 49 Wash. 300.

§ 1805. Proceedings Where Property Claimed by Third Party.—If the property taken be claimed by any other person than the defendant or his agent, and such person make affidavit of his title thereto, or his right to the possession thereof, stating the ground of such title or right, and serve the same upon the officer before the delivery of the property to the plaintiff, the sheriff shall not be bound to keep the property or deliver it to the plaintiff, unless the plaintiff, on demand of him or his agent, indemnify the officer against such claim by a bond executed by two sufficient sureties, accompanied by their affidavits that they are each worth double the value of the property, as specified in the affidavit of the plaintiff, over and above their debts and liabilities, exclusive of property

exempt from execution, and freeholders or householders of the county; and no claim to such property by any other person than the defendant or his agent shall be valid against the officer, unless made as aforesaid, and notwithstanding such claim, when so made, he may retain the property a reasonable time to demand such indemnity. [L. '54, p. 244, § 118; Cd. '81, § 1818; 2 H. C., § 1499.]

§ 1806. Return of Order and Affidavit.—The officer shall return the order and affidavit with his proceedings thereon to the justice within five days after taking the property mentioned therein. [L. '54, p. 244, § 119; Cd. '81, § 1819; 2 H. C., § 1500.]

CHAPTER V.

Garnishee Process by Officers.

§ 1807. Affidavit for Garnishment.—Whenever any action shall have been commenced by summons upon contract express or implied, or notice and complaint in a justice's court, if the plaintiff, or someone in his behalf, shall make and deliver to the officer having such summons, or notice and complaint, an affidavit stating that the affiant has good reason to believe that some person (naming him) is indebted to the defendant, or has personal property in his possession or under his control belonging to the defendant, or when there is more than one defendant, to any or either of them, not by law exempt from sale on execution, and demand that he shall summon such person as garnishee, such officer shall summon such person in writing to appear before the justice on the return day of such summons, or notice and complaint, to answer touching his liability as garnishee. [L. '88, p. 101, § 1; 2 H. C., § 1501.]

Writ of garnishment by justice: See § 1823, infra, and note.
See infra, § 1886, garnishment on execution.

§ 1808. Garnishee Summons.—The summons to the garnishee may be substantially as follows:—

The State of Washington,)
—— County,) ss.

The State of Washington to ——.

Whereas, a summons or notice and complaint has been issued by ——, a justice of the peace of said county, returnable on the —— day of ——, A. D. 18—, in favor of ——, plaintiff, and against ——, defendant; and whereas, the plaintiff (or A B in his behalf) has made oath that you have property in your possession or under your control belonging to the defendant (or are indebted to him), now, therefore, you are hereby summoned to be and appear before the said justice at his office in said county on the return day of said summons (or notice and complaint), at —— o'clock in the —— noon

of said day, then and there to answer under oath, touching your liability as garnishee.

Given under my hand this —— day of ——, 18—.

—— ——, Constable or Sheriff.

[L. '88, p. 101, § 2; 2 H. C., § 1502.]

§ 1809. Service of.—The officer shall serve such summons on the garnishee personally, and return the same, with the affidavit, to the justice at the same time that he shall make return of the service of the summons or notice and complaint, and state the day such summons was served on the garnishee. [L. '88, p. 102, § 3; 2 H. C., § 1503.]

§ 1811. Liability of Garnishee.—The garnishee, from the time of the service of such summons, shall stand liable to the plaintiff to the amount of the personal property, money, credits, and effects in his hands or under his control belonging to the defendant, and the amount of his own indebtedness to the defendant, then due or to become due, and not by law exempt from sale on execution. [L. '88, p. 102, § 5; 2 H. C., § 1505.]

§ 1812. Garnishee Action — When Deemed Commenced. — The service of the garnishee summons shall be deemed the commencement of an action against such garnishee; and upon the return of the constable that such summons has been duly served, the justice shall enter an action in his docket in which the plaintiff in the original action shall be plaintiff and the garnishee defendant. [L. '88, p. 102, § 6; 2 H. C., § 1506.]

§ 1813. Examination of Garnishee.—On the appearance of the garnishee before the justice, the affidavit aforesaid shall be deemed a sufficient complaint in this action, and the justice shall forthwith proceed to examine the said garnishee and his witnesses touching the matters alleged in the affidavit, and shall reduce the answers of said garnishee and his witnesses to writing, and file the same with the papers in the case; such examination may be adjourned by said garnishee as in case of adjournment in justice court in civil actions: Provided, that in lieu of the personal appearance of the garnishee and his examination by the justice, the garnishee may answer the affidavit and writ, in writing, in which case the answer shall be in writing, signed and verified by the garnishee, and make true answer to the several matters set up in the affidavit and such answer shall be filed with the justice of the peace, within the time required by the writ for the garnishee to appear. [L. '88, p. 103, § 7; 2 H. C., § 1507; L. '03, p. 82, § 2.]

§ 1814. Trial, When.—If the plaintiff shall not be satisfied with the answers of the garnishee, or if either party shall desire a trial, the justice shall enter the fact in his docket, and the case shall be proceeded with and tried upon the issue formed by the affidavit and answer, as in other actions commenced by summons; and if, upon the trial of any such issue, property or effects shall be found in the hands of the garnishee, or it shall appear that such garnishee was indebted to the defendant, the justice or jury shall assess the value thereof, and the garnishee may hold the same subject to the further order of the justice. [L. '88, p. 103, § 8; 2 H. C., § 1508.]

§ 1815. Defendant may Participate in Trial.—The defendant in the original action may appear and defend the proceedings against the garnishee, upon the ground that the indebtedness of the garnishee, or any property held by him, is exempt from execution against such defendant, or for any other reason is not liable to garnishment, or upon any grounds upon which a garnishee might defend the same, and may participate in the trial of any issue between the plaintiff and the garnishee for the protection of his interests. [L. '88, p. 103, § 9; 2 H. C., § 1509.]

§ 1816. Costs.—If, in the action instituted against the garnishee, the plaintiff shall be nonsuited or discontinue his action; or if, upon the answer and trial of the issue between the plaintiff and garnishee, no property or effects shall be found in the hands of the garnishee, or nothing shall be found due from the garnishee to the defendant; or if, in the action against the principal defendant, the plaintiff shall be nonsuited or discontinue his action; or if, on the trial in such action, nothing shall be found due from the defendant to the plaintiff,—then in each of these cases the garnishee shall recover costs against the plaintiff, and no such costs shall be paid by the defendant. [L. '88, p. 103, § 10; 2 H. C., § 1510.]

§ 1817. Judgment Against Garnishee.—If the plaintiff recover against the defendant in the original action, and the answer of the garnishee, when no issue is made thereon, or the finding of the court or jury on an issue, show the garnishee, at the time of the service of the summons, had property in his possession belonging to the defendant, or that he was indebted to him, the justice shall enter an order in his docket requiring the garnishee, within ten days, to pay or deliver to the justice such property or the amount of such indebtedness, or so much thereof as may be necessary to satisfy such judgment, with costs thereof, and the costs of the garnishee proceedings; or if it appears, from such answer or finding, that the garnishee is to pay or deliver to the defendant any money or property in any other manner or at any other time than immediately,

and at the time of service of the summons, the same belonging to the defendant, then the order of the justice shall be that such payment or delivery be so made to the justice for the benefit of the plaintiff. If such garnishee shall pay such indebtedness, and deliver such property as directed by such order, the costs of the garnishee shall be paid out of the money or property received by the justice, unless the garnishee, upon an issue joined with him by the plaintiff, shall have been held liable in a greater amount of property or indebtedness than was disclosed in his answer, in which case he shall not have costs. And all property and effects, except money, delivered to the justice shall be by him ordered to be sold on the execution against the defendant. [L. '88, p. 103, § 11; 2 H. C., § 1511.]

§ 1818. Costs Against Garnishee.—If the garnishee do not deliver over the property or pay the money so found in his hands and belonging to the defendant, as provided in the preceding section, then judgment shall be given against him for the value of such property or money, and costs of suit in the cause in which he is garnishee, and no such costs shall be paid by the defendant. [L. '88, p. 104, § 12; 2 H. C., § 1512.]

§ 1819. Final Judgment—Negotiable Instrument.—No final judgment shall be rendered against the garnishee until final judgment be rendered against the defendant in the original action; but no judgment shall be rendered against a garnishee, or any money be required to be delivered by him to the justice, upon any liability arising out of a debt due [evidenced] by negotiable paper, unless such paper is delivered or the garnishee completely exonerated or indemnified from all liability thereon after he may have satisfied the judgment. [L. '88, p. 104, § 13; 2 H. C., § 1513.]

§ 1820. Default, etc., by Garnishee.—When a garnishee shall fail to appear, or, appearing, shall fail to make full answers upon oath to the interrogatories of the justice touching his liabilities as garnishee, the justice shall enter such fact in his docket, and he shall be adjudged to be indebted to the defendant; and if judgment shall be rendered in favor of the plaintiff, against the defendant, judgment in favor of the plaintiff shall be entered against such garnishee for the amount of the judgment against the defendant, and for all costs in the garnishee proceedings, and no such costs shall be paid by the defendant. The justice may continue the cause to some other day, if necessary for further proceedings. [L. '88, p. 104, § 14; 2 H. C., § 1514.]

§ 1821. Appearance After Default.—If the garnishee shall have failed to appear at the proper time, he may afterward appear and

answer at any time before final judgment against him, if he shall first pay all costs in the garnishee suit which have accrued up to that time; and when he shall so appear, the justice shall cause the plaintiff to be notified thereof, so that he may be present at the examination. [L. '88, p. 105, § 15; 2 H. C., § 1515.]

§ 1822. Judgment in Bar.—In all actions brought by the defendant against the garnishee for the recovery of any property, credits, money, or effects delivered up or paid by order of any judgment rendered under this chapter, except costs rendered against the garnishee, such judgment may be pleaded in bar, and the same shall be conclusive between such parties. [L. '88, p. 105, § 16; 2 H. C., § 1516.]

CHAPTER VI.

Writs of Garnishment by Justices.

§ 1823. Writ of Garnishment—When may Issue.—The justices of the peace in the various precincts in this state may issue writs of garnishment, returnable to their respective courts, where the plaintiff sues for a debt which is just, due and unpaid; or where the plaintiff has a judgment wholly or partially unsatisfied in the court from which he seeks to have the writ of garnishment issued. [L. '11, p. 637, § 1. Cf. L. '09, p. 607, § 1.]

§ 1824. Affidavit for Garnishment—Requisites.—Before the issuance of the writ of garnishment, the plaintiff or someone in his behalf, shall make application therefor by affidavit, stating the facts authorizing the issuance of the writ, and that he has reason to believe and does believe that the garnishee is indebted to the defendant or that he has in his possession or under his control personal property or effects belonging to the defendant, or that the garnishee is a corporation and that the defendant is the owner of shares of the capital stock thereof, and that the garnishment applied for is not sued out to injure either the defendant or the garnishee. [L. '11, p. 637, § 2. Cf. L. '09, p. 608, § 2.]

§ 1825. Issuance of Writ—Contents.—When the foregoing requisites have been complied with, the justice of the peace shall, without additional fee, docket the case in the name of the plaintiff, as plaintiff, and of the garnishee as defendant, and shall immediately issue a writ of garnishment, directed to the garnishee commanding him to appear before the justice who issues the writ, at a certain place, day and hour, which shall not be less than six nor more than twenty days from the date of the issuance of the writ, to answer on oath in what amount, if any, he was indebted to the defendant when such writ was served upon him, and what personal property or

affects, if any, of the defendant he had in his possession or under his control when such writ was served upon him; and where it appears from the affidavit for the writ that the garnishee is a corporation in which the defendant is the owner of shares, the writ of garnishment shall further require the garnishee to answer what number of shares, if any, the defendant owned in such corporation when such writ was served upon it. The writ of garnishment shall be served at least five days before the time for answer mentioned therein. [L. '11, p. 637, § 3. Cf. L. '09, p. 608, § 3.]

§ 1826. Form for Writ.—Said writ shall be substantially in the following form:—

The State of Washington, to —— Greeting:

Whereas, in the justice court in and for —— precinct, —— county, state of Washington, before ——, justice of the peace, in a certain cause wherein —— is plaintiff and —— is defendant, the plaintiff claiming an indebtedness (or having a judgment, as the case may be) against the said —— of —— dollars, besides interest and costs of suit, has applied for a writ of garnishment against you:

Now, therefore, you are hereby commanded to be and appear before the said justice at his office —— in said county, on the —— day of ——, 19—, at —— o'clock in the —— noon of said day, then and there to answer upon oath in what amount, if any, you were indebted to the said —— when this writ was served upon you, and what personal property or effects, if any, of the said —— you had in your possession or under your control when this writ was served upon you (and if the garnishee be a corporation in which the defendant is alleged to be the owner of shares, then the writ shall proceed: And further to answer what number of shares, if any, the said —— owned in ——, a corporation, when this writ was served upon you).

Dated this —— day of ——, 19—.

—— ——,

Justice of the Peace.

[L. '11, p. 638, § 4. Cf. L. '09, p. 608, § 4.]

§ 1827. How Issued.—The writ of garnishment shall be dated and signed by the justice of the peace, and the name and office address of the attorney for the plaintiff shall be indorsed thereon, or in case the plaintiff has no attorney, then the name and address of the plaintiff shall be indorsed thereon. The writ, when so issued and indorsed, shall be delivered by the justice of the peace who issues it to the party applying therefor, or to his attorney. [L. '09, p. 609, § 5.]

§ 1828. Service of Writ.—The writ of garnishment may be served by the sheriff or any constable of the county in which the garnishee lives, or it may be served by any citizen of the state of Washington over the age of twenty-one years and not a party to the action in which it is issued, in the same manner as a summons in an action is served. And in case such writ is served by an officer, such officer shall make his return thereon, showing the time, place and manner of service and noting thereon his fees for making such service and shall sign his name to such return. In case such service is made by any person other than an officer, such person shall attach to the original writ his affidavit showing his qualifications to make such service and the time, place and manner of making service, but no fee shall be allowed for the service of such writ unless the same is served by an officer. [L. '09, p. 609, § 6.]

Cited in 73 Wash. 504.

§ 1829. Service upon Bank as Garnishee.—In cases where the writ of garnishment issued under the provisions of this act is directed to a corporation carrying on a general banking business in the state of Washington, the plaintiff, in addition to serving the writ of garnishment upon said garnishee, shall at the same time and as a part of said service deliver to said garnishee a statement in writing signed by the plaintiff or his attorney, stating the place of residence of the defendant and his business, occupation, trade or profession, and unless such statement is so delivered with said writ of garnishment, the service of said writ shall not be deemed complete and the garnishee shall not be held liable thereon. [L. '09, p. 610, § 7.]

§ 1830. Effect of Service—Payment of Debt.—From and after the service of such writ of garnishment, it shall not be lawful for the garnishee to pay to the defendant any debt owing to him at the time of such service, or to deliver to him any personal property or effects belonging to the defendant in his possession or under his control at the time of such service, nor shall the garnishee, if it be a corporation in which the defendant is alleged to be the owner of shares, permit or recognize any sale or transfer of any shares owned by said defendant at the time of such service; and any such payment, delivery, sale or transfer shall be void and of no effect as to so much of said debt, personal property or effects or shares as may be necessary to satisfy the plaintiff's demand. [L. '09, p. 610, § 8.]

§ 1831. Bond to Release Garnishee.—If the defendant in the principal action causes a bond to be executed to the plaintiff, with sureties, to be approved by the justice of the peace issuing the writ,

conditioned that he will pay any judgment that may be rendered against him in favor of the plaintiff in said action, and shall file said bond with said justice of the peace, the writ of garnishment shall, upon the filing and approval of said bond, be immediately discharged, and all proceedings had thereunder shall be vacated and said justice shall issue and deliver to said defendant a certificate to the effect that said writ of garnishment has been discharged, and upon the delivery of said certificate to the garnishee he shall be discharged of any further liability under said writ: Provided, that the garnishee shall not be thereby deprived from recovery of costs in said proceeding to which he would otherwise be entitled under this act. [L. '09, p. 610, § 9.]

§ 1832. Answer of Garnishee.—The answer of the garnishee shall be in writing and signed and verified as other pleadings and shall make true answers to the several matters inquired of in the writ of garnishment and shall be served upon the plaintiff or his attorney and filed with the justice of the peace who issued said writ. [L. '09, p. 611, § 10.]

§ 1833. Discharge of Garnishee.—Should it appear from the answer of the garnishee that he was not indebted to the defendant when the writ of garnishment was served upon him and that he had not in his possession or under his control any personal property or effects of the defendant when the writ was served; and when the garnishee is a corporation in which the defendant is alleged to be the owner of shares of stock, if it shall further appear from such answer that the defendant was not the owner of any such shares when the writ was served, and should the answer of the garnishee not be controverted as hereinafter provided, the court shall enter judgment discharging the garnishee. [L. '09, p. 611, § 11.]

§ 1834. Default of Garnishee—Judgment—Dismissal of Action.—Should the garnishee fail to answer the writ by the time prescribed therein, the court shall, upon application of the plaintiff therefor, declare and enter the default of the garnishee and shall thereafter render judgment as follows:

In case the plaintiff has a judgment against the defendant, judgment shall be rendered against the garnishee for the full amount of such judgment with all accruing interest and costs.

In case judgment has not been rendered in the principal action at the time when the default of the garnishee is declared and entered, final judgment shall not be rendered against the garnishee until the final judgment in the principal action is entered; and if the plaintiff recovers judgment against the defendant, the court shall enter judgment against the garnishee for the full amount of the judgment

awarded to the plaintiff against the defendant; but if the plaintiff fails to recover judgment against the defendant, the garnishee shall be discharged without costs. [L. '11, p. 639, § 5. Cf. L. '09, p. 611, § 12.]

§ 1835. Judgment Against Garnishee—Satisfaction. — Should it appear from the answer of the garnishee, or should it be otherwise made to appear as hereinafter provided, that the garnishee was indebted to the defendant in any amount when the writ of garnishment was served upon him, the court shall render judgment for the plaintiff against such garnishee for the amount so admitted or found to be due from the garnishee, less the amount of the costs awarded to the garnishee, unless the amount so admitted or found to be due shall exceed the amount of the judgment rendered or thereafter rendered in favor of the plaintiff against the defendant, with interest and costs, in which case it shall be for the amount of such judgment rendered or thereafter to be rendered, with interest and costs: Provided, however, that judgment shall not be rendered against the garnishee until the final judgment in the principal action is entered, and if the plaintiff fails to recover judgment against the defendant the garnishee shall be discharged and shall have and recover his costs against plaintiff: Provided, however, if it shall appear from the answer of the garnishee and the same is not controverted, or if it shall appear from the trial hereinafter provided for that the garnishee was indebted to the defendant in any sum at the time of the service of said writ, but that said indebtedness is not matured and is not due and payable, the court shall make an order requiring the garnishee to pay such sum into court when the same becomes due, less the amount of the costs awarded to the garnishee, the date when such payment is to be made to be specified in said order, and in default thereof that judgment shall be entered against the garnishee for the amount of such indebtedness so admitted or found to be due. In case the garnishee shall pay said sum at the time specified in said order, said payment shall operate as a discharge; otherwise judgment shall be entered against him as above provided: Provided further, that if judgment shall be rendered in favor of the principal defendant, or if any judgment rendered against him shall be satisfied prior to the date of payment specified in said order, the garnishee shall not be required to make the payment hereinbefore provided for, nor shall any judgment in such case be against him. [L. '09, p. 612, § 13.]

§ 1836. Execution Against Garnishee.—Execution may be issued on the judgment against the garnishee herein provided for in like manner as upon any other judgment. The amount made upon any

such execution shall be paid by the officer executing the same to the justice of the peace from whom such execution was issued, and shall be applied to the satisfaction of such judgment, interest and costs, and also to the satisfaction of the judgment against the defendant, and the surplus, if any, shall be paid to the garnishee. [L. '09, p. 613, § 14.]

§ 1837. Garnishee in Possession of Property—Surrender—Custody.—Should it appear from the answer of the garnishee, or should it be made otherwise to appear, as hereinafter provided, that the garnishee had in his possession or under his control when the writ was served upon him, any personal property or effects of the defendant liable to execution, the court shall render a decree requiring the garnishee to deliver up to the justice on demand, such personal property or effects, or so much of them as may be necessary to satisfy the plaintiff's claim. In cases where a judgment has been rendered in the principal action, such personal property or effects may be sold in like manner as other property is sold upon execution on a judgment. In cases where judgment has not been rendered in the principal action, the justice of the peace shall retain such personal property or effects in his possession until the rendition of the judgment therein, and in case judgment is entered in such principal action in favor of the plaintiff, said goods, or effects, or sufficient of them to satisfy said judgment, may be sold in like manner as other property is sold upon an execution issued on a judgment. In case judgment shall be rendered in such action against the plaintiff and in favor of the defendant, such effects and personal property shall be by the justice returned to the defendant. [L. '09, p. 613, § 15.]

§ 1838. Attachment for Contempt.—Should the garnishee adjudged to have effects or personal property of the defendant in his possession or under his control, as provided in the preceding section, fail or refuse to deliver them to the justice on such demand, the garnishee shall, on motion of the plaintiff, be cited to show cause why he should not be attached for contempt of court for such failure or refusal, and should the garnishee fail to show some good and sufficient excuse for such failure and refusal he shall be fined for such contempt and imprisoned until he shall deliver such personal property or effects. [L. '09, p. 614, § 16.]

§ 1839. Corporation Garnishee—Shares of Stock Sold.—Where the garnishee is a corporation and it appears by the answer or otherwise that the defendant was, when the writ of garnishment was served upon it, the owner of any shares of stock in such corporation, the court shall render a decree ordering the sale under

execution in favor of the plaintiff against the defendant of such shares of the defendant in such corporation, or so much thereof as may be necessary to satisfy such execution. [L. '09, p. 614, § 17.]

§ 1840. Sales, How Conducted.—The sale so ordered shall be conducted in all respects as other sales of personal property under execution, and the officer making such sale shall execute a transfer of such shares to the purchaser with a brief recital of the judgment of the court under which the same was sold. [L. '09, p. 614, § 18.]

§ 1841. Title on Sale.—Such sale shall be valid and effectual to pass to the purchaser all the right, title and interest which the defendant had in such shares of stock, and the proper officers of such company shall enter such sale and transfer on the books of the company in the same manner as if the sale had been made by the defendant himself. [L. '09, p. 614, § 19.]

§ 1842. Controverting the Answer of the Garnishee—Trial.—If the plaintiff should not be satisfied with the answer of the garnishee, he shall state such fact to the justice of the peace, who shall thereupon enter the fact in his docket, and an issue shall be formed under the direction of the court and tried as other cases: Provided, however, no pleading shall be necessary on such issue other than the affidavit of the plaintiff, the answer of the garnishee and the statement of the plaintiff that he is not satisfied with the answer. [L. '09, p. 614, § 20.]

§ 1843. Attorney's Fees—Costs.—Where the answer is controverted and the garnishee is subsequently discharged upon the trial thereof, his costs, including a reasonable attorney's fee to be fixed by the court, shall be taxed against the plaintiff; and if the garnishee upon his answer being controverted by the plaintiff is held liable to an extent greater than the liability admitted in his answer, the costs of the plaintiff upon such proceeding, including a reasonable attorney's fee to be fixed by the court, shall be taxed against the garnishee. [L. '09, p. 615, § 21.]

§ 1844. Garnishee's Defense Against Defendant.—It shall be a sufficient answer against any claim of the defendant against the garnishee founded on any indebtedness of such garnishee or upon the possession by him of any personal property or effects, or, where the garnishee is a corporation in which the defendant was the owner of shares of stock, for the garnishee to show that such indebtedness was paid or such shares of stock were sold under judgment of the court in accordance with the provisions of this act. [L. '09, p. 615, § 22.]

§ 1845. Garnishee's Answer—Identity of Names, How Determined—Trial.—Where the garnishee in his answer states that he

was indebted or had personal property or effects in his possession under his control at the time of the service of the writ of garnishment upon him to a person of the same or similar name to the defendant, and stating the place of business or residence of said person, and that he does not know whether or not such person is the same person as the defendant, and prays the court to determine whether or not the person to whom he was indebted or whose personal property or effects he had in his possession is the same person as the defendant, the court, before rendering judgment against the garnishee defendant as hereinbefore provided, shall take proof as to the identity of said persons, and if he should find therefrom that they are not one and the same individual, the garnishee shall be discharged and shall have and recover his costs against the plaintiff; and if he should find that said persons are one and the same individuals, he shall make a similar judgment as to the payment of the money or the delivery of personal property and effects and as to costs of the garnishee as is hereinbefore provided, where the garnishee is held upon his answer. Before any such hearing on the question of identity is had, the plaintiff shall cause the justice of the peace to issue a citation directed to the person to whom the garnishee answers he was indebted or whose personal property or effects the garnishee has answered he had in his possession or under his control, commanding him to appear before the justice of the peace from which it is issued within ten days after the service of the same upon him, and to answer on oath whether or not he is the same person as the defendant in said action. Said citation shall be dated and attested in like manner as a writ of garnishment and be delivered to the plaintiff or his attorney and shall be served in the same manner as a summons in an action is served. If upon the hearing in this section provided for, the court shall find that the defendant or judgment debtor is the same person as the person to whom the garnishee defendant was indebted, or whose personal property or effects said garnishee defendant had in his possession or under his control, it shall be sufficient answer to any claim of said person against the garnishee founded on any indebtedness of such garnishee or on the possession by him of any personal property or effects for the garnishee to show that such indebtedness was paid or such personal property or effects delivered under the judgment of the court in accordance with the provisions in this act. [L. '09, p. 615, § 23.]

§ 1846. Answer of Garnishee—Defense of Defendant—Exemptions.—It shall not be necessary for the garnishee to plead or set forth in his answer any defense which the defendant might have to the cause of action against him, nor to plead or set forth in his

answer any claim of exemption which may be available to the defendant, but this section shall not be construed to preclude the defendant from pleading, claiming or asserting any exemption which may be available to him under the laws of the state of Washington now in force or hereafter to be enacted. [L. '09, p. 616, § 24.]

CHAPTER VII.

Trial of Civil Actions in Justice's Court.

§ 1847. Continuance—Not to Exceed Sixty Days.—When the pleadings of the parties shall have taken place, the justice shall, upon the application of either party if the defendant be not under arrest, and sufficient cause be shown on oath, continue the case for any time not exceeding sixty days. If the continuance be on account of absence of testimony, it shall be for such reasonable times as will enable the party to procure such testimony, and shall be at the cost of the party applying therefor, unless otherwise ordered by the justice; and in all other respects shall be governed by the law applicable to continuance in the superior court. [L. '54, p. 232, § 56; Cd. '81, § 1769; 2 H. C., § 1517.]

Cited in 1 Wash. 262, 263.

§ 1848. Justice to Try Cause Unless Jury Demanded.—Upon issues joined, if a jury trial be not demanded, the justice shall hear the evidence, and decide all questions of law and fact, and render judgment accordingly. [L. '54, p. 237, § 82; Cd. '81, § 1782; 2 H. C., § 1518.]

§ 1849. Jury—Number—Qualifications—Fees.—After the appearance of the defendant, and before the justice shall proceed to inquire into the merits of the cause, either party may demand a jury to try the action, which jury shall be composed of six good and lawful men having the qualifications of jurors in the superior court of the same county, unless the parties shall agree upon a less number: Provided, that the party demanding the jury shall first pay to the justice the sum of six dollars, which shall be paid over by the justice to the jury before they are discharged, and said amount shall be taxed as costs against the losing party. [Cf. L. '54, p. 235, § 70; L. '62, p. 58, § 1; L. '63, p. 438, § 51; Cd. '81, § 1770; L. '88, p. 118, § 1; 2 H. C., § 1519.]

§ 1850. Time of Jury Trial.—When a jury is demanded, the trial of the case must be adjourned until the time fixed for the return of the jury; if neither party desire an adjournment, the time must be determined by the justice, and must be on the same day, or within the next two days. The jury must be immediately selected as herein provided. [Cf. L. '54, p. 235, § 71; L. '88, p. 118, § 2; 2 H. C., § 1520.]

§ 1851. Selection of Jury.—The justice shall write in a panel the names of eighteen persons, citizens of the county, from which the defendant, his agent or attorney, must strike one name, the plaintiff, his agent or attorney, one, and so on alternately until each party shall have stricken six names, and the remaining six names shall constitute the jury to try such case; and if either party neglect or refuse to aid in striking the jury as aforesaid, the justice shall strike the name in behalf of such party. [Cf. L. '54, p. 235, § 72; Cd. '81, § 1772; L. '88, p. 119, § 3; 2 H. C., § 1521.]

§ 1852. Summons for Jurors.—The justice shall, thereupon issue a summons for the jury, in which the following form shall be observed in substance:—

The State of Washington,)
County, of ——. } ss.

The State of Washington to the Sheriff or [any] Constable of said County.

You are hereby commanded to summon —— to appear before me, at my office in —— precinct, said county, on the —— day of ——, A. D. 18—, at —— o'clock in the —— noon, to serve as jurors in a case pending before me, then and there to be tried. And this they shall in no wise omit. And have you then and there this writ, with your doings thereon.

Given under my hand this the —— day of ——, A. D. ——.

A B, Justice of the Peace.

Which summons shall be personally served upon the persons named, and the same shall be returned, with the names of the persons summoned, at the time appointed for the trial of the cause. [Cf. L. '54, p. 236, § 73; Cd. '81, § 1773; L. '88, p. 119, § 4; 2 H. C., § 1522.]

§ 1853. Swearing Jury.—When the jury is selected, the justice shall administer to them an oath or affirmation well and truly to try the cause. [L. '54, p. 236, § 76; Cd. '81, § 1776; 2 H. C., § 1525.]

§ 1854. Delivery of Verdict.—When the jury have agreed on their verdict, they shall deliver the same to the justice, publicly, who shall enter it on his docket. [L. '54, p. 236, § 77; Cd. '81, § 1777; 2 H. C., § 1526.]

§ 1855. Justice may Discharge Jury, When.—Whenever a justice shall be satisfied that a jury, sworn in any civil cause before him, having been out a reasonable time, cannot agree on their verdict, he may discharge them, and issue a new venire unless the parties consent that the justice may render judgment on the evidence before him, or upon such other evidence as they may produce. [L. '54, p. 236, § 78; Cd. '81, § 1778; 2 H. C., § 1527.]

§ 1856. Failure to Appear When Summoned—Penalty.—Every person who shall be duly summoned as a juror, and shall not appear nor render a reasonable excuse for his default, shall be subject to a fine not exceeding ten dollars. [L. '54, p. 236, § 79; Cd. '81, § 1779; 2 H. C., § 1528.]

CHAPTER VIII.

Judgments in Civil Actions in Justice's Court.

§ 1857. Judgment of Dismissal.—Judgment that the action be dismissed, without prejudice to a new action, may be entered, with costs, in the following cases:—

1. When the plaintiff voluntarily dismisses the action before it is finally submitted;

2. When he fails to appear at the time specified in the notice, upon continuance, or within one hour thereafter;

3. When it is objected at the trial, and appears by the evidence, that the action is brought in the wrong county; but if the objection be taken and overruled, it shall be cause only of reversal or appeal; if not taken at the trial, it shall be deemed waived, and shall not be the cause of reversal. [Cf. L. '54, p. 236, § 80; L. '63, p. 349, § 61; Cd. '81, § 1780; 2 H. C., § 1529.]

Cited in 1 Wash. 61.

§ 1858. Judgment by Default—Evidence.—When the defendant fails to appear and plead at the time specified in the notice, or within one hour thereafter, judgment shall be given as follows:

1. When the defendant has been served with a true copy of the complaint, judgment shall be given without further evidence for the sum specified therein;

2. In other cases, the justice shall hear the evidence of the plaintiff, and render judgment for such sum only as shall appear by the evidence to be just, but in no case exceed the amount specified in the complaint.

3. The justice shall have full power at any time after a judgment has been given by default for failure of the defendant to appear and plead at the proper time, to vacate and set aside said judgment for any good cause and upon such terms as he shall deem sufficient and proper. Such judgment shall only be set aside upon five days' notice in writing served upon the plaintiff or the plaintiff's attorney and filed with the justice within ten days after the entry of the judgment. The justice shall hear the application to set aside such judgment either upon affidavits or oral testimony as he may deem proper. In case such judgment is set aside the making of the application for setting the same aside shall be considered an entry of general appearance in the case by the applicant, and the case shall duly proceed to

a trial upon the merits: Provided, that, no justice of the peace shall pay out or turn over money or property received by him by virtue of any default judgment until the expiration of the ten days for moving to set aside such default judgment has expired. [L. '15, p. 141, § 1. Cf. L. '54. p. 237, § 81; L. '63, p. 349, § 62; Cd. '81, § 1781; 2 H. C., § 1530.]

Cited in 1 Wash. 508, 511; 12 Wash. 549.

§ 1859. Judgment—Rendition—Entry.—Upon the verdict of a jury, the justice shall immediately render judgment thereon. When the trial is by the justice, judgment shall be entered immediately after the close of the trial, if the defendant has been arrested and is still in custody; in other cases it shall be entered within three days after the close of the trial. [L. '54, p. 237, § 83; Cd. '81, § 1783; 2 H. C., § 1531.]

Cited in 74 Wash. 479.

§ 1860. Tender, Judgment in Case of.—If the defendant, at any time before the trial, offer in writing to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor, with costs then accrued; but if he do not accept such offer before the trial, and fail to recover, on the trial of the action, a sum greater than the offer, such plaintiff shall not recover any costs that may accrue after he shall have been notified of the offer of the defendant, but such costs shall be adjudged against him, and if he recover, deducted from his recovery. But the offer and failure to accept it shall not be given in evidence to affect the recovery, otherwise than as to costs, as above provided. [Cf. L. '54, p. 237, § 84; L. '63, p. 350, § 65; Cd. '81, § 1784; 2 H. C., § 1532.]

§ 1861. Setoff Allowed, to What Extent.—When the setoff of the defendant proved shall exceed the claim of the plaintiff, and such excess in amount exceed the jurisdiction of a justice of the peace, the court shall allow such amount as is necessary to cancel the plaintiff's claim, and give the defendant a judgment for costs; but in such case the court shall not render judgment for any further sum in favor of the defendant. [L. '54, p. 232, § 55; Cd. '81, § 1768; 2 H. C., § 1533.]

See supra, § 1789, pleading setoff.
See infra, § 1873, setoff of mutual judgments.

§ 1862. Judgment for Costs—Attorneys' Fees.—When the prevailing party is entitled to recover costs in a civil action before a justice of the peace, the justice shall add the amount thereof to the judgment; in case of failure of the plaintiff to recover or of dismissal of the action, the justice shall enter up a judgment in favor of the defendant for the amount of his costs; and in case any party so entitled to costs is represented in the action by an attorney, the

justice shall include an attorney's fee of five dollars as part of the costs: Provided, however, that the plaintiff shall not be entitled to such attorney fee unless he obtain, exclusive of costs, a judgment in the sum of five dollars or more. [L. '15, p. 143, § 1. Cf. L. '54, p. 337, § 85; Cd. '81, § 1785; 2 H. C., § 1534; L. '93, p. 22, § 1.]

§ 1863. Proceedings Where Title to Land is in Issue.—If it appear on the trial of any cause before a justice of the peace, from the evidence of either party, that the title to lands is in question, which title shall be disputed by the other [party], the justice shall immediately make an entry thereof in his docket, and cease all further proceedings in the cause, and shall certify and return to the superior court of the county a transcript of all the entries made in his docket, relating to the cause, together with all the process and other papers relating to the action, in the same manner and within the same time as upon appeal, and thereupon the parties shall file their pleadings, and the superior court shall proceed in the cause to final judgment and execution, in the same manner as if the said action had been originally commenced therein, and the cost shall abide the event of the suit. [L. '54, p. 235, § 69; Cd. '81, § 1868; 2 H. C., § 1483.]

CHAPTER IX.

Fees and Compensation of Justices of the Peace.

§ 1864. Schedule of Justice Fees.—The fees and compensation of justices of the peace shall be as follows, to wit:

When each case is filed the sum of $2 shall be paid by the plaintiff, which said sum shall include the docketing of the cause, the issuing of notice or summons, the trial of the case and the entering of judgment: Provided, that no further fee shall be required of either party to the suit for issuing subpoena, for approving any bond, including justification, incident to the case, or for orders and filing of publication of summons, or for any continuance by either party, or for issuing any writ of replevin, attachment and one writ of garnishment. For each additional writ of garnishment a fee of fifty cents shall be charged.

Order, transcript and filings on change of venue, the sum of $2 shall be paid by the party taking the change of venue: Provided, that said sum shall include all fees for transcripts of garnishments or other proceedings incident to the main action.

For transcript of judgment the sum of $1 shall be paid by the party applying therefor, which said sum shall include all fees for transcript of garnishment or other proceedings incident to the main action and for approval of bonds on appeal.

For order and filings for commission to take depositions	$ .50
For issuing writ of venire	.50
For taking affidavits and acknowledgments, each	.25
For taking depositions, each folio	.10
For issuing warrants in criminal cases	.50
For taking recognizance of bail, including justification	.75
For committing to jail	.50

[L. '15, p. 372, § 1; L. '93, p. 143, § 1; L. '07, p. 220, § 1.]

§ 1865. Fees Where Justice Receives Salary.—In any civil action commenced before or transferred to a justice of the peace receiving a salary, the plaintiff may, at the time of such commencement or transfer, pay to such justice the sum of two dollars, which sum shall be all the fees and charges which any party to such action shall be compelled to pay to such justice up to and including the rendition of judgment in such action, unless process in replevin, attachment or garnishment shall issue therein, in which case the party procuring such process may pay to such justice the sum of one dollar as full payment for the fees and charges of such justice incident to the proceedings under such process; but in case said action is transferred from such justice before final judgment, such justice shall repay to any party making such payments any sum in excess of what said party would have been compelled to pay by the last section. [L. '93, p. 144, § 2.]

Cited in 8 Wash. 233.

§ 1866. Compensation Limited to Schedule.—No justice of the peace in any civil action or proceeding shall be entitled to or receive any fees or compensations not provided for by this chapter. [L. '93, p. 144, § 3.]

CHAPTER X.

Executions and Proceedings Thereon.

§ 1867. Stay of Execution.—The execution upon a judgment by a justice of the peace may be stayed in the manner hereinafter provided, upon reasonable notice to the opposite party, and for the following periods of time, to be calculated from the date of the judgment:—

1. If the judgment be for any sum not exceeding twenty-five dollars, exclusive of costs, one month;

2. If it be for more than twenty-five dollars, two months. [L. '54, p. 238, § 86; Cd. '81, § 1786; 2 H. C., § 1535.]

§ 1868. Bond for Stay.—To entitle any person to such stay of execution, some responsible person, to be approved by the justice,

and not being a party to the judgment, must, within five days after rendering of the judgment, enter into a bond before the justice, to the adverse party, in a sufficient sum to secure the payment of the judgment and costs, conditioned to be void upon such payment, at the expiration of the stay. [L. '54, p. 238, § 87; Cd. '81, § 1787; 2 H. C., § 1536.]

§ 1869. Form of Bond.—Such bond shall be signed by the person entering into the same, and may be in the following form:—

Whereas, A B has obtained a judgment before J P, one of the justices of the peace in and for —— county, on the —— day of ——, 18—, against C D, for —— dollars, now, therefore, I, E F, acknowledge myself bound to A B in the sum of —— dollars this bond to be void if such judgment shall be paid at the expiration of —— month after the time it was rendered.

Dated the —— day of ——, 18—. —— ——, E. F.

[L. '54, p. 238, § 88; Cd. '81, § 1788; 2 H. C., § 1537.]

§ 1870. Levy Against Property of Principal or Bail.—If, at the expiration of such stay, the judgment be not paid, the execution shall issue against both the principal and bail. If the principal do not satisfy the execution, and the officer cannot find sufficient property belonging to him upon which to levy, he shall levy upon the property of the bail, and in his return shall state what amount of money collected by him on the execution was collected from the bail, and the time when the same was received. [L. '54, p. 238, § 90; Cd. '81, § 1790; 2 H. C., § 1539.]

§ 1871. Bail may Collect from Defendant.—After the return of such execution, the bail shall be entitled, on application to the justice, to have the judgment, or so much thereof as may have been collected from him in satisfaction of the execution, transferred to his use; and he may collect the same from the defendant by execution, together with the interest at the rate of twelve per cent per annum. [L. '54, p. 238, § 90; Cd. '81, § 1790; 2 H. C., § 1539.]

§ 1872. Execution Revoked Where Judgment Stayed.—If judgment be stayed in the manner above provided after an execution has been issued thereon, the justice shall revoke such execution, in the same manner and with like effect as he is hereinafter directed to revoke an execution after an appeal has been allowed; and if the defendant have been committed, shall order him to be discharged from custody. [L. '54, p. 238, § 91; Cd. '81, § 1791; 2 H. C., § 1540.]

§ 1873. Setoff of Mutual Judgments.—If there be mutual justices' judgments between the same parties, upon which the time for appealing has elapsed on judgment, on the application of either party and

reasonable notice given to the adverse party, one may be set off against the other by the justice before whom the judgment against which the setoff is proposed may be. [L. '54, p. 239, § 92; Cd. '81, § 1792; 2 H. C., § 1541.]

§ 1874. Procedure as to Setoff Rendered Before Another Justice.—If the judgment proposed as a setoff was rendered before another justice, the party proposing such setoff shall produce before such justice a transcript of such judgment, upon which there is a certificate of the justice before whom such may be, that it is unsatisfied in whole or in part, and that there is no appeal, and that such transcript was obtained for the purpose of being set off against the judgment to which it is offered as a setoff. The justice granting such transcript shall make an entry thereof on his docket, and all further proceedings on such judgment shall be stayed, unless such transcript be returned with the proper justice's certificate thereon, that it has not been allowed in setoff. [L. '54, p. 239, § 93; Cd. '81, § 1793; 2 H. C., § 1542.]

§ 1875. Execution for Balance After Setoff.—If any justice shall set off one judgment against another, he shall make an entry thereof on his docket, and execution shall issue only for the balance which may be due after such setoff. If a justice shall allow a transcript of a judgment rendered by another justice to be set off, he shall file such transcript among the papers relating to the judgment in which it was allowed in setoff. If he shall refuse such transcript as a setoff, he shall so certify on the transcript, and return the same to the party who offered it. [L. '54, p. 239, § 94; Cd. '81, § 1794; 2 H. C., § 1543.]

§ 1876. No Execution After Five Years.—Execution for the enforcement of a judgment in a justice's court may be issued on the application of the party entitled thereto, in the manner hereinbefore described; but after the lapse of five years from the date of the judgment no execution shall issue except by leave of the justice before whom such judgment may be, upon reasonable notice to the defendant. [L. '54, p. 240, § 95; Cd. '81, § 1795; 2 H. C., § 1544.]

§ 1877. Execution from Succeeding Justice.—When any judgment shall have been rendered by any justice of the peace, and the same [shall] not be satisfied during his continuance in office, and the docket of such justice shall have been transferred to another justice, or to the successor of the justice rendering such judgment, the justice to whom the docket shall be delivered shall issue execution upon such unsatisfied judgment, in the same manner and with like effect as if he himself had rendered the judgment. [L. '54, p. 240, § 96; Cd. '81, § 1796; 2 H. C., § 1545.]

§ 1878. Execution to Another County.—If the defendant have not goods and chattels in the county in which judgment was rendered sufficient to satisfy the execution, the justice before whom such judgment may be shall, at the request of the party entitled, make out a certified transcript of the same, which may be delivered to a justice in any other county, who shall make an entry thereof in his docket, and issue execution thereon for the amount of the judgment, or such part as shall be unsatisfied, with costs as in other cases. [L. '54, p. 240, § 97; Cd. '81, § 1797; 2 H. C., § 1546.]

This section is in conflict with §§ 450–452.

§ 1879. Execution—Direction, Date, etc.—The execution shall be directed (except when it is otherwise especially provided) to the sheriff or any constable of the county where the justice resides; shall be dated on the day it is issued, and made returnable within thirty days from the date; and it shall be against the goods and chattels of the person against whom the same is issued. [L. '54, p. 240, § 98; Cd. '81, § 1798; 2 H. C., § 1547.]

§ 1880. Amount of Debt, etc., to be Stated.—Before any execution shall be delivered, the justice shall state in his docket, and also on the back of the execution, the amount of the debt, or damages and costs, and of the fees due to each person separately, and the officer receiving such execution shall indorse [thereon] the time of the reception of the same. [L. '53, p. 240, § 99; Cd. '81, § 1799; 2 H. C., § 1548.]

§ 1881. Execution may be Renewed.—If an execution be not satisfied, it may, at the request of the plaintiff, be renewed from time to time by the justice who issues the same, or by the justice to whom his docket is transferred, by an indorsement thereon to that effect, signed by him, and dated when the same shall be made. If any part of such execution has been satisfied, the indorsement of renewal shall express the sum due on the execution. Every such indorsement shall renew the execution in full force in all respects for thirty days, and no longer; and an entry of such renewal shall be made in the docket of the justice. [L. '54, p. 240, § 100; Cd. '81, § 1800; 2 H. C., § 1549.]

§ 1882. Notice of Sale upon Execution.—The officer, after taking goods and chattels into his custody by virtue of an execution, shall, without delay, give public notice by at least three advertisements, put up at three public places in the county, of the time and place when and where they will be exposed for sale. Such notice shall describe the goods and chattels taken, and shall be put up at least ten days before the day of sale. [L. '54, p. 241, § 101; Cd. '81, § 1801; 2 H. C., § 1550.]

§ 1883. Sale upon Execution—Return.—At the time and place so appointed, if the goods and chattels be present for inspection of bidders, the officer shall expose them to sale at public vendue to the highest bidder; he shall return the execution and have the money before the justice, at the time of making such return, ready to be paid over to the persons respectively entitled thereto. [L. '54, p. 241, § 102; Cd. '81, § 1802; 2 H. C., § 1551.]

§ 1884. Officer not to Buy at Execution Sale.—No officer shall directly or indirectly purchase any goods or chattels at any sale made by him upon execution, and every such purchase shall be absolutely void. [L. '54, p. 241, § 103; Cd. '81, § 1803; 2 H. C., § 1552.]

§ 1885. Execution may Issue Against the Person, When.—If the action be one in which the defendant might have been arrested upon a warrant, an execution against the person of such defendant may be issued, after the return of an execution against his property unsatisfied in whole or in part. An execution against the person may likewise be issued after such return, where the defendant has been arrested upon a warrant and not discharged according to law. [L. '54, p. 241, § 104; Cd. '81, § 1804; 2 H. C., § 1553.]

§ 1886. Garnishees may be Examined Under Oath.—If there be no property found, or if the goods and chattels levied on be not sufficient to satisfy such execution, the officer shall, on demand of the plaintiff, summon, in writing, as garnishees, such persons as may be named to [him by] the plaintiff or his agent, to appear before the justice on the return day of the execution, to answer such interrogatories as may be put to them, touching their liabilities as garnishees, and the like proceedings shall be had thereon before the justice to final judgment as in the proceedings by attachment. [Cf. L. '54, p. 241, § 105; L. '63, p. 354, § 86; Cd. '81, § 1805; 2 H. C., § 1554.]

§ 1887. Execution for Costs.—Any justice of the peace may issue an execution against the prevailing party, to collect fees and costs for which such party may be liable, after an execution has been first issued against the other party, and returned "no property found." [L. '54, p. 241, § 106; Cd. '81, § 1806; 2 H. C., § 1555.]

§ 1888. Claim by Third Person to Property Levied on or Attached.—If any property levied on be claimed by any other person than the defendant in the execution, and the claimant make affidavit of his title or right to the possession of the same, stating the ground of such title or right, and serve the same upon the sheriff or constable while the property is in his possession, said sheriff or constable shall not be bound to keep the property, unless the plaintiff, on demand, indemnify him in the same manner as provided in this

act for cases where property held under attachment is claimed by persons not parties to the suit; and when such claim is made, the sheriff or constable shall immediately file the claimant's affidavit with the justice, and notify the plaintiff thereof, and unless the property be at once released, the justice shall set the case for trial upon the allegations of the claimant's affidavit, and the case shall proceed and be determined in the same manner as provided in this act for cases where property held under attachment is claimed by persons not parties to the suit. [Cf. L. '54, p. 241, § 107; L. '77, p. 202, § 6; Cd. '81, § 1807; 2 H. C., § 1556.]

Cited in 11 Wash. 583; 36 Wash. 180; 57 Wash. 139; 70 Wash. 589, 590.

"This act" refers to §§ 1737, 1738, of the Code of 1881.
See supra, § 1796, claim and delivery.

§ 1889. Claimant may Resort to Other Remedies.—Nothing contained in the last section shall be so construed as to prevent the claimant of property levied on by execution from resorting to any legal remedy he may choose to pursue, instead of proceeding in the manner therein prescribed. [L. '54, p. 242, § 108; L. '63, p. 355, § 89; Cd. '81, § 1808; 2 H. C., § 1557.]

CHAPTER XI.

Forms in Civil Actions in Justice's Court.

§ 1890. Forms — Equivalents may be Used.—The following or equivalent forms may be used by justices of the peace in civil actions and proceedings under this chapter, to wit:—

FORM OF A WARRANT.

The State of Washington,
County of ——. } ss.

To the Sheriff or any Constable of said County.

In the name of the state of Washington, you are hereby commanded to take the body of C D, if he be found in your county, and bring him forthwith before the undersigned, one of the justices of the peace in and for said county, at his office in ——, to answer A B in a civil action; and you are hereby commanded to give notice thereof to the said plaintiff, or his agent or attorney; and have you there and then this writ.

Given under my hand this —— day of ——, 18—.

FORM OF A SUBPOENA.

The State of Washington,
County of ——. } ss.

To ——.

In the name of the state of Washington, you are hereby required to appear before the undersigned, one of the justices of the peace in and for said county, on the —— day of ——, 18—, at —— o'clock in the —— noon, at his office in ——, to give evidence in a certain cause, then and there to be tried, between A B, plaintiff, and C D, defendant, on the part of (the plaintiff or defendant, as the case may be).

Given under my hand this —— day of ——, 18—.

J P, Justice of the Peace.

FORM OF EXECUTION.

The State of Washington,
County of ——. } ss.

To the Sheriff or any Constable of said County.

Whereas, judgment against C D, for the sum of —— dollars, and —— dollars costs of suit, was recovered on the —— day of, 18—, before the undersigned, one of the justices of the peace in and for said county, at the suit of A B—these are, therefore, in the name of the state of Washington, to command you to levy on the goods and chattels of the said C D (excepting such as the law exempts), and make sale thereof, according to law, to the amount of said sum and costs upon this writ, and the same return to me within thirty days, to be rendered to the said A B for his debt, interests and costs.

Given under my hand this —— day of ——, 18—.

J P, Justice of the Peace.

FORM OF EXECUTION AGAINST THE BODY.

The State of Washington,
County of ——. } ss.

To the Sheriff or any Constable of said County.

Whereas, judgment against C D for the sum of —— dollars, and for —— dollars costs of suit, was recovered on the —— day of ——, 18—, before the undersigned, one of the justices of the peace in and for said county, at the suit of A B, and an execution against his property returned unsatisfied,—these are, therefore, in the name of the state of Washington, to command you to take the body of the said C D, and him convey and deliver to the keeper of the jail of said county, who is hereby commanded to receive and keep the said C D in safe custody in prison until the aforesaid sum and all legal expenses be paid and satisfied, or until he be discharged therefrom

by due course of law; and of this writ make due return within thirty days.

Given under my hand this —— day of ——, 18—.

J P, Justice of the Peace.

FORM OF EXECUTION AGAINST PRINCIPAL AND SURETY AFTER EXPIRATION OF STAY OF EXECUTION.

The State of Washington, }
County of ——. } ss.

To the Sheriff or any Constable of said County.

Whereas, judgment against C D for the sum of —— dollars, and for —— dollars costs of suit, was recovered on the —— day of ——, 18—, before the undersigned, one of the justices of the peace in and for said county, at the suit of A B; and whereas, on the —— day of ——, 18—, E F became surety to pay said judgment and costs, in the —— month, from the date of the judgment aforesaid, agreeably to law, in the payment of which the said C D and E F have failed,—these are, therefore, in the name, etc. (as in the common form).

FORM OF ORDER IN REPLEVIN.

The State of Washington, }
County of ——. } ss.

To the Sheriff or any Constable of said County.

In the name of the state of Washington, you are hereby commanded to take the personal property mentioned and described in the within affidavit and deliver the same to the plaintiff upon receiving a proper undertaking, unless before such delivery the defendant enter into a sufficient undertaking for the delivery thereof to the plaintiff, if delivery be adjudged.

Given under my hand this —— day of ——, 18—.

J P, Justice of the Peace.

FORM OF A WRIT OF ATTACHMENT.

The State of Washington, }
—— County, } ss.

To the Sheriff or any Constable of said County.

In the name of the state of Washington you are commanded to attach and safely keep the goods and chattels, moneys, effects, and credits of C D (excepting such as the law exempts), or so much thereof as shall satisfy the sum of —— dollars, with interest and cost of suit, in whosesoever hands or possession the same may be found in your county, and to provide that the goods and chattels so attached may be subject to further proceeding thereon as the law requires; and of this writ make legal service and due return.

Given under my hand this —— day of ——, 18—.

J P, Justice of the Peace.

FORM OF UNDERTAKING FOR ARREST.

Whereas an application has been made by A B, plaintiff, to J P, one of the justices of the peace in and for —— county, for a warrant to arrest C D, defendant, founded upon an affidavit of the said plaintiff, setting forth that C D (here state the cause for the arrest of absconding debtor),—now, therefore, we, A B, plaintiff, and E F, acknowledge ourselves bound to C D in the sum of —— dollars to pay all costs that may be awarded to the said defendant, and all damages which he may sustain by reason of the arrest, not exceeding the sum of —— dollars.

Dated this —— day of ——, 18—.

A B, E F.

FORM OF UNDERTAKING IN REPLEVIN.

Whereas, A B, plaintiff, has commenced an action before J P, one of the justices of the peace in and for —— county, against C D, defendant, for the recovery of certain personal property, mentioned and described in the affidavit of the plaintiff, to wit (here set forth the property claimed),—now, therefore, we, A B, plaintiff, E F, and G H, acknowledge ourselves bound unto C D, in the sum of —— dollars for the prosecution of the action for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may for any cause be recovered against the plaintiff.

Dated the —— day of ——, 18—.

A B, E F, G H.

FORM OF UNDERTAKING IN ATTACHMENT.

Whereas, an application has been made by A B, plaintiff, to J P, one of the justices of the peace in and for —— county, for a writ of attachment against the personal property of C D, defendant,—now, therefore, we, A B, plaintiff, and E F, acknowledge ourselves bound to C D, in the sum of —— dollars that if the defendant recover judgment in this action the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the said attachment, and not exceeding the sum of —— dollars.

Dated the —— day of ——, 18—.

A B, E F.

FORM OF UNDERTAKING TO DISCHARGE ATTACHMENT.

Whereas, a writ of attachment has been issued by J P, one of the justices of the peace in and for —— county, against the personal property of C D, defendant in an action in which A B is plaintiff,—now, therefore, we, C D, defendant, E F and G H, acknowledge our-

selves bound unto J K, constable, in the sum of —— dollars (double the value of the property) engaging to deliver the property attached, to wit (here set forth a list of articles attached), or pay the value thereof to the sheriff or constable to whom the execution upon a judgment obtained by plaintiff in the aforesaid action may be issued.

Dated this —— day of ——, 18—.

C D, E F, G H.

FORM OF UNDERTAKING TO INDEMNIFY CONSTABLE ON CLAIM OF PROPERTY BY A THIRD PERSON.

Whereas, L M claims to be owner of and have the right to possession of certain personal property, to wit (here describe it), which has been taken by J K, constable in —— county, upon an execution by J P, justice of the peace in and for the county of ——, upon a judgment obtained by A B, plaintiff, against C D, defendant,—now, therefore, we, A B, plaintiff, E F, and G H, acknowledge ourselves bound unto the said J K, constable, in the sum of —— dollars to indemnify the said J K against such claim.

A B, E F.

[L. '54, p. 253, ch. 19; L. '63, p. 370, ch. 17; Cd. '81, § 1885; 2 H. C., § 1558.]

CHAPTER XII.

Proceedings for Contempt Before Justices of the Peace.

§ 1891. When Justice may Punish for Contempt.—In the following cases, and no others, a justice of the peace may punish for contempt:—

1. Persons guilty of disorderly, contemptuous, and insolent behavior toward such justice while engaged in the trial of a cause, or in rendering judgment, or in any judicial proceedings, which tend to interrupt such proceedings or impair the respect due to his authority;

2. Persons guilty of any breach of the peace, noise, or disturbance, tending to interrupt the official proceedings of such justice;

3. Persons guilty of resistance or disobedience to any lawful order or process made or issued by him. [L. '54, p. 248, § 145; Cd. '81, § 1842; 2 H. C., § 1601.]

§ 1892. Punishment for Contempt.—Punishment for contempt may be by fine not exceeding twenty-five dollars, or by imprisonment in the county jail not exceeding two days, at the discretion of the justice, unless otherwise provided by statute. [L. '54, p. 249, § 146; Cd. '81, § 1843; 2 H. C., § 1602.]

§ 1893. Hearing — Warrant for Offender.—No person shall be punished for a contempt before a justice of the peace until an oppor-

tunity shall have been given to him to be heard in his defense; and for that purpose, the justice may issue his warrant to bring the offender before him. [L. '54, p. 249, § 147; Cd. '81, § 1844; 2 H. C., § 1603.]

§ 1894. Summary Arraignment.—If the offender be present, he may be summarily arraigned by the justice, and proceeded against in the same manner as if a warrant had been previously issued, and the offender arrested thereon. [L. '54, p. 249, § 148; Cd. '81, § 1845; 2 H. C., § 1604.]

§ 1895. Form of Warrant.—The warrant for contempt may be in the following form:—

The State of Washington,
County of ——. } ss.

To the Sheriff or any Constable of said County.

In the name of the state of Washington, you are hereby commanded to apprehend A B, and bring him before J P, one of the justices of the peace of said county, at his office in said county, to show cause why he should not be convicted of a contempt alleged to have been committed on the —— day of ——, A. D. 18—, before the said justice, while engaged as a justice of the peace in a judicial proceeding.

Dated this —— day of ——, A. D. 18—.

J P, Justice of the Peace.

[L. '54, p. 249, § 149; Cd. '81, § 1846; 2 H. C., § 1605.]

§ 1896. Form of Judgment.—Upon the conviction of any person for contempt an entry thereof shall be made in the docket of such justice, stating the particular circumstances of the offense, and the judgment rendered thereon, and may be in the following form:—

The State of Washington,
County of ——. } ss.

Whereas, on the —— day of ——, A. D. 18—, while the undersigned, one of the justices of the peace of said county, was engaged in the trial of an action between C D, plaintiff, and E F, defendant, in said county, A B, of the said county, did interrupt the said proceedings and impair the respect due to the authority of the undersigned, by (here describe the cause particularly); and whereas, the said A B was thereupon required by the undersigned to answer for the said contempt, and show cause why he should not be convicted thereof; and whereas, the said A B did not show cause against the said charge,—be it therefore ordered that the said A B is adjudged to be guilty, and is convicted of the contempt aforesaid, and is ad-

judged by the undersigned to pay a fine of —— dollars (or be imprisoned, etc.).

Dated this —— day of ——, A. D. 18—.

J P, Justice of the Peace.

[L. '54, p. 249, § 150; Cd. '81, § 1847; 2 H. C., § 1606.]

§ 1897. Warrant of Commitment.—If any person convicted of a contempt be adjudged to be imprisoned, a warrant of commitment shall be issued by the justice. If he be adjudged to pay a fine, a process may be issued to collect the same; and when so collected it shall forthwith be paid by the justice into the county treasury. [L. '54, p. 250, § 151; Cd. '81, § 1848; 2 H. C., § 1607.]

CHAPTER XIII.

Witnesses and Depositions.

§ 1898. Witnesses may be Subpoenaed Within Twenty Miles.—A subpoena issued by a justice of the peace shall be valid to compel the attendance of a witness in the justice's court, if such witness be within twenty miles of the place of trial. [L. '54, p. 233, § 57; Cd. '81, § 1869.]

§ 1899. How and by Whom Served.—A subpoena may be served by any person above the age of eighteen years, by reading it to the witness, or by delivering to him a copy at his usual place of abode. [L. '54, p. 233, § 58; Cd. '81, § 1870.]

§ 1900. Attachment for Failure to Appear.—Whenever it shall appear to the satisfaction of the justice, by proof made before him, that any person, duly subpoenaed to appear before him in an action, shall have failed, without a just cause, to attend as a witness, in conformity to such subpoena, and the party in whose behalf such subpoena was issued, or his agent, shall make oath that the testimony of such witness is material, the justice shall have the power to issue an attachment to compel the attendance of such witness: Provided, that no attachment shall issue against witness in any civil action, unless his fees for mileage and one day's attendance have been tendered or paid in advance, if previously demanded by such witness from the person serving the subpoena. [L. '54, p. 233, § 59; Cd. '81, § 1871.]

§ 1901. Service and Costs in Attachment.—Every such attachment may be directed to any sheriff or constable of the county in which the justice resides, and shall be executed in the same manner as a warrant; and the fees of the officer for issuing and serving the same shall be paid by the person against whom the same was issued, unless he show reasonable cause, to the satisfaction of the justice,

for his omission to attend; in which case the party requiring such attachment shall pay all costs. [L. '54, p. 233, § 60; Cd. '81, § 1872.]

§ 1902. Damages for Nonattendance.—Every person subpoenaed as aforesaid, and neglecting to appear, shall also be liable to the party in whose behalf he may have been subpoenaed, for all damages which such party may have sustained by reason of his nonappearance: Provided, that such witness had the fees allowed for mileage and one day's attendance paid, or tendered him, in advance, if demanded by him at the time of the service. [L. '54, p. 234, § 61; Cd. '81, § 1873.]

§ 1903. Party to Action as Witness.—A party to an action may be examined as a witness, at the instance of the adverse party, and for that purpose may be compelled in the same manner, and subject to the same rules of examination, as any other witness, to testify at the trial, or appear and have his deposition taken. [L. '54, p. 243, § 62; Cd. '81, § 1874.]

§ 1904. Testimony of Party may be Rebutted.—The examination of a party thus taken may be rebutted by adverse testimony. [L. '54, p. 234, § 63; Cd. '81, § 1875.]

§ 1905. Proceedings on Party's Refusal to Testify.—If a party refuse to attend and testify at the trial, or give his deposition before trial, when required, his complaint, answer or reply, may be stricken out, and judgment taken against him. [L. '54, p. 234, § 64; Cd. '81, § 1876.]

§ 1906. Examination of Party in His Own Behalf.—A party examined by an adverse party may be examined on his own behalf, in respect to any matter pertinent to the issue. But if he testify to any new matter, not responsive to the inquiries put to him by the adverse party, or necessary to qualify or explain his answer thereto, or to discharge, when his answer would charge himself, such adverse party may offer himself as a witness, and he shall be so received. [L. '54, p. 234, § 65; Cd. '81, § 1877.]

§ 1907. When Depositions may be Taken.—Either party, in an action depending before a justice of the peace, may cause a deposition of a witness therein to be taken, when such witness resides, or is about to go more than twenty miles from the place of trial, or is so sick, infirm, or aged, as to make it probable that he will not be able to attend at the trial. [L. '54, p. 234, § 66; Cd. '81, § 1878.]

§ 1908. How Taken and Certified.—The notice shall be served, and the deposition taken, certified, and returned, according to the law regulating the taking of depositions to be read in the superior court. [L. '54, p. 234, § 67; Cd. '81, § 1879.]

§ 1909. How Used on Trial.—The justice shall allow every deposition taken, certified and returned according to law, to be read on the trial of the cause in which it is taken, in all cases where the same testimony, if given verbally before him, could have been received; but no such deposition shall be read on the trial, unless it appears to the justice that the witness, whose deposition is so offered:

1. Is dead, or resides more than twenty miles from the place of trial; or

2. Is unable, or cannot safely attend before the justice, on account of sickness, age, or other bodily infirmity;

3. That he has gone more than twenty miles from the place of trial without the consent or collusion of the party offering the deposition. [L. '54, p. 234, § 68; Cd. '81, § 1880.]

CHAPTER XIV.

Appeals from Justice's Court.

§ 1910. Appeal in Civil Actions.—Any person considering himself aggrieved by the judgment or decision of a justice of the peace in a civil action may, in person or by his agent, appeal therefrom to the superior court of the same county where the judgment was rendered or the decision made: Provided, there shall be no appeal allowed unless the amount in controversy exclusive of costs, shall exceed the sum of twenty dollars. [L. '05, p. 41, § 1. Cf. L. '54, p. 252, § 160; Cd. '81, § 1858; L. '91, p. 66, § 1; 2 H. C., § 1630.]

Cited in 11 Wash. 15; 12 Wash. 550; 73 Wash. 35.

§ 1911. Appeal, How Taken—Bond.—Such appeal shall be taken by filing a notice of appeal with the justice and serving a copy on the adverse party, or his attorney, and unless such appeal be by a county, city, or school district, filing a bond or undertaking, as herein provided, within twenty days after the judgment is rendered, or the decision made. No appeal, except when such appeals are by a county, city, or school district, shall be allowed in any case, unless a bond or an undertaking shall be executed on the part of the appellant, and filed with and approved by the justice, with one or more sureties, in the sum of one hundred dollars, to the effect that the appellant will pay all costs that may be awarded against him on the appeal; or if a stay of proceedings before the justice be claimed, except by a county, city, or school district, a bond of undertaking, with two or more sureties, to be approved by the justice, in a sum equal to twice the amount of the judgment and costs, to the effect that the appellant will pay such judgment, including costs, as may be rendered against him on appeal. [Cf. L. '54, p. 252, §§ 161, 162; L. '81, p. 8, § 1; Cd. '81, § 1859; L. '91, p. 66, § 2; 2 H. C., § 1631.]

§ 1912. Stay of Proceedings, When.—Upon appeal being taken, and a bond filed to stay all proceedings, the justice shall allow the same, and make an entry of such allowance in his docket, and all further proceedings on the judgment before the justice shall thereupon be suspended; and if in the meantime execution shall have been issued, the justice shall give the appellant a certificate that such appeal has been allowed. [Cf. L. '54, p. 252, § 164; Cd. '81, § 1861; L. '91, p. 67, § 3; 2 H. C., § 1632.]

§ 1913. Release of Property on Certificate of Appeal.—On such certificate being presented to the officer holding the execution, he shall forthwith release the property of the defendant that may have been taken on execution; and if the body of the defendant have been taken on execution he shall be discharged from imprisonment. [L. '54, p. 252, § 165; Cd. '81 § 1862; 2 H. C., § 1633.]

§ 1914. Transcript—Jurisdiction—Procedure in Superior Court.—Within ten days after the appeal has been taken in a civil action or proceeding, the appellant shall furnish the superior court with a transcript of all the entries made in the justice's docket relating to the case, together with all the processes and other papers relating to the action, and file[d] with the justice, which shall be certified by such justice to be correct; and upon the filing of such transcript, the superior court shall become possessed of the cause, and shall proceed in the same manner, as near as may be, as in actions originally commenced in that court, except as herein otherwise provided. [Cf. L. '54, p. 252, § 166; Cd. '81, § 1863; L. '91, p. 67, § 4; 2 H. C., § 1634.]

Cited in 9 Wash. 307; 17 Wash. 56; 25 Wash. 204; 41 Wash. 413.

§ 1915. Pleadings in Superior Court on Appeal.—The issue before the justice shall be tried in the superior court without other or new pleadings unless otherwise directed by the court. [L. '54, p. 253, § 167; Cd. '81, § 1864; 2 H. C., § 1635.]

Cited in 3 Wash. 709.

§ 1916. Attachment for Certified Transcript.—Upon an appeal being taken and allowed the superior court may, by rule and attachment, compel the justice to make and deliver to the appellant a certified transcript of the proceedings, upon paying to such justice the fees allowed by law for making such transcript, and whenever the court is satisfied that the return of the justice is substantially erroneous or defective, it may, by rule and attachment, compel him to amend the same. [Cf. L. '54, p. 253, § 168; Cd. '81, § 1865; L. '91, p. 67, § 5; 2 H. C., § 1636.]

§ 1917. Appeal not to be Dismissed for Defective Bond, When.—No appeal allowed by justice shall be dismissed on account of the

bond being defective, if the appellant will, before the motion is determined, execute and file in the superior court such a bond as he should have executed at the time of taking the appeal, and pay all costs that shall have accrued by reason of such defect. [L. '54, p. 253, § 169; Cd. '81, § 1866; 2 H. C., § 1637.]

§ 1918. Judgment Against Appellant and Sureties, When.—In all cases of appeal to the superior court if, on the trial anew in such court, the judgment be against the appellant in whole or in part, such judgment shall be rendered against him and his sureties in the bond for the appeal. [L. '54, p. 253, § 170; Cd. '81, § 1867; 2 H. C., § 1638.]

Cited in 1 Wash. 25; 34 Wash. 155.

§ 1919. Appeal in Criminal Cases — Notice.—Every person convicted before a justice of the peace of any offense may appeal from the judgment, within ten days thereafter, to the superior court. The appeal shall be taken by orally giving notice thereof at the time the judgment is rendered, or by serving a written notice thereof upon the justice at any time after the judgment, and within the time allowed for taking the appeal; when the notice is given orally, the justice shall enter the same in his docket. The appellant shall be committed to the jail of the county until he shall recognize or give a bond to the state, in such reasonable sum with such sureties as said justice may require, with condition to appear at the court appealed to, and there prosecute his appeal, and to abide the sentence of the court thereon, if not revised by a higher court. [Cf. L. '54, p. 261, § 177; L. '77, p. 203, § 7; Cd. '81, § 1898; L. '91, p. 67, § 6; 2 H. C., § 1639.]

Cited in 49 Wash. 437; 80 Wash. 337.

§ 1920. Fees not Required in Advance — Failure to Prosecute, Effect of.—The appellant in a criminal action shall not be required to advance any fees in claiming his appeal, nor in prosecuting the same; but if convicted in the appellate court, or if sentenced for failing to prosecute his appeal, he may be required, as a part of the sentence, to pay the costs of prosecution. If the appellant shall fail to enter and prosecute his appeal, he shall be defaulted on his recognizance, if any was taken, and the superior court may award sentence against him for the offense whereof he was convicted, in like manner as if he had been convicted thereof in that court; and if he be not then in custody, process may be issued to bring him into court to receive sentence. [Cf. L. '54, p. 261, § 179; Cd. '81, § 1900; L. '91, p. 68, § 7; 2 H. C., § 1640.]

Cited in 49 Wash. 437; 80 Wash. 337.

§ 1921. Justice to Recognize Witnesses — Transcript.—Upon an appeal being taken in a criminal action, the justice shall require the witnesses to give recognizances for their appearance in the superior court, or if they are not present, indorse their names on the copy of proceeding. He shall, on such appeal, make and certify a copy of the conviction and other proceedings in the case, and transmit the same, together with the recognizance and an abstract bill of the costs, to the clerk of the court appealed to, who shall issue a subpoena for the witnesses, if they are not under recognizance. [Cf. L. '54, p. 261, § 178; L. '73, p. 384, § 197; Cd. '81, § 1899; L. '91, p. 68, § 8; 2 H. C., § 1641.]

§ 1922. Appeal from Order for Security to Keep the Peace.—An appeal may be taken from the order of a magistrate requiring a person to give security, to keep the peace, or for good behavior. Such appeal shall be taken in the same manner and subject to the same conditions as appeals from justices' courts in criminal actions, and the magistrate may require recognizances of the appellant and the witness, as in appeals in such criminal actions. [Cf. L. '54, p. 106, §§ 18, 19; L. '63, p. 385, §§ 191, 192; Cd. '81, §§ 1911, 1912; L. '91, p. 68, § 9; 2 H. C., 1642.]

Cited in 23 Wash. 88.

1923. Proceedings on Such Appeal — New Bonds — Costs.—The court before which such appeal is prosecuted may affirm the order of the justice or discharge the appellant, or may require the appellant to enter into a new recognizance, with sufficient sureties, in such sum and for such time as the court shall think proper, and may also make such order in relation to the costs of prosecution as may be deemed just and reasonable. [L. '54, p. 155, § 20; Cd. '81, § 1913; 2 H. C., § 1643.]

§ 1924. Failure to Prosecute Such Appeal, Effect of.—If any party appealing from such order of a magistrate shall fail to prosecute his appeal, his recognizance shall remain in full force and effect, as to any breach of the condition, without an affirmance of the judgment or order of the magistrate, and also shall stand as security for costs which shall be ordered by the court appealed to to be paid by the appellant. [Cf. L. '54, p. 105, § 21; Cd. '81, § 1914; L. '91, p. 68, § 10; 2 H. C., § 1644.]

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CHAPTER I.

Practice in Criminal Actions in Justice's Court.

§ 1925. Justice to Issue Warrant of Arrest, When.—Any justice shall, on complaint on oath in writing before him charging any person with the commission of any crime or misdemeanor of which he has jurisdiction, issue a warrant for the arrest of such person, and cause him to be brought forthwith before him for trial. [L. '54, p. 260, § 172; Cd. '81, § 1888; 2 H. C., § 1559.]

See supra, § 46, jurisdiction in criminal cases.

§ 1926. Offense Committed in View of Justice, Proceedings.—When any offense is committed in view of any justice, he may, by verbal direction to any constable, or if no constable is present, to any citizen, cause such constable or citizen to arrest such offender, and keep him in custody for the space of one hour, unless such offender shall sooner be taken from such custody by virtue of a warrant issued on complaint on oath. But such person so arrested shall not be confined in jail nor put upon any trial until arrested by virtue of such warrant. And on the return of any warrant issued by him, it shall be the duty of the justice to docket the cause, and unless continuance be granted, forthwith to hear and determine the cause, and either acquit, convict and punish, or hold to bail the offender, if the offense be bailable, and prove to be one which should be tried in the superior court, or in default of bail, commit him to jail, as the facts and law may justify. [L. '54, p. 260, §§ 173, 174; Cd. '81, § 1889; 2 H. C., § 1560.]

Cited in 23 Wash. 88.

§ 1927. Either Side may Demand Jury.—In all trials for offenses within the jurisdiction of a justice of the peace, the defendant or the state may demand a jury, which shall consist of six or a less number, agreed [upon] by the state and accused, to be impaneled and sworn as in civil cases, or the trial may be by the justice. When the complaint is for a crime or misdemeanor in the exclusive jurisdiction of the superior court, the justice hears the case as a committing magistrate, and no jury shall be allowed. [L. '54, p. 260, § 174; L. '73, p. 382, § 188; L. '75, p. 51, § 2; Cd. '81, § 1890; L. '91, p. 18, § 1; 2 H. C., § 1561.]

Cited in 40 Wash. 405.

Right to jury trial, see Const., Art. I, § 21, and notes.

§ 1928. Proceedings on Verdict of Guilty.—Such justice or jury, if they find the prisoner guilty, shall assess his punishment; or if, in their opinion, the punishment they are authorized to assess is not adequate to the offense, they may so find, and in such case the jus-

tice shall order such defendant to enter [into] recognizance to appear in the superior court of the county, and shall also recognize the witnesses, and proceed as in proceedings by a committing magistrate. [Cf. L. '54, p. 260, § 174; Cd. '81, § 1891; L. '91, p. 18, § 2; 2 H. C., § 1562.]

Cited in 27 Wash. 687.

See infra, § 1957, recognizance to appear before superior court.

§ 1929. Plea of Guilty.—The defendant may plead guilty to any offense charged. [L. '54, p. 260, § 174; Cd. '81, § 1892; 2 H. C., § 1563.]

§ 1930. Justice to Summon Witnesses.—In all cases arising under this chapter, if the offense charged involve injury to a particular person who is within the county, it shall be the duty of the justice of the peace to summon the injured person, and all others whose testimony may be deemed material, as witnesses at the trial, and to enforce their attendance by attachment if necessary. [Cf. L. '54, p. 260, § 174; Cd. '81, § 1894; L. '91, p. 18, § 3; 2 H. C., § 1564.]

§ 1931. Judgment not to be Given Without Evidence.—No justice shall assess a fine, or enter a judgment thereon, until a witness or witnesses have been examined to state the circumstances of the transaction. [Cf. L. '54, p. 260, § 174; Cd. '81, § 1893; L. '91, p. 19, § 4; 2 H. C., § 1565.]

§ 1932. Continuance to be Granted, How — Costs, etc.—Continuance may be granted, either on application of the defendant or the prosecuting witness, under the same rules as in civil cases; the cost of such continuance shall abide the event of the prosecution in all cases, and the justice shall recognize the defendant and the witnesses to appear from time to time, in the same manner as is provided in other criminal examinations before him. [Cf. L. '54, p. 261, § 176; Cd. '81, § 1895; L. '91, p. 19, § 5; 2 H. C., § 1566.]

See infra, § 1955, recognizance of defendant and witnesses.

§ 1933. Judgment, How Rendered and Satisfied.—In all cases of conviction, unless otherwise provided in this chapter, the justice shall enter judgment for the fine and costs against the defendant, and may commit him to jail, to be placed at hard labor until the judgment is satisfied, or the payment thereof be secured as provided by section 1934, and further proceedings therein shall be had as in like cases in the superior court; but the defendant shall not be imprisoned for a longer aggregate time than one day for every three dollars of the fine and costs; and a defendant who has been committed shall be discharged at any time upon the payment of such part of the fine and costs as remains unpaid after deducting from the whole

amount any previous payment, and three dollars for every day he has been imprisoned upon the commitment. [Cf. L. '54, p. 261, § 176; Cd. '81, § 1896; L. '91, p. 19, § 6; 2 H. C., § 1567.]

§ 1934. Stay of Execution, Manner of Procuring.—Every defendant may stay the execution for the fine and costs for thirty days by procuring sufficient sureties, to be approved by the justice, to enter into recognizance before him for the payment of the fine and costs; the entry of such recognizance shall be made on the docket of the justice, and signed by the sureties, and shall have the same effect as a judgment, and if the same be not paid in thirty days, the justice shall proceed as in like cases in the superior court. [L. '54, p. 261, § 176; Cd. '81, § 1897; 2 H. C., § 1568.]

CHAPTER II.

Forms in Criminal Actions in Justice's Court.

§ 1935. Forms in Criminal Actions — Equivalents Authorized.—The following or equivalent forms may be used by justices of the peace in criminal proceedings under this act:—

FORM OF A SEARCH-WARRANT.

The State of Washington,
County of ——. } ss.

To the Sheriff or any Constable of said County.

Whereas, A B has this day complained in writing under oath to the undersigned, one of the justices of the peace in and for said county, that on the —— day of ——, 18—, at ——, in said county (here insert the substance of the complaint, whatever it may be),—therefore, in the name of the state of Washington, you are commanded forthwith to apprehend the said C D, and bring him before me, to be dealt with according to law.

Given under my hand this —— day of ——, 18—.

J P, Justice of the Peace.

FORM OF A WARRANT.

The State of Washington,
County of ——. } ss.

To the Sheriff or any Constable of said County.

Whereas, A B has this day made complaint on oath to the undersigned, one of the justices of the peace in and for said county, that the following goods and chattels, to wit (here describe them), the property of the said A B, have been within —— days past, or were on the —— day of ——, by some person or persons unknown, stolen, taken, and carried away out of the possession of the said A B, in the county aforesaid; and also, that the said A B verily believes that

the said goods or a part thereof are concealed in or about the house of C D, in said county (describe the premises to be searched),—therefore, in the name of the state of Washington, you are commanded that, with the necessary and proper assistance, you enter into the said house (describe the premises to be searched), and then diligently search for the said goods and chattels; and if the same or any part thereof be found on such search, bring the same, and also the same [said] C D, forthwith before me, to be disposed of according to law.

Given under my hand this —— day of ——, 18—.

J P, Justice of the Peace.

FORM OF COMMITMENT WHERE JUSTICE ON THE TRIAL SHALL FIND THAT HE HAS NOT JURISDICTION IN THE CASE.

The State of Washington,
County of ——. } ss.

To any Constable and the Keeper of the Jail of said County.

Whereas, C D, of ——, etc., has been brought this day before the undersigned, one of the justices of the peace in and for said county, charged, on the oath of A B, with having, on the —— day of ——, 18—, in said county, committed the offense of (here state the offense charged in the warrant), and in the progress of the trial of said charge, it appearing to the said justice that the said C D has been guilty of the offense of (here state the new offense found on the trial), committed at the time and place aforesaid; and whereas the said C D has failed to give bail in the sum of —— dollars, for his appearance to answer at the next session of the superior court, as required by me,—therefore, in the name of the state of Washington, etc. (as in the last form), to receive the said C D into your custody in the said jail, and him there safely keep until he be discharged by due course of law.

Given under my hand this —— day of ——, 18—.

J P, Justice of the Peace.

FORM OF WARRANT TO KEEP THE PEACE.

The State of Washington,
County of ——. } ss.

To the Sheriff or any Constable of said County.

Whereas, A B has this day complained in writing under oath to the undersigned, one of the justices of the peace in and for said county, that he has just cause to fear and does fear C D, late of the said county, will (here state the threatened injury or violence, as sworn to),—therefore, in the name of the state of Washington, you are commanded to apprehend the said C D, and bring him

forthwith before me, to show cause why he should not give surety to keep the peace and be of good behavior towards all people of this state, and the said A B especially, and further to be dealt with according to law.

Given under my hand this —— day of ——, 18—.

J P, Justice of the Peace.

FORM OF COMMITMENT UPON SENTENCE.

The State of Washington, } ss.
County of ——. }

To any Constable and the Keeper of the County Jail of said County.

Whereas, at a justice's court held at my office in said county for the trial of C D, for the offense hereinafter stated, the said C D was convicted of having on the —— day of ——, 18—, in said county, committed (here state the offense), and upon conviction the said court did adjudge and determine that the said C D should be imprisoned in the county jail of said county, for —— days, therefore, you, the said constable, are commanded, in the name of the state of Washington, forthwith to convey and deliver the said C D to the said keeper; and you, the said keeper, are hereby commanded to receive the said C D into your custody in said jail and him there safely keep until the expiration of said —— days, or until he shall thence be discharged by due course of law.

Dated this —— day of ——, 18—.

J P, Justice of the Peace.

FORM OF CERTIFICATE OF CONVICTION.

The State of Washington, } ss.
County of ——. }

At a justice's court held at my office in said county before me, one of the justices of the peace in and for said county, for the trial of C D, for the offense hereinafter stated, the said C D was convicted of having on the —— day of ——, 18—, in said county committed (here insert the offense), and upon conviction, the said court did adjudge and determine that the said C D should pay a fine of —— dollars (or be imprisoned, as the case may be), and the said fine has been paid to me.

Given under my hand this —— day of ——, 18—.

J P, Justice of the Peace.

The State of Washington, } ss.
County of ——. }

To the Sheriff or any Constable of said County.

Whereas, at a justice's court held at my office in said county for the trial of C D for the offense hereinafter stated, the said C D

was convicted of having on the —— day of ——, 18—, in said county committed (here state the offense), and upon conviction the said court did adjudge and determine that the said C D should pay a fine of —— dollars, and —— dollars costs; and whereas, the said fine and costs have not been paid,—these are, therefore, in the name of the state of Washington, to command you to levy on the goods and chattels, etc. (as in execution in civil cases).
[Cf. L. '54, p. 262, § 181; L. '60, p. 281, § 181; Cd. '81, § 1902; L. '91, p. 19, § 7; 2 H. C., § 1569.]

Cited in 30 Wash. 615.

CHAPTER III.

Proceedings to Prevent the Commission of Crime.

§ 1936. Power to Preserve Peace.—Justices of the peace shall have power to cause all laws made for the preservation of the public peace to be kept; and in the execution of that power may require persons to give security to keep the peace, or for their good behavior, or both, in the manner herein provided. [L. '54, p. 104, § 11; Cd. '81, § 1903; 2 H. P. C., § 26.]

Cited in 23 Wash. 86.

§ 1937. Duty of Justice When Complaint Made.—Whenever complaint shall be made to any such magistrate that any person has threatened to commit an offense against the property or person of another, the magistrate shall examine the complaint, and any witness who may be produced on oath, and reduce such complaint to writing, and the same shall be subscribed by the complainant. [L. '54, p. 104, § 12; Cd. '81, § 1904; 2 H. C., § 1570.]

Cited in 16 Wash. 353.

§ 1938. Examination of Witnesses—Transcript of Testimony.—It shall be the duty of every magistrate examining a person charged with an offense, or with an intention to commit an offense, to examine all the witnesses he shall deem material, and reduce their testimony to writing, a copy of which, whether the accused is discharged, committed, or held to bail, or shall take an appeal, he shall transmit to the clerk of the court having jurisdiction of the offense. [Cf. Cd. '81, § 1905; L. '91, p. 22, § 8; 2 H. C., § 1571.]

§ 1939. Magistrate to Issue Warrant, When.—If, upon the examination, it shall appear that there is just cause to fear that such offense may be committed, the magistrate shall issue a warrant, under his hand, reciting the substance of the complaint, and requiring the officer to whom it may be directed forthwith to apprehend the person complained of and bring him before such magistrate, or

some other magistrate or court having jurisdiction of the cause. [L. '54, p. 104, § 13; Cd. '81, § 1906; 2 H. C., § 1572.]

Cited in 30 Wash. 615.

§ 1940. Recognizance in Cases of Apprehended Danger.—The magistrate before whom any person is brought upon charge of having made threats as aforesaid shall, as soon as may be, hear and examine the complaint; and if it shall appear that there is just cause to fear that any such offense will be committed by the party complained of, he shall be required to enter into recognizance, with sufficient sureties, in such sum as the magistrate shall direct, towards all the people of the state, and especially towards the person requiring such security, for such term as the magistrate shall order, not exceeding one year, but he shall not be ordered to recognizance for his appearance at the superior court unless he is charged with some offense for which he ought to be held to answer at said court. [L. '54, p. 104, § 14; Cd. '81, § 1907; 2 H. C., § 1573.]

See infra, § 1946, recognizance without process.
See infra, § 2202, recognizance after conviction.

§ 1941. Commitment of Defendant to Jail, When.—If the person so ordered to recognize shall fail to enter into such recognizance, the magistrate shall commit him to the county jail during the period for which he was required to give security, or until he shall so recognize, stating in the warrant the cause of commitment, with the sum and time for which security was required. [L. '54, p. 104, § 15; Cd. '81, § 1908; 2 H. C., § 1574.]

§ 1942. Magistrate to Discharge, When—Costs.—If, upon examination, it shall appear that there is not just cause to fear that any such offense will be committed by the party complained of, he shall be forthwith discharged; and if the magistrate shall deem the complaint unfounded, frivolous, or malicious, he may order the complainant to pay the costs of prosecution, who shall thereupon be answerable to the magistrate and the officer for their fees, as for his own debt. [L. '54, p. 104, § 16; Cd. '81, § 1909; 2 H. C., § 1575.]

Cited in 8 Wash. 450; 70 Wash. 644.

See infra, § 1954, taxing costs to complainant.
See infra, § 2225, where complaint unfounded, costs, how taxed.

§ 1943. Costs—How Payment Enforced, etc.—When no order respecting the costs is made by the magistrate, they shall be allowed and paid in the same manner as costs before justices in criminal prosecutions; but in all cases where a person is required to give security for the peace, or for his good behavior, the magistrate may further order that the costs of prosecution, or any part thereof, shall be paid by such person, who shall stand committed until such costs

are paid, or he is otherwise legally discharged. [L. '54, p. 105, § 17; Cd. '81, § 1910; 2 H. C., § 1576.]

Cited in 23 Wash. 87.

§ 1944. Defendant Discharged on Giving Security.—Any person committed for not finding sureties or refusing to recognize as required by the magistrate may be discharged by any judge or justice of the peace, on giving such security as was required. [L. '54, p. 105, § 22; Cd. '81, § 1915; 2 H. C., § 1577.]

§ 1945. Recognizances to be Transmitted and Filed.—Every recognizance taken pursuant to the foregoing provisions shall be transmitted to the superior court for the county within ten days, and shall be there filed on record by the clerk. [Cf. L. '54, p. 105, § 23; Cd. '81, § 1916; L. '91, p. 22, § 9; 2 H. C., § 1578.]

§ 1946. Recognizances Without Process, When.—Every person who shall, in the presence of any magistrate, or before any judge of a court of record, make an affray, or threaten to kill or beat another, or to commit any violence or outrage against his person or property, and every person who, in the presence of such judge or magistrate, shall contend with hot and angry words to the disturbance of the peace, may be ordered, without process or other proof, to recognize for keeping the peace or being of good behavior for a term not exceeding three months, and in case of refusal, may be committed as before directed. [Cf. L. '54, p. 105, § 24; Cd. '81, § 1917; L. '91, p. 22, § 10; 2 H. C., § 1579.]

§ 1947. Portion of Penalty Remitted, When.—Whenever, upon a suit brought on any such recognizance, the penalty thereof shall be adjudged forfeited, the court may remit such portion of the penalty, on the petition of any defendant, as the circumstances of the case shall render just and reasonable. [L. '54, p. 106, § 25; Cd. '81, § 1918; 2 H. C., § 1580.]

§ 1948. Surety may Surrender Principal, When—Effect of.—Any surety in recognizance to keep the peace or for good behavior, or both, shall have the same authority and right to take and surrender his principal as if he had been bail for him in a civil cause, and upon such surrender shall be discharged and exempt from all liability for any act of the principal, subsequent to such surrender, which would be a breach of the condition of the recognizance; and the person so surrendered may recognize anew, with sufficient sureties, before any justice of the peace, for the residue of the term, and thereupon shall be discharged. [L. '54, p. 106, § 26; Cd. '81, § 1919; 2 H. C., § 1581.]

Cited in 23 Wash. 86.

CHAPTER IV.

Examination of Persons Charged With Crime Before Magistrates.

§ 1949. Examination of Offenses Before Magistrate.—Upon complaint being made to any justice of the peace, or judge of the superior court, that a criminal offense has been committed, he shall examine on oath the complainant, and any witness provided by him, and shall reduce the complaint to writing, and shall cause the same to be subscribed by the complainant; and if it shall appear that any offense has been committed of which the superior court has exclusive jurisdiction, the magistrate shall issue a warrant reciting the substance of the accusation, and requiring the officer to whom it shall be directed forthwith to take the person accused and bring him before the person issuing the warrant, unless he shall be absent or unable to attend thereto, then before some other magistrate of the county, to be dealt with according to law, and in the same warrant may require the officer to summon such witnesses as shall be therein named, to appear and give evidence on the examination. [L. '54, p. 106, § 27; Cd. '81, § 1921; 2 H. C., § 1582.]

Cited in 30 Wash. 615; 43 Wash. 19, 20.

§ 1950. Officer may Pursue and Retake Prisoner.—If any person against whom a warrant may be issued for an alleged offense committed in any county shall, either before or after the issuing of such warrant, escape from or be out of the county, the sheriff or other officer to whom such warrant may be directed may pursue and apprehend the party charged in any county in this state, and for that purpose may command aid and exercise the same authority as in his own county. [L. '54, p. 107, § 28; Cd. '81, § 1922; 2 H. C., § 1583.]

§ 1951. Recognizance With or Without Examination.—The magistrate before whom such accused person shall be brought, when the offense is bailable, may, at the request of such person, with or without examination, allow him to enter into recognizance, with sufficient sureties, to be approved by the magistrate, conditioned for his appearance in the superior court having jurisdiction of the offense. [Cf. L. '54, p. 107, § 29; Cd. '81, § 1923; L. '91, p. 22, § 11; 2 H. C., § 1584.]

§ 1952. Hearing and Adjournment—Bail.—If the defendant shall not enter into recognizance with sureties, the magistrate shall proceed to hear and examine the complaint, and may adjourn the examination from time to time, not exceeding in all ten days from the time such defendant shall have been brought before him, and in case of such adjournment the magistrate may, if the offense be bail-

able, take a recognizance, with sufficient sureties for the appearance of the defendant at such further examination; and if he fail to enter into such recognizance, he shall be ordered into custody until the time appointed for such examination. [L. '54, p. 107, § 30; Cd. '81, § 1924; 2 H. C., § 1585.]

§ 1953. Testimony, How Taken.—The testimony of the witness examined shall be reduced to writing by the magistrate, or under his direction, when he shall think it necessary, and shall be signed by the witness. [L. '54, p. 109, § 40; Cd. '81, § 1933; 2 H. C., § 1586.]

§ 1954. Defendant Entitled to Discharge, When—Costs.—If it should appear, upon the whole examination, that no offense has been committed, or that there is not probable cause for charging the defendant with an offense, he shall be discharged; and if in the opinion of the magistrate the complaint was malicious or without probable cause, and there was no reasonable ground therefor, the costs shall be taxed against the party making the complaint. [L. '54, p. 107, § 31; Cd. '81, § 1925; 2 H. C., § 1588.]

Cited in 8 Wash. 450; 19 Wash. 348; 70 Wash. 644.

See supra, § 1942, taxing costs to complaining witness.
See infra, § 2225, costs, how taxed when complaint unfounded.

§ 1955. Defendant Recognized to Appear Before Justice, When. If it shall appear that an offense has been committed of which a justice of the peace has jurisdiction, and one which would be sufficiently punished by a fine not exceeding one hundred dollars, if the magistrate having the complaint is a justice of the peace, he shall cause the complaint to be ordered [altered], and proceed as in like cases before a justice of the peace; or if any other magistrate, he shall certify the papers, with a statement of the offense appearing to be proved, to the nearest justice of the peace, and shall, by order, require the defendant and the witnesses to enter into recognizances, with sufficient sureties, to be approved by the magistrate, for their appearance before such justice at the time and place stated in the order; and such justice shall proceed to the trial of the action as if originally commenced before him. [Cf. L. '54, p. 107, § 32; Cd. '81, § 1926; L. '91, p. 23, § 12; 2 H. C., § 1589.]

See supra, § 1928, proceedings on verdict.

§ 1956. Bail to Justify, When Required.—Bail shall, when required, justify as in civil cases. [L. '54, p. 129, § 178; Cd. '81, § 1169; 2 H. C., § 1590.]

See supra, § 765, qualifications of bail.

§ 1957. Defendant to be Discharged on Bail, When.—If it appear that a bailable offense has been committed, the magistrate shall

order the defendant to enter into recognizance, with sufficient sureties, for his appearance in the superior court, to answer the charge, and if he shall not do so, or the offense be not bailable, he shall commit him to jail. The justice of the peace who committed the person, or the judge of the superior court to which the party is held to answer, may admit to bail in the amount required, and approve the sureties. The recognizance shall be conditioned in effect that the defendant will appear in the superior court to answer said charge whenever the same shall be prosecuted, and at all times, until discharged according to law, render himself amenable to the orders and process of the superior court, and if convicted, render himself in execution of the judgment. [Cf. L. '54, p. 108, §§ 33, 34; Cd. '81, § 1927; L. '91, p. 23, § 13; 2 H. C., § 1591.]

See supra, § 1928, order for recognizance in lieu of verdict.
See infra, § 2052, appearance to answer information or indictment.
See infra, § 2053, duty of prosecuting attorney in cases of preliminary examination.
See infra, § 2088, recognizance certified and recorded, effect of.

§ 1958. Magistrates may Associate Other Magistrates. — Any magistrate to whom complaint is made, or before whom any defendant is brought, may associate with himself one or more magistrates of the same county, and they may, together, execute the powers and duties before mentioned; but no fees shall be taxed for such associates. [L. '54, p. 108, § 35; Cd. '81, § 1928; 2 H. C., § 1592.]

§ 1959. Witnesses to be Recognized, When.—When the person arrested is held to bail or committed to jail or forfeits his recognizance, the magistrate shall recognize the witnesses for the prosecution to be and appear in the superior court to which the party is recognized, bailed, or committed, whenever their attendance shall be required. [Cf. L. '54, p. 108, § 36; Cd. '81, § 1929; L. '91, p. 23, § 14; 2 H. C., § 1593.]

§ 1960. Witnesses to Recognize With Sureties, When.—If the magistrate shall be satisfied that there is good cause to believe that any such witness will not perform the condition of his recognizance unless other security be given, such magistrate may order the witness to enter into recognizance with such sureties as may be deemed necessary for his appearance at court. [L. '54, p. 108, § 37; Cd. '81, § 1930; 2 H. C., § 1594.]

§ 1961. Recognizance of Minor or Married Woman.—When any married woman or a minor is a material witness, any other person may be allowed to recognize for the appearance of such witness, or the magistrate may, in his discretion, take the recognizance of such married woman or minor in a sum not exceeding fifty dollars, which shall be valid and binding in law, notwithstanding the disability of

coverture or minority. [L. '54, p. 108, § 38; Cd. '81, § 1931; 2 H. C., § 1595.]

§ 1962. Commitment of Witnesses on Default of Bond—Depositions.—All witnesses required to recognize with or without sureties shall, if they refuse, be committed to the county jail by the magistrate, there to remain until they comply with such orders or be otherwise discharged according to law: Provided, that when the magistrate is satisfied that any witness required to recognize with sureties is unable to comply with such orders, he shall immediately take the deposition of such witness and discharge him from custody upon his own recognizance. The testimony of the witness shall be reduced to writing by the justice or some competent person under his direction, and he shall take only the exact words of the witness; the deposition, except the cross-examinations, shall be in the narrative form, and upon the cross-examination the questions and answers shall be taken in full. The defendant must be present in person when the deposition is taken, and shall have an opportunity to cross-examine the witnesses; he may make any objections to the admission of any part of the testimony, and all objections shall be noted by the justice; but the justice shall not decide as to the admissibility of the evidence, but shall take all the testimony offered by the witness. The deposition must be carefully read to the witness, and any corrections he may desire to make thereto shall be made in presence of the defendant, by adding the same to the deposition as first taken; it must be signed by the witness, certified by the justice, and transmitted to the clerk of the superior court, in the same manner as depositions in civil actions. And if the witness is not present when required to testify in the case, either before the grand jury or upon the trial in the superior court, the deposition shall be submitted to the judge of such superior court, upon the objections noted by the justice, and such judge shall suppress so much of said deposition as he shall find to be inadmissible, and the remainder of the deposition may be read as evidence in the case, either before the grand jury or upon the trial in the court. [Cf. L. '54, p. 108, § 39; L. '77, p. 203, § 8; Cd. '81, § 1932; L. '91, p. 24, § 15; 2 H. C., § 1596.]

§ 1963. Magistrate to Make Return — Penalty.—It shall be the duty of all magistrates within this state, before whom any person or persons shall be committed or held to bail to answer to [for] any crime, to return their proceedings, duly certified, including a copy of all recognizances taken by them, to the clerk of the superior court within ten days after the final hearing and commitment, or holding to bail, as aforesaid; and any justice of the peace who shall

fail or neglect to make such return shall not be entitled to receive any fees or costs in such case. [Cf. L. '54, p. 109, § 41; Cd. '81, § 1934; L. '91, p. 25, § 16; 2 H. C., § 1597.]

§ 1964. Offense may be Compromised, When.—When any person shall be committed to prison, or shall be under examination or recognizance to answer any charge for a misdemeanor for which the party injured may have a remedy by civil action, except where the offense was committed upon a sheriff or other officer, justice, or violently or with intent to commit a felony, if the party injured shall appear before the magistrate who made the commitment or took the recognizance or is conducting the examination, and acknowledge in writing that he has received satisfaction for the injury, the magistrate may, in his discretion, on payment of all costs which may have accrued, discharge the recognizance or supersede the commitment by an order under his hand, and may also discharge all recognizance and supersede the commitment of all witnesses in the case. [L. '54, p. 109, § 42; Cd. '81, § 1935; 2 H. C., § 1598.]

See infra, §§ 2126–2128, compromising offenses.

§ 1965. Action on Forfeiture of Recognizance.—When any person under recognizance in any criminal prosecution, either to appear and answer before a justice, or to testify in any court, shall fail to perform the condition of any recognizance, his default shall be recorded; and it shall be the duty of the prosecuting attorney to proceed at once, by action against the person bound by recognizance, or such of them as he may elect. [L. '54, p. 109, § 43; Cd. '81, § 1936; 2 H. C., § 1599.]

See infra, § 2234 et seq., action on forfeited recognizance.

§ 1966. Abstract of Costs to be Forwarded With Papers.—In all cases where any magistrate shall order a defendant to recognize for his appearance before a justice of the peace or the superior court, he shall forward with the papers in the case an abstract of the costs that have accrued in the case, and such costs shall be subject to the final determination of the case. [L. '54, p. 109, § 44; Cd. '81, § 1937; 2 H. C., § 1600.]

CHAPTER V.

Proceedings Against Vagrants.

§ 1967. Vagrancy, Defined.—The following persons are vagrants: All persons who tell fortunes, or who keep houses where lost and stolen goods may be found; all common prostitutes, and keepers of bawdy-houses or houses for the resort of prostitutes; all habitual drunkards, gamesters, or other disorderly persons; all persons wan-

dering about and having no visible calling or business to maintain themselves; all persons going about as collectors of alms for charitable institutions under any false or fraudulent pretense; all persons playing or betting in any street, or public or open place, at or with any table or instrument of gaming at any game or pretended game of chance. [L. '75, p. 89, § 1; Cd. '81, § 1271; 2 H. C., § 1608.]

As to repeal of this section, see § 2304.

§ 1968. Proceedings for Examination of.—Upon complaint made on oath to any justice of the peace against any person as being such vagrant within his local jurisdiction, as defined in the last preceding section, he shall issue a warrant for the arrest of such person, and the complaint, warrant, arrest, and examination shall be governed by the provisions of this code relating to the examination and commitment for trial of persons charged with offenses, so far as the same may be applicable. [Cf. L. '75, p. 90, § 2; Cd. '81, § 1272; L. '91, p. 25, § 17; 2 H. C., § 1609.]

§ 1969. Arrest Without Warrant.—All peace officers shall arrest any vagrant whom they may find at large, and take him before some justice of the peace of the county, city, or town in which the arrest is made. [L. '75, p. 90, § 3; Cd. '81, § 1273; 2 H. C., § 1610.]

CHAPTER VI.

Juvenile Offenders—Commitment to State Training School.

§ 1980. Juvenile Offender Committed, When.—When a boy of sane mind between the ages of eight and sixteen years, or a girl of sane mind between the ages of eight and eighteen (18) years shall, in any court of record in this state, be found guilty of any crime except murder or manslaughter, or who for want of proper paternal care is growing up in mendicancy or vagrancy, or is incorrigible, and complaint thereof is made and properly sustained, the court may if in its opinion the accused is a proper subject therefor, instead of entering judgment cause an order to be entered that said boy or girl be sent to the state training school, in pursuance of the provisions of this act, and a copy of said order under the seal of said court shall be sufficient warrant for carrying said boy or girl to the said school and for his or her commitment to the custody of the superintendent thereof. [L. '05, p. 39, § 1. Cf. L. '91, p. 195, § 1; 1 H. C., § 1227.]

Cited in 3 Wash. 611, 613; 19 Wash. 309.

Compare, § 2276, same subject.

See infra, § 4382, causes for commitment to state training school.

See infra, § 8615, incorrigibles in truant school to be committed to training school.

§ 1981. Proceedings in Case of Conviction Before Justice—Order to Show Cause.—When a boy of sane mind between the ages of eight and sixteen years or a girl of sane mind between the ages of eight and eighteen years, shall be convicted before a justice of the peace or other inferior court of any crime, mendicancy, vagrancy or incorrigibility, it shall be the duty of said magistrate before whom he or she may be convicted to forthwith send such boy or girl, together with all the papers filed in his office upon the subject, under the control of some officer, to a judge of a court of record. He shall then issue an order to the parent or guardian of said boy or girl, or such person as may have him or her in charge, or with whom she or he has last resided, or any known to be near related to him or her, or if she or he be alone or friendless then to such person as said judge may appoint to act as guardian for the purposes of the case[s], requiring him or her to appear at the time and place stated in said order to show cause why said boy or girl should not be committed to the said state training school for training and reformation. [L. '91, p. 195, § 2; 1 H. C., § 1228; L. '05, p. 40, § 2.]

Cited in 19 Wash. 310; 24 Wash. 333; 37 Wash. 258; 40 Wash. 405.
Compare § 2276, infra, commitment to training school.

§ 1982. Order to Show Cause, How Served—Fees.—Said order shall be served by the sheriff or other qualified officer by delivering a copy thereof personally to the party to whom it is addressed, or leaving it with some person of full age at the place of residence or business of said party, and immediate returns shall be made to said judge of the time and manner of such service. The fees of the sheriff or other officer under this chapter shall be the same as now or may hereafter be allowed by law for like services. [L. '91, p. 196, § 3; 1 H. C., § 1229.]

Cited in 19 Wash. 3111.

§ 1983. Examination, Hearing, and Commitment by Warrant.—At the time and place mentioned in said order, or at the time and place to which it may be adjourned, if the parent or guardian to whom said order may be addressed shall appear, then in his or her presence, or if he or she fail to appear, then in the presence of some competent person whom the said judge shall appoint as guardian for the purposes of the case, it shall be lawful for the said judge to proceed to take the voluntary examination of said boy or girl, and to hear the statements of the party appearing for him or her, and such testimony in relation to the case as may be produced, and if upon such examination and hearing the said judge shall be satisfied that the boy or girl is a fit subject for the state training

school, he may commit him or her to said school by warrant. [L. '91, p. 196, § 4; 1 H. C., § 1230.]

Cited in 19 Wash. 311; 24 Wash. 333; 58 Wash. 341.

§ 1984. Warrant of Commitment must State What—Expense.—The judge shall certify in the warrant the place in which said boy or girl resided at the time of his or her arrest, also his or her age as near as can be ascertained, and command the said officer to take the said boy or girl, and deliver him or her without delay to the superintendent of said school, or other persons in charge thereof at the place where the same is located and established; and such certificate, for the purpose of this act, shall be conclusive evidence of his or her residence or age; accompanying this warrant, the judge shall transmit to the superintendent, by the officer executing it, a statement of the nature of the complaint, together with such other particulars concerning the boy or the girl as the judge is able to ascertain: Provided, the expense of conveying any boy or girl so committed to said state training school, or returning him or her to his or her parent or guardian after his or her release therefrom, shall be at the expense of the state. [L. '91, p. 196, § 5; 1 H. C., § 1231.]

See infra, § 8955, transportation of incorrigibles.

§ 1985. Proceedings in Lower Court—How Reviewed.—The proceedings of any judge or court may be reviewed on writ of error by the superior court, and proceedings before any superior court or judge thereof may be reviewed by the supreme court, in the manner provided by law for reviewing criminal cases in these courts. [L. '91, p. 197, § 6; 1 H. C., § 1232.]

Cited in 37 Wash. 259.

§ 1986. Term of Confinement—Effect of Discharge.—Each boy committed to the state training school shall remain there until he arrives at the age of eighteen years, and each girl committed to the state training school shall remain there until she arrives at the age of nineteen years, unless sooner paroled or legally discharged. The discharge of any boy having arrived at the age of eighteen years or of any girl having arrived at the age of nineteen years, shall be a complete release from all penalties incurred by conviction of the offense for which he or she was committed. [L. '91, p. 197, § 7; 1 H. C., § 1233; L. '05, p. 40, § 3.]

Cited in 3 Wash. 613, 614.

See infra, § 2276. commitment on conviction of crime.
See infra, § 8601, inmate to be returned, when.

CHAPTER VII.

Delinquent Children, and Juvenile Courts.

§ 1987-1. Scope of Act—"Dependent Child"—"Delinquent Child." This act shall be known as the "Juvenile Court Law" and shall apply to all minor children under the age of eighteen years who are delinquent or dependent; and to any person or persons who are responsible for or contribute to, the delinquency or dependency of such children.

For the purpose of this act the words "dependent child" shall mean any child under the age of eighteen years:

(1) Who is found begging, receiving or gathering alms, whether actually begging or under the pretext of selling, or offering anything for sale; or

(2) Who is found in any street, road or public place for the purpose of so begging, gathering or receiving alms; or

(3) Who is a vagrant; or

(4) Who is found wandering and not having any home or any settled place of abode, or any proper guardianship, or any visible means of subsistence; or

(5) Who has no parent or guardian; or who has no parent or guardian willing to exercise, or capable of exercising, proper parental control; or

(6) Who is destitute; or

(7) Whose home by reason of neglect, cruelty or depravity of its parents or either of them, or on the part of its guardian, or on the part of the person in whose custody or care it may be, or for any other reason, is an unfit place for such child; or

(8) Who frequents the company of reputed criminals, vagrants or prostitutes; or

(9) Who is found living or being in any house of prostitution or assignation; or

(10) Who habitually visits any billiard-room or pool-room; or any saloon, or place where spirituous, vinous, or malt liquors are sold, bartered, or given away; or

(11) Who persistently refuses to obey the reasonable and proper orders or directions of its parents or guardian; or

(12) Who is incorrigible; that is, who is beyond the control and power of its parents, guardian, or custodian by reason of the vicious conduct or nature of said child; or

(13) Whose father, mother, guardian or custodian is an habitual drunkard; or do not properly provide for such child, and it appears that such child is destitute of a suitable home or of adequate means of obtaining an honest living, or who is in danger of being brought

up to lead an idle, dissolute or immoral life; or where such child is without proper means of support; or

(14) Who is an habitual truant, as defined in the school laws of the state of Washington; or

(15) Who uses intoxicating liquor as a beverage, or who uses tobacco in any form, or who uses opium, cocaine, morphine, or other similar drug, without the direction of a competent physician; or

(16) Who from any cause is in danger of growing up to lead an idle, dissolute or immoral life; or

(17) Who wanders about in the night-time without being on any lawful business or occupation; or

(18) Any child under the age of twelve years found peddling or selling any article, or singing or playing on any musical instrument for gain upon the public street, or giving any public entertainment, or who accompanies, or is used in aid of, any person so doing: Provided, that this act shall not prohibit the giving of entertainments by regularly organized schools or societies where twelve or more musical instruments are used.

The words "delinquent child" shall include any child under the age of eighteen years who violates any law of this state, or any ordinance of any town, city, county or city and county of this state defining crime; or who habitually uses vile, obscene, vulgar, profane or indecent language, or is guilty of immoral conduct; or who is found in or about railroad yards or tracks; or who jumps on or off trains or cars; or who enters a car or engine, without lawful authority.

For the purpose of this act only, all delinquent and dependent children within the state shall be considered wards of this state and their persons shall be subject to the custody, care, guardianship and control of the court as hereinafter provided. [L. '13, p. 520, § 1. Cf. L. '09, p. 668, § 1; L. '05, p. 34, § 1, et seq.]

Cited in 82 Wash. 150, 156.

§ 1987–2. Juvenile Courts—Terms—Records.—The superior courts in the several counties of this state shall have original jurisdiction in all cases coming within the terms of this act. In all trials under this act, any person interested therein may demand a jury trial, or the judge of his own motion, may order a jury to try the case. In counties containing thirty thousand or more inhabitants, the judges of the superior court shall, at such times as they may determine, designate one or more of their number whose duty it shall be to hear all cases arising under this act. A special session to be designated as the "Juvenile Court Session" shall be provided for the hearing of such cases and the findings of the court shall be entered in a book or books kept for the purpose, and known as the "Juvenile

Record," and the court may, for convenience, be called the "Juvenile Court." [L. '13, p. 522, § 2.]

§ 1987–3. Probation Officers.—The court or judge designated as provided in section 1987–2, shall appoint or designate one or more discreet persons of good character to serve as probation officers during the pleasure of the court, said probation officers to receive no compensation from the public treasury. In case a probation officer shall be appointed by any court, it shall be the duty of the clerk of the court, if practicable, to notify the said probation officer in advance when the child is to be brought before said court; it shall be the duty of said probation officers to make such investigation as may be required by the court. The probation officer or officers shall inquire into the antecedents, character, family history, environments and cause of dependency or delinquency of every alleged dependent or delinquent child brought before the juvenile court and shall make his report in writing to the judge thereof, shall be present in order to represent the interests of the child when the case is heard, shall furnish the court such information and assistance as the judge may require, and shall take such charge of the child before and after the trial as may be directed by the court. In counties containing thirty thousand or more inhabitants when it shall appear that there is a necessity for such county officer, the court may appoint one or more persons to act as probation officers, and one or more persons who shall have charge of detention rooms or house of detention, all of whom shall be paid as compensation for their services, such sums as may be fixed by the board of county commissioners, and who shall be paid as other county officers are paid; all probation officers shall possess all the powers conferred upon sheriffs and police officers to serve process and make arrests for the violation of any state law or city ordinance, relative to the care, custody, and control of delinquent and dependent children. [L. '13, p. 522, § 3.]

§ 1987–4. Expenses of Probation Officers.—The probation officers, and assistant probation officers, and deputy probation officers in all counties of the state shall be allowed such necessary incidental expenses as may be authorized by the judge of the juvenile court, and the same shall be a charge upon the county in which the court appointing them has jurisdiction, and the expenses shall be paid out of the county treasury upon a written order of the judge of the juvenile court of said county directing the county auditor to draw his warrant upon the county treasurer for the specified amount of such expenses. [L. '13, p. 523, § 4.]

§ 1987–5. Petition to Take Charge of Child.—Any person may file with the clerk of the superior court a petition showing that there is within the county, or residing within the county, a dependent or delinquent child and praying that the superior court deal with such child as provided in this act: Provided, that in counties having paid probation officers, such officers shall, as far as possible, first determine if such petition is reasonably justifiable. Such petition shall be verified and shall contain a statement of facts constituting such dependency or delinquency, as defined in section 1987–1, and the names and residence, if known to the petitioner, of the parents, guardian, or custodian of such dependent or delinquent child. There shall be no fee for filing such petitions. [L. '13, p. 524, § 5.]

§ 1987–6. Summons—Hearing.—Upon the filing of an information, or the petition, the clerk of the court shall issue a summons requiring the person having custody or control of the child, or with whom the child may be, to appear with the child at a place and time stated in the summons, which time shall not be less than twenty-four hours after service. The parents of the child, if living, and their residence is known, or its legal guardian, if there be one or if there is neither parent nor guardian, or if his or her residence is not known, then some relative, if there be one, and his residence is known, shall be notified of the proceedings; and in any case the judge shall appoint some suitable person or associ̇ation to act in behalf of the child. If the person summoned as herein provided, shall fail without reasonable cause to appear and abide the order of the court, or bring the child, he shall be proceeded against as for contempt of court. In case the summons cannot be served or the parties served fail to obey same, and in any case when it shall be made to appear to the court that said summons will be ineffectual, a warrant may issue on the order of the court, either against the parent or guardian or the person having custody of the child, or with whom the child may be, or against the child itself. On return of the summons or other process, or as soon thereafter as may be, the court shall proceed to hear and dispose of the case in a summary manner. Pending the final disposition of the case, the child may be retained in the possession of the person having charge of same, or may be kept in some suitable place provided by the city or county authorities, or by any association having for one of its objects the care of delinquent and dependent children. [L. '13, p. 524, § 6.]

§ 1987–7. Publication of Summons.—In any case where it shall appear by the petition or verified statement, that the person stand-

ing in the position of natural or legal guardian of the person of any child, is a nonresident of this state, or that the name or place of residence or whereabouts of such person is unknown, as well as in all cases where, after due diligence, the officer has been unable to make service of the summons or notice provided for in section 1987–6, the court may, by order, direct the clerk of the court to publish a notice four consecutive weeks in some newspaper printed in the county and having a general circulation therein. Such notice shall be directed to the parent, parents, or other person claiming the right to the custody of the child, if their names are known, and if unknown, the phrase "To Whom It May Concern" shall be used and apply to, and be binding upon, any such persons whose names are unknown. The name of the court, the name of the child (or children if of one family), the date of the filing of the petition and the date of hearing, which shall not be less than twenty days from the date of the last publication, and the object of the proceeding in general terms, shall be set forth and the whole shall be subscribed by the clerk. There shall be filed with the clerk an affidavit showing due publication of the notice and the cost of publication shall be paid by the county at not to exceed the rate paid by the county for other legal notices. The publication of notice shall be deemed equivalent to personal service upon all persons, known or unknown, who have been designated as provided in this section. [L. '13, p. 525, § 7.]

§ 1987–8. Commitment of Child—Support by Parent.—When any child under the age of eighteen years shall be found to be delinquent or dependent, within the meaning of this act, the court may, at any time, make an order committing the child to some suitable institution, or to the care of some reputable citizen of good moral character, or to the care of some training school or industrial school as provided by law, or to the care of some association willing to receive it, embracing in its objects the purpose of caring for or obtaining homes for dependent, neglected, or delinquent children: Provided, such order may be temporary or permanent in the discretion of the court and may be revoked or modified as the circumstances of the case may thereafter require. In any case in which the court shall find the child dependent or delinquent, it may in the same or subsequent proceeding upon the parent or parents, guardian, or other person having custody of said child, being duly summoned or voluntarily appearing, proceed to inquire into the ability of such persons or person to support the child or contribute to its support, and if the court shall find such person or persons able to support the child or contribute thereto, the court may enter such order or decree as shall be according to equity in the premises, and

may enforce the same by execution, or in any way in which a court of equity may enforce its decrees. If it be found, however, that the parent or parents or guardian of a dependent or delinquent child is unable to pay the whole expense of maintaining such child, and in cases where the child is committed to one of the institutions or associations above mentioned, the court may, in the order providing for the custody of such child, direct such additional amount as may be necessary to support such child to be paid from the county treasury of the county for the support of such person. The amount so ordered to be paid from the treasury of said county shall not exceed in the case of any one person, the sum of twelve dollars per month; Provided, further, that no order for the payment of all or part of the expense of support and maintenance of a dependent or delinquent child from the county treasury shall be effective for more than six months, unless a new order is secured at the expiration of that period. [L. '13, p. 525, § 8.]

§ 1987–9. Award and Adoption of Children.—In any case where the court shall award a child to the care of any association or individual, the child shall, unless otherwise ordered, become a ward and be subject to the guardianship of the association or individual to whose care it is committed; such association shall have authority, with the assent of the court, to place such child in a family home, either temporarily or for adoption. With the written consent of the parents, or other person having the right, under the laws of this state, to dispose of a dependent or delinquent child, the court may make an order or decree of adoption transferring to any suitable person or persons, willing to receive such child, all the rights of the parent or other guardian. The order of the court made upon such consent will be binding upon the child and its parents or guardian, or other person, the same as if such person were in court and consented thereto, whether made a party to the proceedings or not. The estate or property rights of any child shall not be affected nor subject to guardianship by the provisions of this act. The jurisdiction of the court shall continue over every child brought before the court, or committed pursuant to this act, and the court shall have power to order a change in the care or custody of such child, if at any time it is made to appear to the court that it would be for the best interests of the child to make such change. [L. '13, p. 527, § 9.]

§ 1987–10. Private Hearings — Judgment of Conviction. — The hearings may be conducted in any room provided for the purpose in the courthouse, or building where sessions of the court are held and, as far as practicable, such cases shall not be heard in conjunction with other business of the court. At the hearing of any

case involving a child, the court shall have power to exclude the general public from the room where the hearing is had, admitting thereto only such persons as may have a direct interest in the case. Any child may have a private hearing upon the question of its dependency or delinquency, and upon the request of said child, or either of its parents, or guardian, or custodian, such hearing may be had privately. An order of court adjudging a child dependent or delinquent under the provisions of this act shall in no case be deemed a conviction of crime. The probation officer's investigation record and report in each case, shall be withheld from public inspection, but such records shall be kept open to the inspection of such child, its parents, or guardian, or its attorney, and to such other persons as may secure a special order of the court therefor. Such records shall be kept as unofficial records of the court and shall be destroyed at any time in the discretion of any judge presiding in said court on or before the child shall arrive at the age of twenty-one years. After acquiring jurisdiction over any child, the court shall have power to make an order with respect to the custody, care or control of such child, or any order, which in the judgment of the court, would promote the child's health and welfare. In any case of a delinquent or dependent child, the court may continue the hearing from time to time, and may commit the child to the care or guardianship of a probation officer, duly appointed by the court, and may allow such child to remain at its own home subject to the visitation of the probation officer, such child to report to the probation officer as often as may be required and subject to being returned to the court for further proceedings whenever such action may appear to be necessary, or the court may commit the child to the care and guardianship of the probation officer, to be placed in a suitable family home, in case provision is made by voluntary contribution or otherwise for the payment of the board of the child until a suitable provision may be made for the child in a home without such payment, or the court may commit the child to a suitable institution for the care of delinquent or dependent children. In no case shall a child be committed beyond the age of twenty-one years. A child committed to such institution shall be subject to the control thereof and the said institution shall have the power to parole such child, on such conditions as may be prescribed, and the court shall have power to discharge such child from custody, whenever, in the judgment of the court, his or her reformation shall be complete; or the court may commit the child to the care and custody of some association that will receive such child, embracing in its objects the care of neglected, delinquent, and dependent children. [L. '13, p. 527, § 10.]

§ 1987–11. Child not to be Detained in Jail.—No court or magistrate shall commit a child under sixteen years of age to a jail, common lock-up, or police station; but if such child is unable to give bail, it may be committed to the care of the sheriff, police officer, or probation officer, who shall keep such child in some suitable place or house or school of detention provided by the city or county, outside the inclosure of any jail or police station, or in the care of any association willing to receive it and having as one of its objects the care of delinquent, dependent or neglected children. When any child shall be sentenced to confinement in any institution to which adult convicts are sentenced, it shall be unlawful to confine such child in the same building with such adult convicts, or to bring such child into any yard or building in which such adult convicts may be present. [L. '13, p. 529, § 11.]

§ 1987–12. Justice Court Cases Transferred to Juvenile Court.—When, in any county where a court is held as provided in section 1987–2, a child under the age of eighteen years is arrested with or without warrant, such child may, instead of being taken before a justice of the peace or police magistrate, be taken directly before such court; or if the child is taken before a justice of the peace or police magistrate, it shall be the duty of such justice of the peace or police magistrate to transfer the case to such court, and the officer having the child in charge shall take the child before that court, and in any such case, the court may proceed to hear and dispose of the case in the same manner as if the child had been brought before the court upon petition as hereinbefore provided. In any such case, the court shall require notice to be given and investigation to be made as in other cases under this act, and may adjourn the hearing from time to time for such purpose. If, upon investigation, it shall appear that a child has been arrested upon the charge of having committed a crime, the court, in its discretion, may order such child to be turned over to the proper officers for trial under the provisions of the criminal code. [L. '13, p. 529, § 12.]

§ 1987–13. Detention Rooms.—Counties containing more than fifty thousand inhabitants shall, and counties containing a lesser number of inhabitants may, provide and maintain at public expense, a detention room or house of detention, separated or removed from any jail, or police station, to be in charge of a matron, or other person of good character, wherein all children within the provisions of this act shall, when necessary, be sheltered. [L. '13, p. 530, § 13.]

§ 1987–14. Construction of Act.—This act shall be liberally construed to the end that its purpose may be carried out, to wit: that the care, custody and discipline of a dependent or delinquent child

as defined in this act shall approximate as nearly as may be that which should be given by its parents, and in all cases where it can be properly done, the dependent or delinquent child as defined in this act shall be placed in an approved family and may become a member of the family, by adoption or otherwise. No dependent or delinquent child as defined in this act shall be taken from the custody of its parent, parents or legal guardian, without the consent of such parent, parents or guardian, unless the court shall find such parent, parents or guardian is incapable or has failed or neglected to provide proper maintenance, training and education for said child; or unless said child has been tried on probation in said custody, and has failed to reform, or unless the court shall find that the welfare of said child requires that his custody shall be taken from said parent or guardian. In this act, the words used in any gender shall include all other genders, and the word "county" shall include "city and county," the plural shall include the singular and singular shall include the plural. [L. '13, p. 530, § 14.]

§ 1987–15. Court may Change Order.—Any order made by the court in the case of a dependent or delinquent child may at any time be changed, modified or set aside, as to the judge may seem meet and proper. [L. '13, p. 530, § 15.]

§ 1987–16. Fees not Allowable.—No fees shall be charged or collected by any officer or other person for filing petition, serving summons, or other process under this act. [L. '13, p. 531, § 16.]

§ 1987–17. Penalty for Delinquency of Child — Bond.—In all cases where any child shall be dependent or delinquent under the terms of this act, the parent or parents, legal guardian or person having custody of such child, or any other person who shall by any act or omission, encourage, cause or contribute to the dependency or delinquency of such child shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by fine not exceeding one thousand dollars, or imprisonment in the county jail for not more than one year, or by both such fine and imprisonment, and the juvenile court shall have jurisdiction of all such misdemeanors: Provided, however, that the court may suspend sentence for a violation of the provisions of this section and impose conditions as to conduct in the premises of any person so convicted, and make such suspension to depend upon the fulfillment by such person of such conditions, and, in case of the breach of such conditions, or any thereof, the court may impose sentence as though there had been no such suspension. The court may also, as a condition of such suspension, require a bond in such sum as the court may designate, to be approved by the judge requiring same, to secure the perform-

ance by such persons on the conditions imposed by the court on such suspension. Such bond shall, by its terms, be made payable to the state of Washington, and any moneys received for a breach thereof shall be paid into the county treasury. [L. '13, p. 531, § 17. Cf. L. '09, p. 595, § 1; L. '07, p. 16, § 1.]

§ 1987–18. Board of Visitation.—In each county, the judge presiding over the juvenile court sessions, as defined in this act, may appoint a board of four reputable citizens, who shall serve without compensation, to constitute a board of visitation, whose duty it shall be to visit as often as twice a year all institutions, societies and associations within the county receiving children under this act, as well as all homes for children or other places where individuals are holding themselves out as caretakers of children, also to visit other institutions, societies and associations within the state receiving and caring for children, whenever requested to do so by the judge of the juvenile court: Provided, the actual expenses of such board may be paid by the county commissioners when members thereof are requested to visit institutions outside of the county seat, and no member of the board shall be required to visit any institutions outside the county unless his actual traveling expenses shall be paid as aforesaid. Such visits shall be made by not less than two members of the board, who shall go together or make a joint report. The board of visitors shall report to the court from time to time the condition of children received by or in charge of such institutions, societies, associations, or individuals. It shall be the duty of every institution, society, or association, or individual receiving and caring for children to permit any member or members of the board of visitation to visit and inspect such institution, society, association or home where such child is kept, in all its departments, so that a full report may be made to the court. [L. '13, p. 531, § 18.]

CHAPTER VIII.

Limitation of Criminal Actions and Repeals.

§ 2005. Limitation on Criminal Actions Other Than Murder.—Prosecutions for the offenses of murder and arson, where death ensues, may be commenced at any period after the commission of the offense; for offenses the punishment of which may be imprisonment in the penitentiary, within three years after their commission; and for all other offenses, within one year after their commission; Provided, that any length of time during which the party charged was not usually and publicly resident within this state shall not be reckoned within the one and three years respectively: And

further provided, that where an indictment has been found, or an information filed, within the time limited for the commencement of a criminal action, if the indictment or information be set aside, the time of limitation shall be computed from the setting aside of such indictment or information. [Cf. L. '54, p. 77, § 10; Cd. '81, § 779; L. '91, p. 46, § 2; 2 H. C., § 1188.]

Cited in 19 Wash. 436; 56 Wash. 385.

§ 2006. Repeal and Amendment of Criminal Statutes—Saving Clause Presumed.—No offense committed and no penalty or forfeiture incurred previous to the time when any statutory provision shall be repealed, whether such repeal be express or implied, shall be affected by such repeal, unless a contrary intention is expressly declared in the repealing act, and no prosecution for any offense, or for the recovery of any penalty or forfeiture, pending at the time any statutory provision shall be repealed, whether such repeal be express or implied, shall be affected by such repeal, but the same shall proceed in all respects, as if such provision had not been repealed, unless a contrary intention is expressly declared in the repealing act. Whenever any criminal or penal statute shall be amended or repealed, all offenses committed, or penalties or forfeitures incurred while it was in force shall be punished or enforced as if it were in force, notwithstanding such amendment or repeal, unless a contrary intention is expressly declared in the amendatory or repealing act, and every such amendatory or repealing statute shall be so construed as to save all criminal and penal proceedings, and proceedings to recover forfeitures, pending at the time of its enactment, unless a contrary intention is expressly declared therein. [L. '01, Ex. Sess., p. 13, § 1.]

Cited in 55 Wash. 406; 56 Wash. 398; 58 Wash. 423.

CHAPTER IX.

Parties to Criminal Actions.

§ 2007. Distinctions Relating to Accessory Abolished.—No distinction shall exist between an accessory before the fact and a principal, or between principals in the first and second degree, and all persons concerned in the commission of an offense, whether they directly counsel the act constituting the offense, or counsel, aid and abet in its commission, though not present, shall hereafter be indicted, tried, and punished as principals. [L. '54, p. 98, § 125; Cd. '81, § 956; 2 H. C., § 1189.]

Cited in 3 Wash. 178, 179; 7 Wash. 340; 12 Wash. 350; 19 Wash. 467; 20 Wash. 502; 21 Wash. 356; 48 Wash. 262; 66 Wash. 467, 468; 82 Wash. 674; 86 Wash. 281.

§ 2008. Accessory After the Fact—Who may be.—Every person not standing in the relation of husband or wife, parent or grandparent, child or grandchild, brother or sister, by consanguinity or affinity, to the offender, who, after the commission of any felony, shall harbor, conceal, or maintain, or assist any principal felon or accessory before the fact, or shall give the offender any other aid, knowing that he had committed a felony, or had been accessory thereto before the fact, with intent that he shall avoid or escape from detection, arrest, trial, or punishment, shall be deemed accessory after the fact, and shall, on conviction thereof, be imprisoned in the county jail not more than one year, or be fined in any sum not exceeding five hundred dollars. [L. '54, p. 98, § 126; Cd. '81, § 957; 2 H. C., § 1190.]

§ 2009. Accessory After Fact Tried Though Principal not.—Every person who shall become an accessory after the fact to any felony may be indicted, convicted, and punished, whether the principal felon shall or shall not have been convicted previously, or shall or shall not be amenable to justice by any court having jurisdiction to try the principal felon. [Cf. L. '54, p. 98, § 127; Cd. '91, § 958; L. '91, p. 65, § 97; 2 H. C., § 1376.]

§ 2010. Who may be Tried and Punished.—Every person, whether an inhabitant of this state, or of any other state, territory, or county, may be tried and punished under the laws of this state for an offense committed by him therein, except when such offense is cognizable exclusively in the courts of the United States. [L. '91, p. 47, § 3; 2 H. C., § 1191.]

§ 2011. Term "Person" Defined.—When the term "person" or other word is used to designate the party whose property is the subject of an offense, or against whom any act is done with intent to defraud or injure, the term may be construed to include the United States, this state, or any state or territory, or any public or private corporation, as well as an individual. [L. '54, p. 99, § 134; Cd. '81, § 964.]

§ 2011-1. Corporation Charged With Crime.—Whenever an indictment or information shall be filed in any superior court against a corporation charging it with the commission of a crime, a summons shall be issued by the clerk of such court, signed by one of the judges thereof, commanding the sheriff forthwith to notify the accused thereof, and commanding it to appear before such court at such time as shall be specified in said summons. Such summons and a copy of the indictment or information shall be at once delivered by such clerk to said sheriff and by him forthwith served and returned in the manner provided for service of summons upon such

corporation in a civil action. Whenever a complaint against a corporation, charging it with the commission of a crime, shall be made before any justice of the peace or municipal judge, a like summons, signed by such justice of the peace or municipal judge, shall be issued, which, together with a copy of said complaint, shall be delivered to the sheriff at once and by him forthwith served as herein provided. [L. '11, p. 106, § 1.]

§ 2011–2. Appearance by Corporation.—Upon such service being made such corporation shall appear at the time designated, by one of its officers or by counsel; and upon such appearance, and thereafter, the same course shall be pursued, as nearly as may be, as upon the appearance of an individual to indictment, information or complaint and warrant charging him with the same offense. Upon failure of the corporation to make such appearance said court shall cause to be entered a plea of "not guilty," and upon appearance made or plea entered the corporation shall be deemed forthwith continuously present in court until the case shall be finally disposed of. [L. '11, p. 106, § 2.]

§ 2011–3. Judgment Against Corporation.—If the corporation shall be found guilty and a fine imposed, it shall be entered and docketed by the clerk, or justice of the peace or municipal judge as a judgment against the corporation, and it shall be of the same force and effect and be enforced against such corporation in the same manner as a judgment in a civil action. [L. '11, p. 106, § 3.]

CHAPTER X.

Venue of Criminal Actions.

§ 2012. Criminal Actions, Where Commenced.—Except as otherwise specially provided by statute, all criminal actions shall be commenced and tried in the county where the offense was committed. [Cf. L. '79, p. 75, § 10; Cd. '81, § 780; L. '91, p. 47, § 4; 2 H. C., § 1192.]

Cited in 23 Wash. 576; 15 Wash. 17.

§ 2013. Jurisdiction When Offense Committed in Two or More Counties.—When a public offense has been committed partly in one county and partly in another, or the act or effects constituting or requisite to the consummation of the offense occur in two or more counties, the jurisdiction is in either county. [L. '54, p. 99, § 129; Cd. '81, § 959; 2 H. C., § 1193.]

Cited in 26 Wash. 654.

§ 2014. Offenses Committed on County Boundaries.—Offenses committed on the boundary line of two counties, or within one hun-

dred rods of the dividing line between them, may be alleged in the indictment or information to have been committed in either of them, and may be prosecuted and punished in either county. [Cf. L. '54, p. 99, § 130; Cd. '81, § 960; L. '91, p. 47, § 5; 2 H. C., § 1194.]

§ 2015. Venue of Stolen Property Taken into Another County.—When property taken in one county by burglary, robbery, larceny, or embezzlement has been brought into another county, the jurisdiction is in either county. [L. '54, p. 99, § 131; Cd. '81, § 961; 2 H. C., § 1195.]

Cited in 14 Wash. 553; 55 Wash. 589.

§ 2016. Jurisdiction of Homicide in Either County, When.—If any mortal wound is given or poison administered in one county, and death, by means thereof, ensue in another, the jurisdiction is in either. [L. '54, p. 99, § 132; Cd. '81, § 962; 2 H. C., § 1196.]

§ 2017. Venue of Action Against Accessory After the Fact.—An accessory after the fact to a felony may be tried either in the county in which he shall have become an accessory, or in the county in which the felony shall have been committed. [Cf. Cd. '81, § 958; L. '91, p. 47, § 6; 2 H. C., § 1197.]

See supra, § 1940, trial of accessory.
See infra, § 2262, venue and trial of accessories.

§ 2018. Change of Venue, Proceedings to Obtain.—The defendant may show to the court, by affidavit, that he believes he cannot receive a fair trial in the county where the action is pending, owing to the prejudice of the judge, or to excitement or prejudice against the defendant in the county, or some part thereof, and may thereupon demand to be tried in another county. The application shall not be granted on the ground of excitement or prejudice other than prejudice of the judge, unless the affidavit of the defendant be supported by other evidence; nor in any case unless the judge is satisfied the ground upon which the application is made does exist. [L. '54, p. 117, § 98; Cd. '81, § 1072; 2 H. C., § 1198.]

Cited in 23 Wash. 291; 40 Wash. 609; 65 Wash. 248.
See notes to § 209, supra.

§ 2019. Discretion of Court—Duty of Clerk.—When the affidavit is founded on prejudice of the judge, the court may, in its discretion, grant a change of venue to some other county, or may continue the cause until such time as it can be tried by another judge in the same county; if the affidavit is founded upon excitement or prejudice in the county against the defendant, the court may, in its discretion, grant a change of venue to the most convenient county. The clerk must, upon the granting of a change of the place of trial,

make a transcript of the proceedings and order of court, and, having sealed up the same with the original papers, deliver them to the sheriff, who must without delay, deposit them in the clerk's office of the proper county, and make his return accordingly. [Cf. L. '54, p. 117, § 99; Cd. '81, § 1073; L. '91, p. 47, § 8; 2 H. C., § 1199.]

Cited in 23 Wash. 291; 65 Wash. 248.

§ 2020. Change upon Consent of Parties.—The court may, at its discretion, at any time, order a change of venue or place of trial to any county in the state, upon the written consent or agreement of the prosecuting attorney and the defendant. [L. '73, p. 235, § 237; Cd. '81, § 1075; 2 H. C., § 1200.]

§ 2021. Recognizance of Defendant and Witnesses on Change.—When a change of venue is ordered, if the offense be bailable, the court shall recognize the defendant, and in all cases the witnesses, to appear at the court to which the change of venue was granted. [Cf. L. '54, p. 117, § 100; Cd. '81, § 1076; L. '91, p. 48, § 9; 2 H. C., § 1201.]

CHAPTER XI.

Forms of Criminal Actions.

§ 2022. Pleadings—Forms Abolished.—All the forms of pleading in criminal actions heretofore existing are abolished; and hereafter, the forms of pleading, and the rules by which the sufficiency of pleadings is to be determined, are those prescribed herein. [L. '69, p. 240, § 180; Cd. '81, § 1002; 2 H. C., § 1202.]

Cited in 4 Wash. 106; 9 Wash. 97; 11 Wash. 119; 23 Wash. 549, 576; 44 Wash. 208.

§ 2023. The Charge must be by Information or Indictment.—No person shall be held to answer in any court for an alleged crime or offense, unless upon information filed by the prosecuting attorney, or upon an indictment by a grand jury, except in cases of misdemeanor before a justice of the peace, or before a court-martial. [Cf. Cd. '81, § 764; L. '91, p. 48, § 10; 2 H. C., § 1203.]

§ 2024. All Prosecutions may be by Information.—All public offenses may be prosecuted in the superior courts by information. [L. '09, p. 186, § 1. Cf. L. '90, p. 100, § 1; L. '91, p. 214, § 1; 2 H. C., § 1204.]

Cited in 1 Wash. 380; 3 Wash. 174; 13 Wash. 337; 20 Wash. 245; 30 Wash. 139; 32 Wash. 10; 50 Wash. 322; 58 Wash. 405.

See notes to Const., Art. I, § 25.
See infra, § 2050, manner of bringing information.
See infra, § 2053, duty of prosecuting attorney.

CHAPTER XII.

Indictments and Proceedings by Information.

§ 2025. Challenge to Panel of Grand Jurors.—Challenges to the panel of grand jurors shall be allowed to any person in custody or held to answer for an offense, when the clerk has not drawn from the jury-box the requisite number of ballots to constitute a grand jury, or when the drawing was not done in the presence of the proper officers; and such challenges shall be in writing and verified by affidavit, and proved to the satisfaction of the court. [Cf. L. '54, p. 110, § 45; Cd. '81, § 977; L. '91, p. 48, § 11; 2 H. C., § 1205.]

Cited in 82 Wash. 290.

§ 2026. Challenge to Individual Grand Juror.—Challenges to individual grand jurors may be made by such person for reason of want of qualification to sit as such juror, and, when, in the opinion of the court, a state of mind exists in the juror, such as would render him unable to act impartially and without prejudice. [L. '54, p. 110, § 46; Cd. '81, § 978; 2 H. C., § 1206.]

§ 2027. Venire When Panel Discharged.—If a challenge to the panel be allowed, the panel shall be discharged, and the court may order the sheriff to summon from the bystanders and the body of the county a sufficient number of persons to act as grand jurors. [Cf. L. '54, p. 110, § 47; Cd. '81, § 979; L. '91, p. 48, § 12; 2 H. C., § 1207.]

See infra, § 2041, resummoning from county and from bystanders.

§ 2028. Discharge of Juror—Panel to be Filled.—If a challenge to an individual juror be allowed, he shall be discharged, and the panel filled. [L. '54, p. 110, § 48; Cd. '81, § 980; 2 H. C., § 1208.]

See supra, § 110, venire to fill vacancies and open venire.

§ 2029. Oath of Grand Jury—Form.—The following oath shall be administered to the grand jury:—

"You, as grand jurors for the body of the county of ——, do solemnly swear (or affirm) that you will diligently inquire into and true presentment make of all such matters and things as shall come to your knowledge, according to your charge; the counsel of the state, your own counsel, and that of your fellows, you shall keep secret; you shall present no person through envy, hatred, or malice; neither will you leave any person unpresented through fear, favor, affection, or reward, or the hope thereof; but that you will present things truly as they come to your knowledge, according to the best of your understanding, and according to the laws of this state. So help you God." [Cf. L. '54, p. 110, § 49; Cd. '81, § 981; L. '91, p. 48, § 13; 2 H. C., § 1209.]

§ 2030. Foreman—Powers of—Clerk of Grand Jury.—A foreman of the grand jury shall be appointed by the court, who may remove him and appoint another at any time, and such foreman shall have power to administer all oaths and affirmations to witnesses who shall appear before such grand jury, and the jury may appoint one of their number as clerk to keep a minute of their proceedings. [L. '54, p. 110, § 50; Cd. '81, § 982; 2 H. C., § 1210.]

Cited in 39 Wash. 695.

§ 2031. Grand Jury Charged by Court — Advice to.—The grand jury shall be charged by the court as to the nature of their duties, and may at any reasonable time ask the advice of the court as to any legal questions upon which they may desire information. [L. '54, p. 110, § 51; Cd. '81, § 983; 2 H. C., § 1211.]

§ 2032. Prosecuting Attorney to Attend, etc.—The prosecuting attorney shall attend on the grand jury for the purpose of examining witnesses and giving them such advice as they may ask. [Cf. L. '54, p. 110, § 52; Cd. '81, § 984; L. '91, p. 49, § 14; 2 H. C., § 1212.]

Cited in 21 Wash. 61; 39 Wash. 695; 52 Wash. 490.

See infra, § 3967, prosecuting attorney to attend, duties, etc.

§ 2033. Duties of Grand Jury.—The grand jury shall inquire into the cases of parties in custody or under bail, charged with commission of offenses against the laws of this state, and duly returned by a committing magistrate, or upon a complaint sworn to before an officer authorized to administer oaths and presented by the prosecuting attorney, or under the instructions of the court. [Cf. L. '54, p. 111, § 53; L. '65, p. 19, § 1; Cd. '81, § 985; L. '91, p. 49, § 15; 2 H. C., § 1213.]

§ 2034. Jurors to Communicate Personal Knowledge of Offenses. If a member of a grand jury knows, or has reason to believe, that a public offense, triable within the county, has been committed, he must declare the same to his fellow-jurors, who may thereupon investigate the same, if a majority so order. [Cd. '81, § 986; 2 H. C., § 1214.]

§ 2035. Complainant not to be Present, When.—No complainant who may institute a prosecution shall be competent to be present at the deliberations of a grand jury, or vote for the finding of an indictment. [L. '65, p. 19, § 1; Cd. '81, § 987; 2 H. C., § 1215.]

§ 2036. Malicious and Frivolous Prosecution — Costs.—Where a grand jury ignore a bill of indictment, they shall also find whether the prosecution is malicious and frivolous, and find whether the complainant or county shall pay the costs, which shall be returned with their proceedings into open court. [L. '65, p. 20, § 2; Cd. '81, § 988; 2 H. C., § 1216.]

§ 2037. Inquiry into Persons in Prison, etc.—The grand jury shall especially inquire as to the offense of any person confined in prison on a criminal charge; into the condition and mismanagement of the public prisons in the county; into the willful misconduct in office of public officers; and shall in their discretion examine the public records of the county. [L. '54, p. 111, § 53; Cd. '81, § 989; 2 H. C., § 1217.]

§ 2038. Duty to Hear Evidence.—The grand jury are not bound to hear evidence for the defendant; but it is their duty to weigh all the evidence submitted to them, and when they have reason to believe that other evidence within their reach will explain away the charge, they should order such evidence to be produced, and for that purpose may cause process to issue for the witnesses. [L. '54, p. 111, § 54; Cd. '81, § 990; 2 H. C., § 1218.]

§ 2039. Fact of Indictment Found not to be Disclosed, When.—No grand jury shall disclose the fact that an indictment for a felony has been found against any person not in custody or under recognizance until such person has been arrested. [L. '54, p. 111, § 56; Cd. '81, § 991; 2 H. C., § 1219.]

See infra, § 2046, secrecy of indictment.
See infra, § 2378, penalty for violating secrecy.

§ 2040. Secrecy of Proceedings, Charge as to.—No grand juror shall be allowed to state or to testify in any court in what manner he or any member of the jury voted on any question before them, or what opinion was expressed by any juror in relation to such question, or what question was before them; and in charging the grand jury the court shall remind them of the provisions of this and the preceding sections. [L. '54, p. 111, § 57; Cd. '81, § 992; 2 H. C., § 1220.]

Cited in 8 Wash. 464.

§ 2041. Grand Jury may be Resummoned, When.—Whenever the grand jury shall have been dismissed, they may be summoned to attend again, if necessary; and if a full jury do not attend, the number may be completed from the bystanders. [L. '54, p. 111, § 58; Cd. '81, § 993; 2 H. C., § 1221.]

CHAPTER XIII.

Findings and Presentment of Indictments.

§ 2042. Twelve Jurors must Concur — Indorsement.—An indictment cannot be found without the concurrence of at least twelve grand jurors, and when so found, it must be indorsed "a true bill," and such indorsement, signed by the foreman of the jury. [Cf. L.

'54, p. 111, §§ 55, 59; L. '69, p. 238, § 173; Cd. '81, § 994; 2 H. C., § 1223.]

§ 2043. Names of Witnesses Indorsed, Defendant Entitled to Copy.—When an indictment is found, the names of the witnesses examined before the grand jury must be inserted at the foot of the indictment, or indorsed thereon, before it is presented to the court, and the clerk of the court must, within one day after demand made, furnish the defendant, or his counsel, a copy thereof without charge, or permit the defendant's counsel, or the clerk of such counsel, to take a copy. [Cf. L. '54, p. 111, § 59; L. '69, p. 239, § 174; Cd. '81, § 995; 2 H. C., § 1223.]

Cited in 8 Wash. 233; 67 Wash. 22.

§ 2044. Indictment at Instance of Private Prosecutor—Costs.—When an indictment is found at the instance of a private prosecutor, the following must be added to the indorsement required by the preceding section: "Found at the instance of" (here state the name of the person); and in such case, if the prosecution fails, the court trying the cause may award costs against the private prosecutor, if satisfied, from all circumstances, that the prosecution was malicious or without probable cause. [Cd. '81, § 996; 2 H. C., § 1224.]

See infra, § 2226, costs against complainant on frivolous or malicious accusation.

§ 2045. Custody and Inspection of.—An indictment, when found by the grand jury, must be presented by their foreman, in their presence, to the court and filed by the clerk, and remain in his office as a public record; but if the defendant has not been held to answer the charge, neither the indictment, nor any order or process in relation thereto, must be inspected by any person other than the judge of the court, or an officer thereof, in the discharge of a duty concerning the same, until after the arrest of the defendant. [L. '69, p. 239, § 175; Cd. '81, § 997; 2 H. C., § 1225.]

§ 2046. Secrecy as to Indictment.—No grand juror or officer of the court must disclose any fact concerning such indictment while it is not subject to public inspection; and a violation of this section or the foregoing section is punishable as a contempt. [L. '69, p. 239, § 176; Cd. '81, § 998; 2 H. C., § 1226.]

See supra, § 2039, grand jury not to disclose.
See infra, § 2378, penalty for violating secrecy.

§ 2047. Indictment Found "Not a True Bill," Filing, etc.—When a person has been held to answer a criminal charge, and the indictment in relation thereto is not found a "true bill," it must be indorsed "not a true bill," which indorsement must be signed by the foreman, and presented to the court and filed with the clerk, and

remain a public record; but in the case of an indictment not found "a true bill," against a person not so held, the same, together with the minutes of the evidence in relation thereto, must be destroyed by the grand jury. [L. '69, p. 239, § 177; Cd. '81, § 999; 2 H. C., § 1227.]

§ 2048. Effect of Finding "Not a True Bill."—When an indictment indorsed "not a true bill" has been presented in court and filed, the effect thereof is to dismiss the charge; and the same cannot be again submitted to or inquired of by the grand jury, or made the cause of an information, unless the court so order. [Cf. L. '69, p. 239, § 178; Cd. '81, § 1000; L. '91, p. 49, § 16; 2 H. C., § 1228.]

§ 2049. Presentment Defined.—A presentment is an informal statement of facts, for the purpose of obtaining the advice of the court as to the law thereon. It is made by the foreman, in the presence of the grand jury, and with the concurrence of twelve of their number. A presentment is not to be filed in court, or preserved beyond the sitting of the grand jury. [Cf. L. '69, p. 239, § 179; Cd. '81, § 1001; L. '91, p. 49, § 17; 2 H. C., § 1229.]

§ 2050. Information, Filing, Indorsement, etc.—All informations shall be filed in the court having jurisdiction of the offense specified therein, by the prosecuting attorney of the proper county as informant; he shall subscribe his name thereto, and indorse thereon the names of the witnesses known to him at the time of filing the same, and at such time before the trial of any case as the court may, by rule or otherwise, prescribe he shall indorse thereon the names of such other witnesses as shall then be known to him; and said court shall possess and may exercise the same powers and jurisdiction to hear, try, and determine all such prosecutions upon information, to issue writs and process, and do all other acts therein, as it possesses and may exercise in cases of like prosecutions upon indictments. [L. '90, p. 101, § 2; 2 H. C., § 1230.]

Cited in 3 Wash. 173; 7 Wash. 309, 465, 509; 14 Wash. 411; 30 Wash. 139; 33 Wash, 326, 327; 54 Wash. 167.

§ 2051. Verification of Information.—All informations shall be verified by the oath of the prosecuting attorney, complainant, or some other person. [L. '91, p. 49, § 18; 2 H. C., § 1231.]

Cited in 3 Wash. 174; 6 Wash. 643; 20 Wash. 514; 66 Wash. 627.

§ 2052. Commitment or Recognizance of Defendant Held to Answer.—Any person who may according to law be committed to jail, or become recognized, or held to bail with sureties for his appearance in court to answer to any indictment, may in like manner so be committed to jail, or become recognized and held to bail for

his appearance to answer to any information or indictment, as the case may be. [L. '90, p. 101, § 5; 2 H. C., § 1587.]

See supra, § 1957, recognizance, when and how taken.

§ 2053. Duty of Prosecuting Attorney Relating to Preliminary Examinations.—It shall be the duty of the prosecuting attorney of the proper county to inquire into and make full examination of all the facts and circumstances connected with any case of preliminary examination, as provided by law, touching the commission of any offense, wherein the offender shall be committed to jail, or become recognized or held to bail; and if the prosecuting attorney shall determine, in any such case, that an information ought not to be filed, he shall make, subscribe, and file with the clerk of the court a statement in writing containing his reasons, in fact and in law, for not filing an information in such case, and such statement shall be filed at and during the session of court at which the offender shall be held for his appearance: Provided, that in such case, such court may examine such statement, together with the evidence filed in the case, and if, upon such examination, the court shall not be satisfied with such statement, the prosecuting attorney shall be directed by the court to file the proper information, and bring the case to trial. [L. '90, p. 102, § 6; 2 H. C., § 1232.]

Cited in 43 Wash. 20.

CHAPTER XIV.

Requisites of Indictments and Informations.

§ 2054. First Pleading.—The first pleading on the part of the state is the indictment or information. [Cf. L. '69, p. 240, § 181; Cd. '81, § 1003; L. '90, p. 49, § 19; 2 H. C., § 1233.]

Cited in 23 Wash. 549.

§ 2055. Contents of Indictment or Information.—The indictment or information must contain,—

1. The title of the action, specifying the name of the court to which the indictment or information is presented, and the names of the parties;

2. A statement of the acts constituting the offense, in ordinary and concise language, without repetition, and in such manner as to enable a person of common understanding to know what is intended. [Cf. L. '69, p. 240, § 182; Cd. '81, § 1004; L. '91, p. 49, § 20; 2 H. C., § 1234.]

Cited in 9 Wash. 10, 97; 11 Wash. 418; 12 Wash. 353; 15 Wash. 7; 20 Wash. 249; 23 Wash. 549; 34 Wash. 600; 38 Wash. 272; 43 Wash. 121; 48 Wash. 263; 56 Wash. 303; 65 Wash. 598, 607; 75 Wash. 15.

§ 2056. Form of Indictment.—The indictment may be substantially in the following form:—

The State of Washington,
v.
A—— B——.
} Superior Court of the State of Washington, for the County of ——.

A B is accused by the grand jury of the ——, by this indictment, of the crime of (here insert the name of the crime, if it have one. such as treason, murder, arson, manslaughter, or the like; or if it be a crime having no general name, such as libel, assault and battery, and the like, insert a brief description of it as given by law), committed as follows:—

The said A B, on the —— day of ——, 18—, in the county of ——, aforesaid (here set forth the act charged as a crime).

Dated at——, in the county aforesaid, the —— day of ——, A. D., 18—.

(Signed) C D, Prosecuting Attorney.

(Indorsed) A true bill.

(Signed) E F, Foreman of the Grand Jury.

[Cf. L. '69, p. 240, § 183; Cd. '81, § 1005; L. '91, p. 50, § 21; 2 H. C., § 1235.]

Cited in 9 Wash. 98.

§ 2057. Indictment or Information must be Direct and Certain.—The indictment or information must be direct and certain, as it regards:—

1. The party charged;

2. The crime charged; and

3. The particular circumstances of the crime charged, when they are necessary to constitute a complete crime. [Cf. L. '54, p. 112, § 61; L. '69, p. 241, § 184; Cd. '81, § 1006; L. '91, p. 50, § 22; 2 H. C., § 1236.]

Cited in 4 Wash. 107; 15 Wash. 444; 21 Wash. 356; 22 Wash. 5; 27 Wash. 461, 464; 34 Wash. 600; 56 Wash. 623; 65 Wash. 598; 74 Wash. 518; 75 Wash. 16; 84 Wash. 441; 85 Wash. 354.

§ 2058. True Name Inserted, When.—When a defendant is designated in the indictment or information by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it may be inserted in the subsequent proceedings, referring to the fact of his being indicted or informed against by the name mentioned in the indictment or information. [Cf. L. '69, p. 241, § 185; Cd. '81, § 1007; L. '91, p. 50, § 23; 2 H. C., § 1237.]

§ 2059. One Crime to be Charged and in One Form Only.—The indictment or information must charge but one crime, and in one form only, except that where the crime may be committed by use of different means, the indictment or information may allege the means

in the alternative. [Cf. L. '69, p. 241, § 186; Cd. '81, § 1008; L. '91, p. 50, § 24; 2 H. C., § 1238.]

Cited in 7 Wash. 463; 15 Wash. 444; 20 Wash. 164; 27 Wash. 464; 32 Wash. 302; 42 Wash. 674; 51 Wash. 226; 56 Wash. 86, 471, 623, 626; 61 Wash. 534; 74 Wash. 518; 84 Wash. 439; 85 Wash. 345.

§ 2060. Statement as to Time When Offense Committed.—The precise time at which the crime was committed need not be stated in the indictment or information; but it may be alleged to have been committed at any time before the finding of the indictment or the filing of the information, and within the time in which an action may be commenced therefor, except where the time is a material ingredient in the crime. [Cf. L. '69, p. 241, § 187; Cd. '81, § 1009; L. '91, p. 51, § 25; 2 H. C., § 1239.]

Cited in 13 Wash. 338; 30 Wash. 16; 35 Wash. 154; 39 Wash. 551; 56 Wash. 385; 73 Wash. 433; 87 Wash. 474.

§ 2061. Statement as to Person Injured or Intended to be.—When the crime involves the commission of or an attempt to commit a private injury, and is described with sufficient certainty in other respects to identify the act, an erroneous allegation as to the person injured or intended to be injured is not material. [L. '69, p. 241, § 188; Cd. '81, § 1010; 2 H. C., § 1240.]

Cited in 35 Wash. 154; 67 Wash. 397.

§ 2062. Animal, What Description of Sufficient.—When the crime involves the taking of or injury to an animal, the indictment or information is sufficiently certain in that respect if it describes the animal by the common name of its class. [Cf. L. '69, p. 241, § 189; Cd. '81, § 1011; L. '91, p. 51, § 26; 2 H. C., § 1241.]

§ 2063. Construction of Words and Phrases.—The words used in an indictment or information must be construed in their usual acceptance, in common language, except words and phrases defined by law, which are to be construed according to their legal meaning. [Cf. L. '69, p. 241, § 190; Cd. '81, § 1012; L. '91, p. 51, § 27; 2 H. C., § 1242.]

Cited in 23 Wash. 549.

§ 2064. Words of the Statute Need not be Strictly Pursued.—Words used in a statute to define a crime need not be strictly pursued in the indictment or information, but other words, conveying the same meaning, may be used. [Cf. L. '69, p. 241, § 191; Cd. '81, § 1013; L. '91, p. 51, § 28; 2 H. C., § 1243.]

Cited in 8 Wash. 464; 11 Wash. 518; 12 Wash. 463; 21 Wash. 272; 22 Wash. 276; 31 Wash. 247; 55 Wash. 305; 65 Wash. 598.

§ 2065. Requisites of Indictments, etc.—The indictment or information is sufficient if it can be understood therefrom,—

1. That it is entitled in a court having authority to receive;

2. That it was found by a grand jury of the county in which the court was held;

3. That the defendant is named, or if his name cannot be discovered, that he is described by a fictitious name, with the statement that his real name is to the jury unknown;

4. That the crime was committed within the jurisdiction of the court, except where, as provided by law, the act, though done without the county in which the court is held, is triable therein;

5. That the crime was committed at some time previous to the finding of the indictment, or filing of the information, and within the time limited by law for the commencement of an action therefor;

6. That the act or omission charged as the crime is clearly and distinctly set forth in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended;

7. [That] the act or omission charged as the crime is stated with such a degree of certainty as to enable the court to pronounce judgment upon a conviction, according to the right of the case. [L. '69, p. 242, § 192; Cd. '81, § 1014; L. '91, p. 51, § 29; 2 H. C., § 1244.]

Cited in 4 Wash. 107; 9 Wash. 99, 403; 10 Wash. 98; 11 Wash. 419; 13 Wash. 338; 23 Wash. 550; 29 Wash. 373; 31 Wash. 247, 310; 33 Wash. 346; 51 Wash. 226, 228; 55 Wash. 305; 56 Wash. 626; 75 Wash. 16.

§ 2066. Former Defects or Imperfections, How Regarded.—No indictment or information is insufficient, nor can the trial, judgment, or other proceedings thereon be affected, by reason of any of the following matters, which were formerly deemed defects or imperfections:—

1. For want of an allegation of the time or place of any material fact, when the time and place have been once stated;

2. For the omission of any of the following allegations, namely: "With force and arms," "contrary to the form of the statute or the statutes," or "against the peace and dignity of the state";

3. For the omission to allege that the grand jury was impaneled, sworn, or charged;

4. For any surplusage or repugnant allegation, or for any repetition, when there is sufficient matter alleged to indicate clearly the offense and the person charged; nor

5. For any other matter which was formerly deemed a defect or imperfection, but which does not tend to the prejudice of the substantial rights of the defendant upon the merits. [Cf. L. '69, p. 242, § 193; Cd. '81, § 1015; L. '91, p. 52, § 30; 2 H. C., § 1245.]

Cited in 9 Wash. 99; 29 Wash. 373; 31 Wash. 248; 42 Wash. 674; 49 Wash. 294; 65 Wash. 598.

§ 2067. Presumptions of Law, etc., Need not be Stated.—Neither presumptions of law nor matters of which judicial notice is taken need be stated in an indictment or information. [Cf. L. '69, p. 242, § 194; Cd. '81, § 1016; L. '91, p. 52, § 31; 2 H. C., § 1246.]

§ 2068. Judgment, How Pleaded.—In pleading a judgment or other determination of or proceeding before a court or officer of special jurisdiction, it is not necessary to state in the indictment or information the facts conferring jurisdiction; but the judgment, determination, or proceeding may be stated to have been duly given or made. The facts conferring jurisdiction, however, must be established on the trial. [Cf. L. '54, p. 112, § 65; L. '69, p. 242, § 195; Cd. '81, § 1017; L. '91, p. 52, § 32; 2 H. C., § 1247.]

§ 2069. Private Statute, How Pleaded.—In pleading a private statute, or right derived therefrom, it is sufficient to refer, in the indictment or information, to the statute by its title and the day of its passage, and the court must thereupon take judicial notice thereof. [Cf. L. '54, p. 112, § 66; L. '69, p. 243, § 196; Cd. '81, § 1018; L. '91, p. 53, § 33; 2 H. C., § 1248.]

§ 2070. Pleading in Indictment, etc., for Libel.—An indictment or information for libel need not set forth any extrinsic facts, for the purpose of showing the application to the party libeled, of the defamatory matter on which the indictment or information is founded; but it is sufficient to state generally that the same was published concerning him; and the fact that it was so published must be established on the trial. [Cf. L. '69, p. 243, § 197; Cd. '81, §§ 1019, 1232; L. '91, p. 53, § 34; 2 H. C., § 1249.]

§ 2071. Pleading in Forgery Where Instrument Destroyed or Withheld.—When an instrument which is the subject of an indictment or information for forgery has been destroyed or withheld by the act or procurement of the defendant, and the fact of the destruction or withholding is alleged in the indictment or information, and established on the trial, the misdescription of the instrument is immaterial. [Cf. L. '54, p. 113, § 68; Cd. '81, § 1020; L. '91, p. 53, § 35; 2 H. C., § 1250.]

§ 2072. Pleadings in Indictment, etc., for Perjury.—In an indictment or information for perjury, or subornation of perjury, it is sufficient to set forth the substance of the controversy or matter in respect to which the crime was committed, and in what court or before whom the oath alleged to be false was taken, and that the court or person before whom it was taken had authority to administer it, with proper allegations of the falsity of the matter on which the perjury is assigned; but the indictment or information need not set

forth the pleadings, record or proceedings with which the oath is connected, nor the commission or authority of the court or person before whom the perjury was committed. [Cf. L. '54, p. 112, § 67; L. '69, p. 243, § 199; Cd. '81, § 1021; L. '91, p. 53, § 36; 2 H. C., § 1251.]

Cited in 31 Wash. 12; 55 Wash. 304.

§ 2073. Against Several—Conviction or Acquittal Against One or More.—Upon an indictment or information against several defendants, any one or more may be convicted or acquitted. [Cf. L. '69, p. 243, § 200; Cd. '81, § 1022; L. '91, p. 53, § 37; 2 H. C., § 1252.]

§ 2074. Pleading in Indictment, etc., for Larceny or Embezzlement.—In an indictment or information for larceny or embezzlement of money, bank notes, certificates of stock, or valuable securities, or for a conspiracy to cheat or defraud a person of any such property, it is sufficient to allege the larceny or embezzlement, or the conspiracy to cheat and defraud, to be of money, bank notes, certificates of stock, or valuable securities, without specifying the coin, number, denomination, or kind thereof. [Cf. Cd. '81, § 1023; L. '91, p. 53, § 38; 2 H. C., § 1253.]

Cited in 11 Wash. 117; 19 Wash. 54, 412; 20 Wash. 208; 27 Wash. 366.

§ 2075. Pleading in Indictment, etc., for Selling Obscene Literature.—An indictment or information for exhibiting, publishing, passing, selling, or offering to sell, or having in possession with such intent, any lewd or obscene book, pamphlet, picture, print, card, paper, or writing, need not set forth any portion of the language used or figures shown upon such book, pamphlet, picture, print, card, papers, or writing, but it is sufficient to state generally the fact of the lewdness or obscenity thereof. [Cf. Cd. '81, § 1024; L. '91, p. 54, § 39; 2 H. C., § 1254.]

§ 2076. Ownership of Property, How Pleaded — Variance.—In prosecutions under the provisions of sections 2803, 2814, 3257, where the owner of the property is unknown, such property shall, for the purpose of this code, be deemed and held to be owned by the state of Washington; and in all cases where the indictment or information alleges the state to be the owner of such property, and the proof on the trial discloses the name of the actual owner, it shall not be deemed a variance, or failure of proof, unless the defendant is the actual owner. [Cd. '81, § 1025; L. '91, p. 54, § 40; 2 H. C., § 1255.]

Cited in 46 Wash. 495.

See infra, § 2156, variance as to ownership of property.

CHAPTER XV.

Proceedings Before Arraignment.

§ 2077. Warrant of Arrest to Issue, When.—When an indictment is found or an information filed, the court may direct the clerk to issue a warrant for the arrest of the defendant, returnable forthwith; if no order is made, the clerk must issue a warrant within ten days after the indictment is returned into court, or the information filed. [Cf. L. '54, p. 113, § 70; Cd. '81, § 1026; L. '91, p. 54, § 41; 2 H. C., § 1256.]

§ 2079. Bail to be Indorsed on Warrant.—The court must, at the time of directing the clerk to issue the warrant, fix the amount in which persons charged by indictment are to be held to bail, and the clerk must indorse the amount on the warrant. If no order fixing the amount of bail has been made, the sheriff may present the warrant to the judge of the court, and such judge must thereon indorse the amount of bail to be required; or if there is no such judge in the county, the clerk may fix the amount of bail. [Cf. L. '54, p. 113, § 72; Cd. '81, § 1028; L. '91, p. 54, § 42; 2 H. C., § 1257.]

§ 2080. Service of Criminal Process.—All criminal process issuing out of the superior court shall be directed to the sheriff of the county in which it is to be served, and be by him executed according to law. Where there is no sheriff of a county, or he is disqualified from any cause from discharging any particular duty, it shall be lawful for the officer or person commanding or desiring the discharge of that duty to appoint some suitable person, a citizen of the county, to execute the same: Provided, that final process shall in no case be executed by any other person than the legally authorized officer, or in case he is disqualified, some suitable person appointed by the court, or judge thereof, out of which the process issues, who shall make such appointment in writing, and before such appointment shall take effect, the person so appointed shall give surety to the party interested for the faithful performance of his duties, which bonds of suretyship shall be in writing and approved by the court or judge making the appointment, and be placed on file with the papers in the case. [Cf. L. '54, p. 113, § 71; L. '60, p. 146, § 214; Cd. '81, § 1027; 2 H. C., § 1258.]

§ 2081. Warrant of Arrest by Telegraph.—Whenever any person or persons shall have been indicted or accused on oath of any public offense, or thereof convicted, and a warrant of arrest shall have been issued, the magistrate issuing such warrant, or any judge of the supreme court, or of any superior court, may indorse thereon an order signed by him and authorizing the service thereof by telegraph, and thereupon such warrant and order may be sent by telegraph to

any marshal, sheriff, constable, or policeman, and on the receipt of the telegraphic copy thereof by any such officer, he shall have the same authority and be under the same obligations to arrest, take into custody, and detain the said person or persons, as if the said original warrant of arrest, with the proper direction for the service thereof, duly indorsed thereon, had been placed in his hands, and the said telegraphic copy shall be entitled to full faith and credit, and have the same force and effect in all courts and places as the original; but prior to indictment and conviction, no such order shall be made by any officer, unless in his judgment there is probable cause to believe the said accused person or persons guilty of the offense charged: Provided, the making of such order, by any officer aforesaid, shall be prima facie evidence of the regularity thereof, and of all the proceedings prior thereto. The original warrant and order, or a copy thereof, certified by the officer making the order, shall be preserved in the telegraph office from which the same is sent, and in telegraphing the same the original or the said certified copy may be used. [L. '66, p. 75, § 16; Cd. '81, § 2357; 1 H. C., § 1557.]

Cited in 20 Wash. 488.

§ 2082. Officer may Break Door, etc., to Make Arrest.—To make an arrest in criminal actions, the officer may break open any outer or inner door or windows of a dwelling-house or other building, or any other inclosure, if, after notice of his office and purpose, he be refused admittance. [L. '54, p. 129, § 1179; Cd. '81, § 1170; 2 H. C., § 1379.]

§ 2083. Officer to Exhibit Warrant.—The officer making an arrest must inform the defendant that he acts under authority of a warrant, and must also show the warrant if required. [Cf. L. '54, p. 114, § 74; Cd. '81, § 1030; L. '91, p. 55, § 43; 2 H. C., § 1259.]

§ 2084. Force may be Used.—If, after notice of the intention to arrest the defendant, he either flee or forcibly resist, the officer may use all necessary means to effect the arrest. [L. '54, p. 114, § 75; Cd. '81, § 1031; 2 H. C., § 1260.]

§ 2085. Pursuit of Prisoner, Assistance Commanded.—If a person arrested escape or be rescued, the person from whose custody he made his escape or was rescued may immediately pursue and retake him at any time and within any place in the state. To retake the person escaping or rescued, the person pursuing has the same power to command assistance as given in cases of arrest. [L. '54, p. 114, § 76; Cd. '81, § 1032; 2 H. C., § 1261.]

§ 2086. Taking and Entering Recognizance.—Recognizances in criminal proceedings may be taken in open court and entered on the order-book. [L. '54, p. 114, § 77; Cd. '81, § 1033; 2 H. C., § 1262.]

See supra, § 1957, recognizance, when and how taken.

§ 2087. Officer may Take Recognizances, etc.—Any officer authorized to execute a warrant in a criminal action may take the recognizance, and justify and approve the bail; he may administer an oath, and examine the bail as to its sufficiency. [L. '54, p. 114, § 78; Cd. '81, § 1034; 2 H. C., § 1263.]

§ 2088. Recognizance Certified and Recorded, Effect of.—Every recognizance taken by any peace officer must be certified by him forthwith to the clerk of the court to which the defendant is recognized. The clerk must thereupon record the recognizance in the order-book, and from the time of filing it has the same effect as if taken in open court. [L. '54, p. 114, § 79; Cd. '81, § 1035; 2 H. C., § 1264.]

§ 2089. Deposit of Money in Lieu of Bail.—The defendant may, in the place of giving bail, deposit with the clerk of the court to which he is held to answer the sum of money mentioned in the order; and upon delivering to the sheriff the certificate of deposit, he must be discharged from custody. [L. '54, p. 114, § 80; Cd. '81, § 1036; 2 H. C., § 1265.]

Cited in 23 Wash. 324.

§ 2090. Forfeiture of Bail.—If, without sufficient excuse, the defendant neglect to appear for trial or judgment, or upon any other occasion when his presence in court may be lawfully required, according to the condition of his recognizance, the court must direct the default to be entered upon its minutes, and the recognizance of bail, or money deposited as bail, as the case may be, is thereupon forfeited. [L. '54, p. 114, § 81; Cd. '81, § 1037; 2 H. C., § 1266.]

Cited in 69 Wash. 615.

§ 2091. Rights of Defendant in Capital Cases.—As soon as may be after the finding of an indictment or the filing of an information for a capital crime, the party charged shall be served with a copy thereof by the sheriff or his deputy, at least twenty-four hours before trial, and shall, on demand upon the clerk by himself or counsel, have a list of the petit jurors returned delivered to him at least twenty-four hours before trial, and shall also have process to summon such witnesses as are necessary to his defense, at the expense of the county. [Cf. L. '54, p. 114, § 82; Cd. '81, § 1038; L. '91, p. 55, § 44; 2 H. C., § 1267.]

Cited in 7 Wash. 509; 42 Wash. 542; 56 Wash. 297.

§ 2092. Rights of Defendant Charged With a Felony.—Every person indicted or informed against for an offense for which he may be imprisoned in the penitentiary, if he be under recognizance or in custody to answer for such offense, he or his attorney shall be fur-

nished with a copy of the indictment or information, and of all indorsements thereof, without paying any fees therefor. [Cf. L. '54, p. 115, § 83; Cd. '81, § 1039; L. '91, p. 55, § 45; 2 H. C., § 1268.]

CHAPTER XVI.

Arraignment, Pleadings and Proceedings Thereon.

§ 2093. Arraignment of Defendant.—When the indictment or information has been filed the defendant, if he has been arrested, or as soon thereafter as he may be, shall be arraigned thereon before the court. [L. '91, p. 55, § 46; 2 H. C., § 1269.]

Cited in 4 Wash. 207; 5 Wash. 643; 36 Wash. 360; 44 Wash. 618.

§ 2094. Defendant may Appear by Counsel, When.—If the indictment or information be for a misdemeanor punishable by fine only, the defendant may appear upon arraignment by counsel. [Cf. L. '54, p. 116, § 92; Cd. '81, § 1066; L. '91, p. 55, § 47; 2 H. C., § 1270.]

§ 2095. Right to have Counsel.—If the defendant appear without counsel, he shall be informed by the court that it is his right to have counsel before being arraigned, and he shall be asked if he desire the aid of counsel, and if it appear that he is unable to employ counsel, by reason of poverty, counsel shall be assigned to him by the court. [Cf. L. '54, p. 116, § 89; L. '55, p. 11; L. '60, p. 149, § 232; Cd. '81, § 1063; 2 H. C., § 1271.]

Cited in 5 Wash. 330, 643.

§ 2096. Defendant to Declare His True Name.—When the defendant is arraigned, he shall be interrogated; if the name by which he is indicted be not his true name, he shall then declare his true name, or be proceeded against by the name in the indictment or information. [Cf. L. '54, p. 116, § 90; L. '69, p. 248, § 221; Cd. '81, § 1064; L. '91, p. 55, § 48; 2 H. C., § 1272.]

§ 2097. Entry of True Name.—If he alleges that another name is his true name it must be entered in the minutes of the court, and the subsequent proceedings on the indictment or information may be had against him by that name, referring also to the name by which he is indicted or informed against. [Cf. L. '54, p. 116, § 91; Cd. '81, § 1065; L. '91, p. 56, § 49; 2 H. C., § 1273.]

§ 2098. Pleading on Arraignment—Time for Answer.—In answer to the arraignment, the defendant may move to set aside the indictment or information, or he may demur or plead to it, and is entitled to one day after arraignment in which to answer thereto if he demand it. [Cf. Cd. '81, § 1045; L. '91, p. 56, § 50; 2 H. C., § 1274.]

Cited in 11 Wash. 119.

§ 2099. Grounds of Motion to Set Aside Indictment.—The motion to set aside the indictment can be made by the defendant on one or more of the following grounds, and must be sustained:—

1. When it is not indorsed "a true bill," and the indorsement signed by the foreman of the grand jury as prescribed by this code;

2. When the names of all the witnesses examined before the grand jury are not indorsed thereon;

3. When it has not been presented, and marked "filed," as prescribed by this code;

4. When any person, other than the grand jurors, was present before the grand jury when the question was taken upon the finding of the indictment, or when any person, other than the grand jurors, was present before the grand jury during the investigation of the charge, except as required or permitted by law;

5. That the grand jury were not selected, drawn, summoned, impaneled, or sworn as prescribed by law. [Cd. '81, § 1046; 2 H. C., § 1275.]

Cited in 1 Wash. 271; 22 Wash. 554; 67 Wash. 22; 82 Wash. 290.

§ 2100. Grounds not Allowed, When.—The ground of the motion to set aside the indictment mentioned in the fifth subdivision of the last section is not allowed to a defendant who has been held to answer before indictment. [Cd. '81, § 1047; 2 H. C., § 1275, last pt.]

§ 2101. Grounds of Motion to Set Aside Information.—A motion to set aside an information can be made by the defendant on one or more of the following grounds, and must be sustained:—

1. When it is not signed by the prosecuting attorney;

2. When it is not verified;

3. When it has not been marked "filed" by the clerk;

4. When the names of the witnesses are not indorsed upon it as required by section 2050. [L. '91, p. 56, § 51; 2 H. C., § 1276.]

Cited in 32 Wash. 11.

§ 2102. Must Demur or Plead on Denial of Motion.—If the motion to set aside the indictment [or information] be denied, the defendant must immediately answer the indictment or information, either by demurring or pleading thereto. [Cf. Cd. '81, § 1048; L. '91, p. 56, § 52; 2 H. C., § 1277.]

§ 2103. Effect of Order for Resubmission.—If the court direct that the case be resubmitted, the defendant, if already in custody, must so remain, unless he be admitted to bail; or if already admitted to bail, or money has been deposited instead thereof, the bail or money is answerable for the appearance of the defendant to answer

a new indictment or information. [Cf. Cd. '81, § 1049; L. '91, p. 56, § 52; 2 H. C., § 1278.]

Cited in 11 Wash. 420.

§ 2104. Order No Bar to Another Prosecution.—An order to set aside the indictment or information as provided in this chapter shall be no bar to a future prosecution for the same offense. [Cf. Cd. '81, § 1050; L. '91, p. 56, § 54; 2 H. C., § 1279.]

§ 2105. Grounds of Demurrer.—The defendant may demur to the indictment or information when it appears upon its face either,—

1. That it does not substantially conform to the requirements of this code;

2. [That] more than one crime is charged;

3. That the facts charged do not constitute a crime;

4. That the indictment or information contains any matter which if true would constitute a defense or other legal bar to the action. [Cf. Cd. '81, § 1051; L. '91, p. 56, § 55; 2 H. C., § 1280.]

Cited in 42 Wash. 456; 56 Wash. 471; 72 Wash. 394.

§ 2106. Judgment on Demurrer Final, When.—If the demurrer is sustained because the indictment or information contains matter which is a legal defense or bar to the action, the judgment shall be final, and the defendant must be discharged. [Cf. Cd. '81, § 1052; L. '91, p. 57, § 56; 2 H. C., § 1281.]

Cited in 11 Wash. 420.

§ 2107. Effect of Failure to Plead After Demurrer Overruled.—If the demurrer is overruled, the defendant has a right to put in a plea. If he fails to do so, judgment may be rendered against him on the demurrer, and if necessary, a jury may be impaneled to inquire and ascertain the degree of the offense. [Cf. Cd. '81, § 1053; 2 H. C., § 1282.]

Cited in 16 Wash. 115; 20 Wash. 560.

§ 2108. The Three Pleas of Defendant.—There are but three pleas to the indictment or information: A plea of,—

1. Guilty;

2. Not guilty;

3. A former judgment of conviction or acquittal of the offense charged, which may be pleaded with or without the plea of not guilty. [Cf. Cd. '81, § 1054; L. '91, p. 57, § 57; 2 H. C., § 1283.]

Cited in 69 Wash. 63.

See infra, § 2174, insanity, how pleaded.

§ 2109. Pleas, How Entered—Form of.—The plea may be entered on the record substantially in the following form:—

1. A plea of guilty: The defendant pleads that he is guilty of the offense charged in the indictment (or information, as the case may be);

2. A plea of not guilty: The defendant pleads that he is not guilty of the offense charged in the indictment (or information, as the case may be);

3. A plea of former conviction or acquittal: The defendant pleads that he has formerly been convicted (or acquitted, as the case may be) of the offense charged in the indictment (or information, as the case may be), by the judgment of the court of (naming it), rendered on the —— day of ——, A. D. 18— (naming the time). [Cf. Cd. '81, § 1055; L. '91, p. 57, § 58; 2 H. C., § 1284.]

Cited in 31 Wash. 86; 84 Wash. 114.

§ 2110. Plea of Guilty must be Put in by Defendant.—The plea of guilty can only be put in by the defendant himself in open court. [Cd. '81, § 1056; 2 H. C., § 1285.]

Cited in 44 Wash. 618.

See supra, § 2094, appearance by counsel in misdemeanors.

§ 2111. Substitution of Plea.—At any time before judgment, the court may permit the plea of guilty to be withdrawn and other plea or pleas substituted. [Cd. '81, § 1057; 2 H. C., § 1286.]

Cited in 53 Wash. 270.

§ 2112. Plea of not Guilty, Effect of.—The plea of not guilty is a denial of every material allegation in the indictment or information; and all matters of fact may be given in evidence under it, except a former conviction or acquittal. [Cf. Cd. '81, § 1058; L. '91, p. 57, § 59; 2 H. C., § 1287.]

§ 2113. Conviction or Acquittal Operates as a Bar, When.—A conviction or acquittal by a judgment upon a verdict shall bar another prosecution for the same offense, notwithstanding a defect in form or substance in the indictment or information on which the conviction or acquittal took place. [Cf. Cd. '81, §§ 768, 1059; L. '91, p. 57, § 60; 2 H. C., §§ 1288, 1365.]

Cited in 54 Wash. 117; 75 Wash. 15; 84 Wash. 115, 116, 117.

Compare infra, §§ 2271, 2272, 2316, former acquittal or conviction when a bar.

See Const. U. S., amendment 5; Const. Wash., Art. I, § 9, jeopardy.

§ 2114. Judgment on Demurrer No Bar—Exception.—The judgment for the defendant on a demurrer to the indictment or information, except where it is otherwise provided, or for an objection taken at the trial to its form or substance, or for variance between the indictment or information and the proof, shall not bar another prose-

cution for the same offense. [Cf. Cd. '81, § 1060; L. '91, p. 58, § 61; 2 H. C., § 1289.]

See supra, § 2106, judgment on demurrer, when final.

§ 2115. Refusal to Plead—Plea of not Guilty to be Entered.—If the defendant fail or refuse to answer the indictment or information by demurrer or plea, a plea of not guilty must be entered by the court. [Cf. L. '54, p. 116, § 88; Cd. '81, § 1061; L. '91, p. 58, § 62; 2 H. C., § 1290.]

Cited in 16 Wash. 115; 20 Wash. 560.

§ 2116. On Charge of Murder Jury must be Impaneled.—If, on the arraignment of any person, he shall plead guilty, if the offense charged be not murder, the court shall, in its discretion, hear testimony, and determine the amount and kind of punishment to be inflicted; but if the defendant plead guilty to a charge of murder, a jury shall be impaneled to hear testimony, and determine the degree of murder and the punishment therefor. [L. '54, p. 115, § 87; Cd. '81, § 1062; 2 H. C., § 1291.]

Cited in 35 Wash. 569.

§ 2118. Conviction Necessary Before Punishment.—No person charged with any offense against the law shall be punished for such offense unless he shall have been duly and legally convicted thereof in a court having competent jurisdiction of the case and of the person. [L. '54, p. 76, § 6; Cd. '81, § 770; 2 H. C., § 1367.]

§ 2126. Compromise of Misdemeanor, When.—When a defendant is prosecuted in a criminal action for a misdemeanor, for which the person injured by the act constituting the offense has a remedy by a civil action, the offense may be compromised as provided in the next section, except when it was committed,—

1. By or upon an officer while in the execution of the duties of his office;

2. Riotously; or

3. With an intent to commit a felony. [L. '54, p. 115, § 84; Cd. '81, § 1040; 2 H. C., § 1292.]

§ 2127. Compromising Criminal Actions, When and How.—In such case, if the party injured appear in the court in which the cause is pending at any time before the final judgment therein, and acknowledge in writing, that he has received satisfaction for the injury, the court may, in its discretion on payment of the costs incurred, order all proceedings to be discontinued and the defendant to be discharged. The reasons for making the order must be set forth therein and entered in the minutes. Such order is a bar to another

prosecution for the same offense. [Cf. L. '54, p. 115, § 84; Cd. '81, §§ 1041, 1042; L. '91, p. 58, § 63; 2 H. C., § 1293.]

See infra, § 2866, compounding or concealing crime.

§ 2128. Offenses not to be Compromised Except as Herein Provided.—No offense can be compromised, nor can any proceedings for the prosecution or punishment thereof be stayed upon a compromise, except as provided in this chapter. [Cf. Cd. '81, § 1043; L. '91, p. 58, § 64; 2 H. C., § 1294.]

§ 2129. Restoration of Stolen Property—Duty of Officer as to.—All property obtained by larceny, robbery, or burglary, shall be restored to the owner; and no sale, whether in good faith on the part of the purchaser or not, shall divest the owner of his rights to such property; and it shall be the duty of the officer who shall arrest any such person charged as principal or accessory in any robbery or larceny, to secure the property alleged to have been stolen, and he shall be answerable for the same, and shall annex a schedule thereof to his return of the warrant. [L. '54, p. 84, § 51; Cd. '81, § 851; 2 H. C., § 1380.]

§ 2130. Recompense for Securing and Keeping Stolen Property. Upon any conviction of burglary, robbery, or larceny, the court may order a suitable recompense to the prosecutor, and also to the officer who has secured and kept the stolen property, not exceeding their actual expenses, with a reasonable allowance for their time and trouble, to be paid by the county treasurer. [L. '54, p. 84, § 52; Cd. '81, § 852; 2 H. C., § 1381.]

CHAPTER XVII.

Trials and Verdicts in Criminal Actions.

§ 2134. Trial Docket.—The clerk shall, in preparing the docket of criminal cases, enumerate the indictments and informations pending according to the date of their filing, specifying opposite to the title of each action whether it be for a felony or misdemeanor, and whether the defendant be in custody or on bail; and shall, in like manner, enter therein all indictments and informations on which issues of fact are joined, all cases brought to the court on change of venue from other counties, and all cases pending upon appeal from inferior courts. [Cf. L. '54, p. 115, § 86; Cd. '81, § 1044; L. '91, p. 58, § 65; 2 H. C., § 1295.]

§ 2135. Continuance, When Granted.—A continuance may be granted in any case on the ground of the absence of evidence, on the motion of the defendant, supported by affidavit showing the materiality of the evidence expected to be obtained, and that due

diligence has been used to procure it, and also the name and place of residence of the witness or witnesses, and the substance of the evidence expected to be obtained; and if the prosecuting attorney admit that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the continuance shall not be granted. [L. '77, p. 206, § 7; Cd. '81, § 1077; 2 H. C., § 1296.]

Cited in 29 Wash. 448.

§ 2136. Subpoena for State Witnesses—Continuance for State.—The clerk shall, at the time of issuing a warrant for the defendant, issue a subpoena for all the witnesses whose names are indorsed on the indictment, and any others required; but in no case shall a continuance be granted to the state on account of the absence of any witness whose name is not indorsed on the indictment. [Cd. '81, § 1068.]

The present force of this section is doubtful.

§ 2137. Issues to be Tried by Jury—Practice as in Civil Cases.—Except as otherwise specially provided, issues of fact joined upon an indictment or information shall be tried by a jury of twelve persons, and the law relating to the drawing, retaining, and selecting jurors, and trials by jury in civil cases, shall apply to criminal cases. [Cf. L. '54, p. 118, § 101; Cd. '81, § 1078; L. '91, p. 58, § 66; 2 H. C., § 1297.]

Cited in 8 Wash. 306; 17 Wash. 550; 22 Wash. 133; 83 Wash. 517.

§ 2138. Peremptory Challenges, Number Allowed Defendant.—In prosecution for capital offenses, the defendant may challenge peremptorily twelve jurors; in prosecution for offenses punishable by imprisonment in the penitentiary, six jurors; in all other prosecutions, three jurors. When several defendants are on trial together, they must join in their challenges. [L. '54, p. 118, § 102; Cd. '81, § 1079; 2 H. C., § 1298.]

Cited in 83 Wash. 2.

§ 2139. Peremptory Challenges Allowed State.—The prosecuting attorney, in capital cases, may challenge peremptorily six jurors; in all other cases, three jurors. [L. '54, p. 118, § 103; Cd. '81, § 1080; 2 H. C., § 1299.]

§ 2140. Challenges to Panel, When Allowed.—Challenges to the panel shall only be allowed for a material departure from the forms prescribed by law for the drawing and return of the jury, and shall be in writing, sworn to, and proved to the satisfaction of the court. [L. '54, p. 118, § 104; Cd. '81, § 1081; 2 H. C., § 1300.]

Cited in 6 Wash. 566; 29 Wash. 446; 61 Wash. 408.

§ 2141. Challenges for Cause.—Challenges for cause shall be allowed for such cause as the court may, in its discretion, deem sufficient, having reference to the causes of challenge prescribed in civil cases, as far as they may be applicable, and to the substantial rights of the defendant. [L. '54, p. 119, § 105; Cd. '81, § 1082; 2 H. C., § 1301.]

Cited in 3 Wash. 103, 104; 8 Wash. 14.

§ 2142. Conscientious Scruples of Juror as to Capital Punishment.—No person whose opinions are such as to preclude him from finding any defendant guilty of an offense punishable with death shall be compelled or allowed to serve as a juror on the trial of any indictment or information for such an offense. [Cf. L. '54, p. 119, § 106; Cd. '81, § 1083; L. '91, p. 59, § 67; 2 H. C., § 1302.]

§ 2143. Oath to Jury, Form of.—The jury shall be sworn or affirmed well and truly to try the issue between the state and defendant, according to the evidence; and in capital cases, to well and truly try, and true deliverance make between the state and the prisoner at the bar, whom they shall have in charge, according to the evidence. [Cf. L. '54, p. 119, § 107; Cd. '81, § 1084; L. '91, p. 59, § 68; 2 H. C., § 1303.]

Cited in 16 Wash. 426; 18 Wash. 144.

§ 2144. Jury may be Waived Except in Capital Cases.—The defendant and prosecuting attorney, with the assent of the court, may submit the trial to the court, except in capital cases. [L. '54, p. 119, § 108; Cd. '81, § 1085; 2 H. C., § 1304.]

§ 2145. Personal Presence of Defendant During Trial.—No person prosecuted for an offense punishable by death, or by confinement in the penitentiary or in the county jail, shall be tried unless personally present during the trial. [L. '54, p. 119, § 109; Cd. '81, § 1086; 2 H. C., § 1305.]

Cited in 66 Wash. 384, 385; 76 Wash. 308; 82 Wash. 367.

§ 2146. Trial in Defendant's Absence, When.—No person prosecuted for an offense punishable by a fine only shall be tried without being personally present, unless some responsible person, approved by the court, undertakes to be bail for stay of execution and payment of the fine and costs that may be assessed against the defendant. Such undertaking must be in writing, and is as effective as if entered into after judgment. [L. '54, p. 119, § 110; Cd. '81, § 1087; 2 H. C., § 1306.]

§ 2147. Competency of Witnesses—Exceptions.—Witnesses competent to testify in civil cases shall be competent in criminal prosecutions, but regular physicians or surgeons, clergymen or priests,

shall be protected from testifying as to confessions, or information received from any defendant, by virtue of their profession and character; Indians shall be competent as witnesses hereinbefore provided, or in any prosecutions in which an Indian may be a defendant. [L. '54, p. 117, § 95; L. '73, p. 233, § 231; Cd. '81, § 1069.]

See infra, § 2290, convict as witness.

§ 2148. Compelling Attendance of Witnesses—Defendant as Witness—Failure to Testify.—Witnesses may be compelled to attend and testify before the grand jury; and witnesses on behalf of the state, or of the defendant, in a criminal prosecution, may be compelled to attend and testify in open court, if they have been subpoenaed, without their fees being first paid or tendered, unless otherwise provided by law; the court may, upon the motion of the prosecuting attorney, recognize witnesses, with or without sureties, to attend and testify at any hearing or trial in any criminal prosecution in any court of this state, or before the grand jury, and in default of such recognizance the court may direct that such witness shall be detained in the custody of the sheriff until the hearing or trial of the prosecution in which such testimony may be required: Provided, however, that each witness so detained by order of court pursuant to the provisions of this section, shall be paid, in addition to witness fees for actual attendance in court, the sum of one dollar per day for time actually detained in custody, and shall be furnished food and lodging while so detained, and any person accused of any crime in this state, by indictment, information, or otherwise, may, in the examination or trial of the cause, offer himself, or herself, as a witness in his or her own behalf, and shall be allowed to testify as other witnesses in such case, and when accused shall so testify, he or she shall be subject to all the rules of law relating to cross-examination of other witnesses: Provided, that nothing in this code shall be construed to compel such accused person to offer himself or herself as a witness in such case: And provided further, that it shall be the duty of the court to instruct the jury that no inference of guilt shall arise against the accused if the accused shall fail or refuse to testify as a witness in his or her own behalf. [L. '15, p. 260, § 1. Cf. L. '54, p. 116, § 93; L. '71, p. 105, § 2; Cd. '81, § 1067; L. '91, p. 59, § 69; 2 H. C., § 1307.]

Cited in 7 Wash. 339; 8 Wash. 181, 185; 13 Wash. 486; 32 Wash. 26, 65; 35 Wash. 334; 71 Wash. 458; 84 Wash. 603; 87 Wash. 472, 616.

§ 2149. Immunity of Witnesses in Cases of Bribery, Grafting, etc.—Any person offending against any provisions of the common law or statutes of the state of Washington or any ordinances of any municipality thereof, relating to bribery, grafting or corrupt solicitation, shall be a competent witness against any other person

so offending, and may be compelled to attend and testify upon any trial, hearing, proceeding or investigation in the same manner as any other person. But the testimony so given shall not be used in any prosecution or proceeding, civil or criminal, against the person so testifying. A person so testifying shall not thereafter be liable to indictment, information, prosecution, or punishment for such offense. [L. '07, p. 99, § 1.]

§ 2150. Not Applicable to Proceedings Before Committing Magistrate or Justice.—The provisions of section 2149 shall not be applicable to any prosecution or proceeding before a committing magistrate or justice of the peace. [L. '07, p. 99, § 2.]

§ 2151. Confession as Evidence.—The confession of a defendant made under inducement, with all the circumstances, may be given as evidence against him, except when made under the influence of fear produced by threats; but a confession made under inducement is not sufficient to warrant a conviction without corroborating testimony. [L. '54, p. 117, § 96; Cd. '81, § 1070; 2 H. C., § 1308.]

Cited in 3 Wash. 110; 7 Wash. 240; 12 Wash. 676; 13 Wash. 6; 18 Wash. 396; 21 Wash. 68; 25 Wash. 349; 36 Wash. 488; 56 Wash. 512; 68 Wash. 245, 469.

§ 2152. Rules of Evidence Same as in Civil Actions.—The rules of evidence in civil actions, so far as practicable, shall be applied to criminal prosecutions. [L. '54, p. 117, § 97; Cd. '81, § 1071; 2 H. C., § 1309.]

Cited in 15 Wash. 18; 83 Wash. 517.

§ 2153. Proof of Marriage in Adultery, Bigamy, etc.—A recorded certificate of marriage, or a certified copy thereof, there being no decree of divorce, proves the marriage of a person for the purposes of this chapter. [L. '95, p. 372, § 5.]

§ 2154. Receiving Stolen Property—Averments and Proof Necessary.—In any prosecution for the offense of buying, receiving, or aiding in the concealment of stolen property, moneys, or goods, known to have been stolen, or for bringing or aiding in bringing into this state any such property, money or goods, known to have been stolen, it shall not be necessary to aver, nor on the trial thereof to prove, that the person who stole such property has been convicted, nor that the larceny of such property, nor that any conspiracy or agreement between the defendant and any other person or persons concerning the stealing, buying, receiving, concealing, or bringing of such stolen property, was committed or entered into within the jurisdiction of the court trying the case. [Cf. L. '54, p. 84, § 50; Cd. '81, § 850; L. '90, p. 129, § 1; 2 H. P. C., § 69.]

§ 2156. Variance as to Ownership of Property.—In the prosecution of any offense committed upon or in relation to or in any way affecting any real estate, or any offense committed in stealing, embezzling, destroying, injuring, or fraudulently receiving or concealing any money, goods, or other personal estate, it shall be sufficient, and shall not be deemed variance, if it be proved on trial that, at the time when such offense was committed, either the actual or constructive possession, or the general or special property, in the whole or any part of such real or personal estate, was in the person or community alleged in the indictment or other accusation to be the owner thereof. [L. '54, p. 99, § 133; Cd. '81, § 963; 2 H. C., § 1377.]

Cited in 6 Wash. 189; 35 Wash. 134.

See supra, § 2076, variance as to ownership of property, when.

§ 2158. Court to Decide Questions of Law, Rules of Practice.—The court shall decide all questions of law which shall arise in the course of the trial, and the trial shall be conducted in the same manner as in civil actions. [Cf. L. '54, p. 119, § 111; Cd. '81, § 1088; L. '91, p. 60, § 70; 2 H. C., § 1310.]

Cited in 83 Wash. 517.

§ 2159. Custody of Jury.—Juries in criminal cases shall not be allowed to separate, except by consent of the defendant and the prosecuting attorney, but shall be kept together, without meat or drink, unless otherwise ordered by the court, to be furnished at the expense of the county. [L. '54, p. 119, § 114; Cd. '81, § 1089; 2 H. C., § 1311.]

Cited in 2 Wash. 185, 563; 5 Wash. 775; 12 Wash. 54; 18 Wash. 46; 25 Wash. 407; 34 Wash. 263; 38 Wash. 273; 58 Wash. 131; 71 Wash. 676; 87 Wash. 475.

§ 2160. Court may Order View of Place of Crime.—The court may order a view by any jury impaneled to try a criminal case. [L. '54, p. 120, § 115; Cd. '81, § 1090; 2 H. C., § 1312.]

Cited in 18 Wash. 674.

§ 2161. Separate Trial.—When two or more defendants are indicted or informed against jointly, any defendant requiring it shall be tried separately. [Cf. L. '54, p. 120, § 116; Cd. '81, § 1091; L. '91, p. 60, § 71; 2 H. C., § 1313.]

Cited in 19 Wash. 95; 48 Wash. 75; 66 Wash. 468, 589.

See supra, § 2175, trial of question of insanity.

§ 2162. Discharging One Defendant to Give Evidence—Effect of. When two or more persons are included in one prosecution, the court may, at any time before the defendant has gone into his de-

fense, direct any defendant to be discharged, that he may be a witness for the state. A defendant may also, when there is not sufficient evidence to put him on his defense, at any time before the evidence is closed, be discharged by the court, for the purpose of giving evidence for a codefendant. The order of discharge is a bar to another prosecution for the same offense. [L. '54, p. 120, § 117; Cd. '81, § 1092; 2 H. C., § 1314.]

Cited in 2 Wash. 294.

§ 2163. Mistake in Charge, Defendant to be Held, When.—When it appears, at any time before verdict or judgment, that a mistake has been made in charging the proper offense, the defendant shall not be discharged if there appear to be good cause to detain him in custody; but the court must recognize him to answer the offense shown, and if necessary, recognize the witnesses to appear and testify. [L. '54, p. 120, § 118; Cd. '81, § 1093; 2 H. C., § 1315.]

Cited in 10 Wash. 238; 14 Wash. 666.

§ 2164. Venue may be Corrected and Action Certified to Proper County.—When it appears, at any time before verdict or judgment, that the defendant is prosecuted in a county not having jurisdiction, the court may order the venue of the indictment or information to be corrected, and direct that all papers and proceedings be certified to the superior court of the proper county, and recognize the defendant and witnesses to appear at such court, on a day specified in the order, and the prosecution shall proceed in the latter court in the same manner as if it had been there commenced. [L. '54, p. 120, § 119; Cd. '81, § 1094; L. '91, p. 60, § 72; 2 H. C., § 1316.]

See supra, § 2012, to be tried in county where crime committed.

§ 2165. Discharge of Jury Without Prejudice to Further Prosecution.—When a jury has been impaneled in either case contemplated in the last two preceding sections, such jury may be discharged without prejudice to the prosecution. [L. '54, p. 120, § 120; Cd. '81, § 1095; L. '91, p. 60, § 73; 2 H. C., § 1317.]

§ 2166. When Conviction or Acquittal a Bar.—When the defendant has been convicted or acquitted upon an indictment or information of an offense consisting of different degrees, the conviction or acquittal shall be a bar to another indictment or information for the offense charged in the former, or for any lower degree of that offense, or for an offense necessarily included therein. [L. '54, p. 120, § 121; Cd. '81, § 1096; L. '91, p. 60, § 74; 2 H. C., § 1318.]

See supra, § 2113, conviction or acquittal a bar, when.
See infra, § 2316, same subject.

§ 2167. Jury may Find Any Degree of Offense.—Upon an indictment or information for an offense consisting of different degrees,

the jury may find the defendant not guilty of the degree charged in the indictment or information, and guilty of any degree inferior thereto, or of an attempt to commit the offense. [L. '54, p. 120, § 122; Cd. '81, § 1097; L. '91, p. 60, § 75; 2 H. C., § 1319.]

Cited in 11 Wash. 247; 12 Wash. 351; 17 Wash. 599; 21 Wash. 285; 22 Wash. 276; 32 Wash. 302; 39 Wash. 203; 43 Wash. 227; 59 Wash. 237; 76 Wash. 587.

§ 2168. In Other Cases Degree of Guilt.—In all other cases, the defendant may be found guilty of an offense the commission of which is necessarily included within that with which he is charged in the indictment or information. [Cf. L. '54, p. 120, § 123; Cd. '81, § 1098; L. '91, p. 61, § 76; 2 H. C., § 1320.]

Cited in 17 Wash. 511; 20 Wash. 164; 32 Wash. 303; 59 Wash. 237; 66 Wash. 245; 76 Wash. 587; 80 Wash. 534.

§ 2169. Verdict as to One or More Where Several are Charged.—On an indictment or information against several, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment shall be entered accordingly. [Cf. L. '54, p. 120, § 124; Cd. '81, § 1099; L. '91, p. 61, § 77; 2 H. C., § 1321.]

§ 2170. Reconsideration Where Jury Mistakes the Law.—When there is a verdict of conviction in which it appears to the court that the jury have mistaken the law, the court may explain the reason for that opinion, and direct the jury to reconsider the verdict; and if after such reconsideration they return the same verdict, it must be entered, but it shall be good cause for new trial. When there is a verdict of acquittal, the court cannot require the jury to reconsider it. [Cf. L. '54, p. 121, § 125; Cd. '81, § 1100; L. '91, p. 61, § 78; 2 H. C., § 1322.]

§ 2171. Rendition of Verdict.—When the jury have agreed upon their verdict, they must be conducted into court by the officer having them in charge. Their names must then be called, and if all appear, their verdict must be rendered in open court; and if all do not appear, the rest must be discharged without giving a verdict, and the cause must be tried again. [Cf. L. '54, p. 121, § 127; Cd. '81, § 1102; L. '91, p. 61, § 80; 2 H. C., § 1324.]

Cited in 18 Wash. 46.

See infra, § 2176, verdict on defense of insanity.

§ 2172. Form of Verdict, Punishment Fixed by Court.—When the defendant is found guilty, the court, and not the jury, shall fix the amount of fine and the punishment to be inflicted. The verdict of the jury may be substantially in the following form:—

"We, the jury, in the case of the state of Washington, plaintiff, against ——, defendant, find the defendant (guilty or not guilty, as the case may be).

(Signed) A. B. Foreman."

[Cf. L. '54, p. 121, § 128; L. '65, p. 101, § 1; Cd. '81, § 1103; 2 H. C., § 1335.]

Cited in 3 Wash. 673; 14 Wash. 418; 20 Wash. 516; 56 Wash. 472; 58 Wash. 238.

See infra, § 2176, verdict on plea of insanity.

§ 2173. "Criminally Insane," Defined—Mental Irresponsibility.—Any person who shall have committed a crime while insane, or in a condition of mental irresponsibility, and in whom such insanity or mental irresponsibility continues to exist, shall be deemed criminally insane within the meaning of this act. No condition of mind induced by the voluntary act of a person charged with a crime shall be deemed mental irresponsibility within the meaning of this act. [L. '07, p. 33, § 1.]

Cited in 63 Wash. 487.

"Act," in this section, refers to §§ 2173–2176, and § 5974 et seq.

§ 2174. Insanity—How Pleaded.—When it is desired to interpose the defense of insanity or mental irresponsibility on behalf of one charged with a crime, the defendant, his counsel or other person authorized by law to appear and act for him, shall at the time of pleading to the information or indictment file a plea in writing in addition to the plea or pleas required or permitted by other laws than this, setting up (1) his insanity or mental irresponsibility at the time of the commission of the crime charged, and (2) whether the insanity or mental irresponsibility still exists, or (3) whether the defendant has become sane or mentally responsible between the time of the commission of the crime and the time of the trial. The plea may be interposed at any time thereafter, before the submission of the cause to the jury, if it be proven that the insanity or mental irresponsibility of the defendant at the time of the crime was not before known to any person authorized to interpose a plea. [L. '07, p. 33, § 2.]

Cited in 56 Wash. 298, 299; 63 Wash. 486, 487; 69 Wash. 237, 238.

§ 2175. Special Verdict on Acquittal, When Plea of Insanity Interposed.—If the plea of insanity or mental irresponsibility be interposed, and evidence upon that issue be given, the court shall instruct the jury when giving the charge, that in case a verdict of acquittal of the crime charged be returned, they shall also return special verdicts finding (1) whether the defendant committed the crime and if so, (2) whether they acquit him because of his insanity

or mental irresponsibility at the time of its commission, (3) whether the insanity or mental irresponsibility continues and exists at the time of the trial, and (4) whether, if such condition of insanity or mental irresponsibility does not exist at the time of the trial, there is such likelihood of a relapse or recurrence of the insane or mental irresponsible condition, that the defendant is not a safe person to be at large. Forms for the return of the special verdicts shall be submitted to the jury with the forms for the general verdicts. [L. '07, p. 33, § 3.]

Cited in 63 Wash. 487.

§ 2176. Verdict — Findings — Discharge or Commitment.—If the jury find by their special verdicts that the defendant committed the crime charged, that he is acquitted because of his insanity or mental irresponsibility at the time of its commission, and that before the trial he has become a sane or mentally responsible person, and is not liable to a relapse or recurrence of the insane or mentally irresponsible condition, and is a safe person to be at large, he shall be discharged. If the jury find that the defendant committed the crime charged, that he is acquitted because of his insanity or mental irresponsibility at the time of its commission, and that the insanity or mental irresponsibility still exists, or, if it does not exist, that he is so liable to a relapse or recurrence of the insane or mentally irresponsible condition as to be an unsafe person to be at large, the court shall enter judgment in accordance therewith, and shall order the defendant committed as a criminally insane person until such time as he shall be discharged as hereinafter provided. [L. '07, p. 34, § 4. Cf. L. '54, p. 121, § 126; Cd. '81, § 1101; L. '91, p. 61, § 79; 2 H. C., § 1323.]

Cited in 63 Wash. 487.

See infra, §§ 5974–5978, confinement and discharge of the criminal insane. Compare § 2283, infra.

CHAPTER XVIII.

New Trial and Arrest of Judgment.

§ 2181. When New Trial may be Granted.—An application for a new trial must be made before judgment, and may be granted for the following causes materially affecting a substantial right of the defendant:—

1. When the jury has received any evidence, paper, document, or book not allowed by the court;

2. Misconduct of the jury;

3. Newly discovered evidence material for the defendant, which he could not have discovered with reasonable diligence, and produced at the trial;

4. Accident or surprise;

5. Error of law occurring at the trial and excepted to by the defendant;

6. When the verdict is contrary to law and evidence; but not more than two new trials shall be granted for these causes alone. [Cf. L. '54, p. 121, § 130; Cd. '81, § 1105; L. '91, p. 61, § 81; 2 H. C., § 1326.]

Cited in 25 Wash. 415; 42 Wash. 61; 47 Wash. 6; 59 Wash. 311.

§ 2182. Application, How Made.—When the application is made for a cause mentioned in the first, second, third, and fourth subdivisions of the preceding section, the facts on which it is based shall be set out in an affidavit. [L. '54, p. 122, § 131; Cd. '81, § 1106; 2 H. C., § 1327.]

Cited in 42 Wash. 61; 25 Wash. 415; 59 Wash. 311.

§ 2183. Judgment may be Arrested, When.—Judgment may be arrested on the motion of the defendant for the following causes:—

1. No legal authority in the grand jury to inquire into the offense charged, by reason of its not being within the jurisdiction of the court;

2. That the facts as stated in the indictment or information do not constitute a crime or misdemeanor. [Cf. L. '54, p. 122, § 132; Cd. '81, § 1107; L. '91, p. 62, § 82; 2 H. C., § 1328.]

Cited in 22 Wash. 554; 53 Wash. 269; 72 Wash. 393; 79 Wash. 263.

§ 2184. Judgment Arrested Without Motion, When.—The court may also, on its views of any of these defects, arrest the judgment without motion. [L. '54, p. 122, § 133; Cd. '81, § 1108; 2 H. C., § 1329.]

§ 2185. Defendant may be Recommitted After Arrest of Judgment.—When judgment is arrested in any case, and there is reasonable ground to believe that the defendant can be convicted of an offense, properly charged, the court may order the defendant to be recommitted, or admitted to bail anew, to answer a new indictment [or information]. [L. '54, p. 122, § 134; Cd. '81, § 1109; 2 H. C., § 1330.]

§ 2186. Exceptions as in Civil Cases.—Exceptions may be taken by the defendant, as in civil cases, on any matter of law by which his substantial rights are prejudiced. [L. '54, p. 122, § 135; Cd. '81, § 1110; 2 H. C., § 1331.]

See supra, § 381 et seq., exceptions in civil cases, and notes.

CHAPTER XIX.

Judgment, and the Enforcement Thereof.

§ 2187. Judgment on Verdict.—When the defendant is found guilty, the court shall render judgment accordingly and the defendant shall be liable for all costs, unless the court or jury trying the cause expressly find otherwise. [L. '54, p. 121, § 129; Cd. '81, § 1104; 2 H. C., § 1332.]

Cited in 1 Wash. 414; 29 Wash. 60; 44 Wash. 618.

See infra, §§ 2190, 2198, pronouncing judgment.
See infra, § 2228 et seq., cost bills in criminal cases.
See infra, § 8541, conviction to be certified to state auditor.

§ 2188. Judgment a Lien on Realty, When.—Judgments for fines in all criminal actions rendered are and may be made liens upon the real estate of the defendant in the same manner and with like effect as judgments in civil actions. [Cd. '81, § 1111; 2 H. C., § 1333.]

Cited in 82 Wash. 671.

See supra, § 445 et seq., judgment liens in civil cases.

§ 2189. Fines, Disposition—Penalty for Neglect to Pay Over.—All fines imposed on any person by the provisions of this code, where the same shall be collected, shall be paid to the county treasurer of the county where such conviction shall have been had, to go into the general county fund. The county treasurer shall give duplicate receipts therefor, one of which shall be filed with the county auditor; and all officers refusing or neglecting to pay over any fines within one month after they shall have been received shall, upon conviction thereof, be fined in fourfold the amount of such fines so received. [L. '54, § 128; Cd. '81, § 1113; 2 H. C., § 1335.]

Cited in 7 Wash. 447; 15 Wash. 416.

See supra, § 966, disposition of fines and forfeitures generally.
See infra, § 2230, costs and other moneys collected in criminal cases belong to county.

§ 2190. Judgment Pronounced, When.—After verdict of guilty or finding of the court against the defendant, if the judgment be not arrested or a new trial granted, the court must pronounce judgment. [L. '54, p. 123, § 136; Cd. '81, § 1114; 2 H. C., § 1336.]

See infra, § 2198, defendant to be informed of verdict.

§ 2194. Certain Criminals may be Sentenced to Reformatory.—All provisions of existing laws requiring the courts of this state to sentence male criminals between the ages of sixteen and thirty, convicted of any criminal offense, to the Washington penitentiary shall, from and after the turning over of the buildings of the Washington state reformatory to the board of managers as provided

for in section 8591, of this code, apply to said Washington state reformatory, so far as to enable courts to sentence the class of prisoners mentioned in section 8585 of this code to the Washington state reformatory. [L. '07, p. 389, § 12.]

See infra, § 8585, certain criminals to be sentenced to reformatory.
See infra, § 8595, indefinite sentences not void.

§ 2195. Indeterminate Sentence to Reformatory.—Every sentence to the Washington state reformatory of a person hereinafter convicted of a felony, shall be a general sentence to imprisonment in the Washington state reformatory, giving the location thereof, and the courts of this state imposing such sentence shall not fix or limit the duration thereof. The term of such imprisonment of any prisoner so convicted and sentenced shall be terminated by the board of managers of the Washington state reformatory as authorized by this act, but such imprisonment shall not exceed the maximum provided by law for the crime for which the person was convicted nor be less than the minimum term provided by law for a felony; and a person sentenced to the Washington state reformatory shall, within thirty days after his sentence, unless the execution thereof be suspended, be conveyed to the Washington state reformatory by the state board of control in the manner prescribed in section 8955 of this code, and delivered into the custody of the superintendent of the Washington state reformatory, together with a certified copy of the sentence of the court, and there be safely kept until released by the board of managers of the Washington state reformatory, or until said prisoner be pardoned by the governor, and if the execution of the sentence be suspended, and the judgment be afterward affirmed, the defendant shall be conveyed to the Washington state reformatory within thirty days after the court directs the execution of the sentence. [L. '07, p. 390, § 13.]

See infra, § 2282, indeterminate sentence to reformatory.
See infra, § 8585, certain criminals to be sentenced to reformatory.

§ 2196. Presence of Defendant, When Necessary.—For the purpose of judgment, if the conviction be for an offense punishable by imprisonment, the defendant must be personally present; if for a fine only he must be personally present, or some responsible person must undertake for him to secure the payment of the judgment and costs; judgment may then be rendered in his absence. [L. '54, p. 123, § 137; Cd. '81, § 1115; 2 H. C., § 1337.]

Cited in 66 Wash. 384.
See supra, § 2145, presence at trial.

§ 2197. Warrant for Defendant, When.—If in any case the defendant is not present when his personal attendance is necessary, the court may order the clerk to issue a warrant for his arrest,

which may be served in any county in this state, as a warrant of arrest in other cases. [L. '54, p. 123, § 138; Cd. '81, § 1116; 2 H. C., § 1338.]

§ 2198. Defendant to be Informed of Verdict.—When the defendant appears for judgment, he must be informed by the court of the verdict of the jury, and asked whether he have any legal cause to show why judgment should not be pronounced against him. [L. '54, p. 123, § 139; Cd. '81, § 1117; 2 H. C., § 1339.]

§ 2199. Bench-warrant, Forfeiture of Bail, etc.—If the defendant have been discharged on bail, or have deposited money instead thereof, and do not appear for judgment when his personal appearance is necessary, the court, in addition to the forfeiture of the recognizance, or of the money deposited, may direct the clerk to issue a bench-warrant for his arrest. [L. '54, p. 123, § 140; Cd. '81, § 1118; 2 H. C., § 1340.]

Cited in 82 Wash. 671.

§ 2200. Commitment Until Fine and Costs Paid.—When the defendant is adjudged to pay a fine and costs, the court shall order him to be committed to the custody of the sheriff until the fine and costs are paid or secured as provided by law. [L. '54, p. 123, § 141; Cd. '81, § 1119; 2 H. C., § 1341.]

Cited in 1 Wash. 329.

See infra, § 2206, enforcement of judgment for fine and costs.
See infra, § 2209, fine and costs, how worked out.

§ 2201. Execution as in Civil Actions for Fine and Costs.—Upon a judgment for fine and costs, and for all adjudged costs, execution shall be issued against the property of the defendant, and returned in the same manner as in civil actions. [L. '54, p. 123, § 142; Cd. '81, § 1120; 2 H. C., § 1342.]

Cited in 23 Wash. 87; 82 Wash. 671.

See supra, § 510 et seq., execution in civil actions.

§ 2202. Recognizance to Keep the Peace — Exception. — Every court before whom any person shall be convicted upon an indictment or information for an offense not punishable with death or imprisonment in the penitentiary may, in addition to the punishment prescribed by law, require such person to recognize with sufficient sureties in a reasonable sum to keep the peace, or to be of good behavior, or both, for any term not exceeding one year, and to stand committed until he shall so recognize. [Cf. L. '54, p. 123, § 143; Cd. '81, § 1121; L. '91, p. 62, § 83; 2 H. C., § 1343.]

§ 2203. Proceedings upon Breach of Bond.—In case of the breach of the conditions of any such recognizance the same proceedings

shall be had that are by law prescribed in relation to recognizances to keep the peace. [L. '54, p. 123, § 144; Cd. '81, § 1122; 2 H. C., § 1344.]

See supra, § 1936 et seq., provisions relating to recognizances to keep the peace.

§ 2204. Stay upon Judgment Sixty Days. — Every defendant against whom a judgment has been rendered for fine and costs may stay the execution for the fine assessed and costs for sixty days from the rendition of the judgment, by procuring one or more sufficient sureties, to enter into a recognizance in open court, acknowledging themselves to be bail for such fine and costs. [L. '54, p. 124, § 145; Cd. '81, § 1123; 2 H. C., § 1345.]

§ 2205. Qualification and Liability of Sureties.—Such sureties shall be approved by the clerk, and the entry of the recognizance shall be written immediately following the judgment, and signed by the bail, and shall have the same effect as a judgment; and if the fine or costs be not paid at the expiration of the sixty days, a joint execution shall issue against the defendant and the bail, and an execution against the body of the defendant, who shall be committed to jail, to be released as provided in this code in committal for default to pay or secure the fine and costs. [L. '54, p. 124, § 146; Cd. '81, § 1124; 2 H. C., § 1346.]

§ 2206. Judgment of Fine and Costs, How Enforced.—If any person ordered into custody until the fine and costs adjudged against him be paid shall not, within five days pay or cause the payment of the same to be made, the clerk of the court shall issue a warrant to the sheriff commanding him to imprison such defendant in the county jail until such fine and costs are paid, or until he has been imprisoned in such jail one day for every three dollars of such fine and costs; but execution may at any time issue against the property of the defendant as in other cases. [Cf. L. '54, p. 124, § 147; Cd. '81, § 1125; L. '83, p. 38, § 1; L. '91, p. 62, § 84; 2 H. C., § 1347.]

Cited in 1 Wash. 414; 23 Wash. 87; 82 Wash. 671.

See notes to § 2200, commitment until fine paid.
See infra, § 2209, fine and costs, how worked out.

§ 2207. Certified Transcript—Mittimus.—When any person shall be sentenced to be imprisoned in the penitentiary or county jail, the clerk of the court shall, as soon as may be, make out and deliver to the sheriff of the county, or his deputy, a transcript, from the minutes of the court, of such conviction and sentence, duly certified by such clerk, which shall be sufficient authority for such sheriff to execute the sentence, who shall execute it accordingly. [L. '54, p. 124, § 148; Cd. '81, § 1126; 2 H. C., § 1348.]

Cited in 66 Wash. 11, 12.

§ 2208. Form of Sentence to Penitentiary.—In every case where imprisonment in the penitentiary is awarded against any convict, the form of the sentence shall be, that he be punished by confinement at hard labor; and he may also be sentenced to solitary imprisonment for such term as the court shall direct, not exceeding twenty days at any one time; and in the execution of such punishment the solitary [imprisonment] shall precede the punishment by hard labor, unless the court shall otherwise order. [L. '54, p. 124, § 149; Cd. '81, § 1127; 2 H. C., § 1349.]

See § 2281, indeterminate sentence.
See infra, § 8505, solitary confinement.

§ 2209. Fine and Costs, How Worked Out.—When a defendant is committed to jail on failure to pay any fines and costs, he shall, under the order of the county commissioners, work out the amount of the fine and costs at the rate of two dollars per day; and in case he shall so work out the fine and costs, or in case he shall not be able to work, or the county commissioners fail to provide work, and he shall have been confined in the county jail one day for every two dollars of such fine and costs, no execution shall issue therefor. When any defendant is in the custody of the sheriff by virtue of a sentence of imprisonment in the county jail, and if there be no county jail in the county, he shall, under the order of the county commissioners, cause such person to work his unexpired term of imprisonment in such manner as said county commissioners may direct. [Cf. L. '54, p. 124, § 151; L. '77, p. 206, § 8; Cd. '81, § 1129; 2 H. C., § 1350.]

§ 2210. Death Warrant, Contents, Return.—When judgment of death is rendered following conviction and no appeal is taken, or the judgment has been affirmed on appeal, a death warrant shall be issued by the clerk of the trial court, which said warrant shall be signed by a judge of said court and attested by the clerk thereof under the seal of the court. Said warrant shall be directed to the superintendent of the state penitentiary of the state of Washington, and shall state the conviction of the person named therein and the judgment of the court, and appoint a day in which the judgment shall be executed by the superintendent of the state penitentiary, which shall not be less than thirty nor more than ninety days from the date of final judgment. [L. '01, Ex. Sess., p. 17, § 1. Cf. L. '54, p. 125, § 152; L. '60, p. 159, § 291; Cd. '81, § 1130; 2 H. C., § 1351.]

Cited in 25 Wash. 272, 612.

This section does not apply to crimes committed prior to its taking effect, which are governed by the laws existing at the time of their commission: See infra, § 2221.

§ 2212. Death Penalty, How Executed. — The punishment of death prescribed by law must be inflicted by hanging by the neck. [L. '54, p. 125, § 153; Cd. '81, § 1131; 2 H. C., § 1352.]

Cited in 9 Wash. 349; 25 Wash. 273.

§ 2213. Order to Sheriff to Deliver to State Penitentiary.—At the time of the issuance of said death warrant an order shall be issued by the clerk of the court, which shall be signed by the judge and attested by the clerk under the seal of the court. Said order shall direct the sheriff to hold the person condemned to death, who shall be named therein, in safe custody and forthwith deliver said person, together with the death warrant, into the hands of the superintendent of the state penitentiary. [L. '01, Ex. Sess., p. 18, § 2.]

§ 2214. Custody and Execution of Condemned at Penitentiary.—Upon delivery to him of said death warrant, and of the person therein named, the superintendent of the state penitentiary shall take the person condemned to be executed and keep said person in said custody within the said state penitentiary until the day appointed in the warrant for the execution, upon which appointed day he shall carry out the mandate contained in said warrant by executing said condemned person within the walls of the state penitentiary in the manner provided by law. And between the date of receiving such condemned person and the date fixed in such warrant for his execution, such superintendent shall not suffer or permit any person to visit, converse or communicate with such condemned person excepting the attendants in the state penitentiary, legal, spiritual and medical advisers, and the members of the immediate family of the condemned person, which visits and communications shall be under and subject to the rules and regulations of the state penitentiary. [L. '01, Ex. Sess., p. 18, § 3.]

§ 2215. Record, of Death Warrant and Return, by Superintendent.—The superintendent of the state penitentiary shall keep in his office as part of the public records a book in which shall be entered a copy of the death warrant and his return made thereon, together with a complete statement of his acts in pursuance of said warrant. [L. '01, Ex. Sess., p. 18, § 4.]

§ 2216. Return of Warrant to Clerk of Court.—Within twenty days after said execution the superintendent of the state penitentiary shall return said death warrant to the clerk of the court from which same was issued with his return thereon, showing all proceedings had by him thereunder. [L. '01, Ex. Sess., p. 19, § 5.]

§ 2217. Return of Execution of Order by Sheriff.—The sheriff to whom the above-named order is issued and delivered shall imme-

diately execute such order and return the same into court within twenty days after he has delivered the death warrant and the person named therein into the hands of the superintendent of the state penitentiary, with his return thereon showing all proceedings had by him thereunder. [L. '01, Ex. Sess., p. 19, § 6.]

§ 2218. Clerk to File Returns. — The clerk of the court from which the death warrant and the order to the sheriff were issued shall, upon receipt of the returns from the superintendent of the state penitentiary and from the sheriff hereinbefore directed, file same with the records in the case and subjoin to the record of conviction and sentence a brief abstract of such returns. [L. '01, Ex. Sess., p. 19, § 7. Cf. L. '54, p. 125, § 154; Cd. '81, § 1132; 2 H. C., § 1353; Bal. Code, § 6995.]

§ 2219. Sheriff to Keep Prisoner Pending Issuance of Warrant.— Pending the issuance of the death warrant, the sheriff shall hold the condemned person in safe custody. [L. '01, Ex. Sess., p. 19, § 8.]

See supra, § 2214, sheriff to deliver to penitentiary.

§ 2220. Repeal—Exception.—All acts or parts of acts in conflict with this act are hereby repealed, except as hereinafter provided. [L. '01, Ex. Sess., p. 19, § 9.]

§ 2221. Saving Clause.—The provisions of this act shall not apply to any act done or crime heretofore committed, and all acts and crimes heretofore done or committed shall be prosecuted and punished under the laws existing at the time of the commission of said acts or crimes in the same manner as if this act had not been enacted, and all such existing laws and especially sections 6993 and 6995 of Ballinger's Annotated Codes and Statutes of Washington are hereby continued in force as to all such acts and crimes committed prior to the taking effect of this act. [L. '01, Ex. Sess., p. 19, § 10.]

See supra, § 2006, general saving clause.

"Act" in this and preceding section refers to § 2210 and §§ 2213–2221.

The Ballinger sections referred to are superseded (except as saved in this section) by §§ 2210, 2218, supra. They are as follows:

Bal. Code, § 6993: "When judgment of death is rendered, a warrant signed by the judge and attested by the clerk, under the seal of the court, shall be drawn and delivered to the sheriff; it shall state the conviction and judgment, and appoint a day in which the judgment shall be executed, which shall not be less than thirty nor more than ninety days from the time of judgment. And the sheriff or officer to whom said warrant was delivered shall return the same within twenty days after the time fixed for the execution."

Bal. Code, § 6995: "The sheriff shall return and file with the clerk the warrant, with a statement of his doings thereon, and the clerk shall subjoin a brief abstract of such statement to the record of conviction and sentence."

§ 2222. Proceedings on Failure to Execute Death Sentence.—Whenever the time appointed for the execution of a prisoner shall have passed, from any cause, the court by whom the time was fixed, or the judge or judges thereof, shall cause the prisoner to be brought immediately before the said court, judge or judges, and proceed to appoint a day for the carrying into effect the sentence of death. [L. '54, p. 125, § 155; Cd. '81, § 1133; 2 H. C., § 1354.]

Cited in 25 Wash. 273.

§ 2223. Governor may Grant Pardons, etc.—Whenever a prisoner has been sentenced to death, the governor shall have power to commute such sentence to imprisonment for life at hard labor; and in all cases in which the governor is authorized to grant pardons or commute sentence of death, he may, upon the petition of the person convicted, commute a sentence or grant a pardon upon such conditions and with such restrictions and under such limitations as he may think proper; and he may issue his warrant to all proper officers to carry into effect such pardon or commutation, which warrant shall be obeyed and executed instead of the sentence, if any, which was originally given. The governor may also, on good cause shown, grant respites or reprieves, from time to time, as he may think proper. [L. '54, p. 128, § 174; Cd. '81, § 1136; 2 H. C., § 1356.]

Cited in 47 Wash. 280.

See Const., Art. III, §§ 9, 11, pardoning power vested in governor—Power to remit fines and forfeitures, etc.—Report to legislature.

See infra, § 8545, power of governor to parole.
See infra, § 8551, parole of prisoners.
See infra, § 8553, recommitment on violation of parole.
See infra, § 8588, parole by governor of convicts in state reformatory.
See infra, § 8589, reimprisonment in reformatory of paroled prisoners.
See infra, § 8595, credits at state reformatory and discharge by governor.

§ 2224. Final Record Shall Contain What.—The clerk of the court shall make a final record of all the proceedings in a criminal prosecution within six months after the same shall have been decided, which shall contain a copy of the minutes of the challenge to the panel of the grand jury, the indictment or information, journal entries, pleadings, minutes of challenges to panel of petit jurors, judgment, orders, or decision, and bill of exceptions. [Cf. L. '54, p. 125, § 156; Cd. '81, § 1134; L. '91, p. 63, § 85; 2 H. C., § 1355.]

CHAPTER XX.

Costs in Criminal Cases.

§ 2225. Costs—How Taxed Where Complaint Unfounded or Malicious.—When any person shall be brought before a court, justice of the peace, or other committing magistrate of any county, city, or town in this state, having jurisdiction of the alleged offense, charged

with the commission of a crime or misdemeanor, and such complaint upon examination shall appear to be unfounded, no costs shall be payable by such acquitted party, but the same shall be chargeable to the county, city, or town for or in which the said complaint is triable; but if the court, justice of the peace, or other magistrate trying said charge shall decide the complaint was frivolous or malicious, the judgment or verdict shall also designate who is the complainant, and may adjudge that said complainant pay the costs. In such cases a judgment shall thereupon be entered for the costs against said complainant, who shall stand committed until such costs be paid or discharged by due process of law. [L. '69, p. 418, § 1; Cd. '81, § 2103; 1 H. C., § 3050.]

Cited in 3 Wash. 673; 8 Wash. 450; 19 Wash. 348; 37 Wash. 587; 40 Wash. 10; 70 Wash. 644.

See supra, §§ 1942, 1954, costs against complainant when.

§ 2226. Enforcing Costs Against Complainant.—When a grand jury, upon a complaint submitted to them for investigation, fail to find a bill of indictment for an offense against the laws of the state, they shall also inquire whether the complaint is frivolous or malicious, and decide whether the county or complainant shall pay the costs, and make return of their finding in open court. Any complainant adjudged by said grand jury as liable for the costs shall forthwith be brought into court, and sentenced to pay the same or stand committed until such judgment is satisfied or complied with. [L. '69, p. 418, § 2; Cd. '81, § 2104; 1 H. C., § 3051.]

§ 2227. Jury Fee to be Taxed to Defendant, When.—Every person convicted of a crime, or held to bail to keep the peace, shall be liable to all the costs of the proceedings against him, including, when tried by a jury in the superior court, twelve dollars for a jury fee, and when tried by a jury before a committing magistrate, six dollars for jury fee, for which judgment shall be rendered and collection had as in cases of fines. The jury fee, when collected for a case tried by the superior court, shall be paid to the clerk, to be by him applied as the jury fee in civil cases is applied. [L. '69, p. 418, § 3; Cd. '81, § 2105; 1 H. C., § 3052.]

Cited in 1 Wash. 414; 7 Wash. 448; 29 Wash. 60.

§ 2228. Cost Bills, How Made and Certified.—In all convictions for felony, whether capital or punishable by imprisonment in the penitentiary, the clerk of the superior court shall forthwith, after sentence, tax the costs in the case. The cost bill shall be made out in triplicate, and be examined by the prosecuting attorney of the county in which the trial was had. After which the judge of the superior court shall allow and approve such bill or so much

thereof as is allowable by law. The clerk of the superior court shall thereupon, under his hand, and under the seal of the court, certify said triplicate cost bills, and shall file one with the papers of the cause, and shall transmit one to the state auditor and one to the county auditor of the county in which said felony was committed. [Cd. '81, § 2106; L. '83, p. 35, § 1; 2 H. C., § 1382a.]

Cited in 7 Wash. 446.

See supra, § 491, costs against state or county.

§ 2229. Payment of Amount Stated in Cost Bill.—Upon the receipt of the cost bill as provided for in the last preceding section, the county auditor shall draw warrants for the amounts due each person, as certified in said cost bill, which warrants shall be paid as other county warrants are paid. On receipt of the certified copy of said cost bill, the state auditor shall examine and audit said bill and allow the same or so much thereof as may be allowable against the state, and shall credit the amount so allowed to the county from whence the bill came as so much state tax paid. The state auditor shall immediately notify the state treasurer and county auditor, each of whom shall credit and charge accordingly. [Cd. '81, § 2107; L. '83, p. 35, § 1; 1 H. C., § 3053.]

Cited in 7 Wash. 447; 18 Wash. 611.

§ 2230. Costs and Other Moneys Collected Belong to County.—All costs collected against any person convicted of crime or misdemeanor, and all sums collected on recognizances of persons accused, or of witnesses in criminal cases for fines and forfeitures shall belong to the county from which the case came. [L. '63, p. 425, § 12; L. '69, p. 421, § 11; Cd. '81, § 2112; 1 H. C., § 3054.]

Cited in 7 Wash. 447.

CHAPTER XXI.

Forfeiture of Recognizances in Criminal Actions.

§ 2231. Forfeiture of Recognizance, Judgment, Execution.—In criminal cases where a recognizance for the appearance of any person, either as a witness or to appear and answer, shall have been taken and a default entered, the recognizance shall be declared forfeited by the court, and at the time of adjudging such forfeiture said court shall enter judgment against the principal and sureties named in such recognizance for the sum therein mentioned, and execution may issue thereon the same as upon other judgments. [L. '67, p. 103, § 1137; 2 H. C., § 1357.]

Cited in 69 Wash. 615.

§ 2232. Stay of Execution on Forfeited Recognizance.—The parties, or either of them, against whom such judgment may be entered

in the superior or supreme courts, may stay said execution for sixty days by giving a bond, with two or more sureties, to be approved by the clerk, conditioned for the payment of such judgment at the expiration of sixty days, unless the same shall be vacated before the expiration of that time. [Cf. L. '67, p. 103, § 2; Cd. '81, § 1138; L. '91, p. 63, § 86; 2 H. C., § 1358.]

Cited in 69 Wash. 614, 616.

See supra, § 2204, stay on judgment for fines and costs.

§ 2233. Judgment Vacated on Defendant's Production, When.—If a bond be given and execution stayed, as provided in the last preceding section, and the person for whose appearance such recognizance was given shall be produced in court before the expiration of said period of sixty days, the judge may vacate such judgment upon such terms as may be just and equitable; otherwise execution shall forthwith issue as well against the sureties in the new bond as against the judgment debtors. [Cf. L. '67, p. 193, § 3; Cd. '81, § 1139; L. '91, p. 63, § 87; 2 H. C., § 1359.]

Cited in 69 Wash. 616; 76 Wash. 254.

§ 2234. Recognizances Before Magistrates, Forfeiture, Action.—All recognizances taken and forfeited before any justice of the peace or magistrate shall be forthwith certified to the clerk of the superior court of the county; and it shall be the duty of the prosecuting attorney to proceed at once by action against all the persons bound in such recognizances, and in all forfeited recognizances, whatever, or such of them as he may elect to proceed against. [L. '54, p. 128, § 175; Cd. '81, § 1166; 2 H. C., § 1360.]

§ 2235. Action on Recognizance not to be Barred, etc.—No action brought on any recognizance given in any criminal proceeding whatever shall be barred or defeated, nor shall judgment be arrested thereon, by reason of any neglect or omission to note or record the default of any principal or surety at the time when such default shall happen, or by reason of any defect in the form of the recognizance, if it sufficiently appear, from the tenor thereof, at what court or before what justice the party or witness was bound to appear, and that the court or magistrate before whom it was taken was authorized by law to require and take such recognizance; and a recognizance may be recorded after execution awarded. [Cf. L. '54, p. 129, § 176; Cd. '81, § 1167; L. '91, p. 63, § 88; 2 H. C., § 1361.]

§ 2236. Costs, Liability for—How Taxed and Paid.—No prisoner or person under recognizance who shall be acquitted by verdict or discharged because no indictment is found against him, or, for want

of prosecution, shall be liable for any costs or fees of any officer, or for any charge of subsistence while he was in custody, but in every such case the fees of the defendant's witnesses, and of the officers for services rendered at the request of the defendant, and charges for subsistence of the defendant while in custody, shall be taxed and paid as other costs and charges in such cases. [Cf. L. '54, p. 129, § 177; L. '77, p. 207, § 10; Cd. '81, § 1168; 2 H. C., § 1382.]

Cited in 7 Wash. 449; 18 Wash. 610; 37 Wash. 587; 40 Wash. 11.

CHAPTER XXII.

Search-warrants.

§ 2237. When Issued.—When complaint shall have been made on oath to any magistrate authorized to issue warrant in criminal cases that personal property has been stolen or embezzled, or obtained by false tokens or pretenses, and that the complainant believes that it is concealed in any particular house or place, the magistrate, if he be satisfied that there is a reasonable cause for such belief shall issue a warrant for such property. [L. '54, p. 100, § 1; Cd. '81, § 967; 2 H. C., § 1383.]

Cited in 43 Wash. 477; 69 Wash. 52.

§ 2238. Additional Grounds for Issuing Warrant. — Any such magistrate, when satisfied that there is reasonable cause, may also, upon like complaint made on oath, issue search-warrant in the following cases, to wit:—

1. To search for and seize any counterfeit or spurious coin, or forged instruments, or tools, machines, or materials prepared or provided for making either of them;

2. To search for and seize any gaming apparatus used or kept and to be used in any unlawful gaming-house, or in any building, apartment, or place resorted to for the purpose of unlawful gaming. [L. '54, p. 101, § 2; Cd. '81, § 968; 2 H. C., § 1384.]

Cited in 9 Wash. 337, 339.

§ 2239. To Whom Directed — Contents of.—All such warrants shall be directed to the sheriff of the county or his deputy, or to any constable of the county, commanding such officer to search the house or place where the stolen property or other things for which he is required to search are believed to be concealed, which place and property or things to be searched for shall be designated and described in the warrant, and to bring such stolen property or other things, when found, and the person in whose possession the same shall be found, before the magistrate, who shall issue the warrant, or before some other magistrate or court having cognizance of the case. [L. '54, p. 101, § 3; Cd. '81, § 969; 2 H. C., § 1385.]

Cited in 43 Wash. 477; 69 Wash. 53.

§ 2240. Execution of Warrant, Custody and Disposition of Property.—When any officer, in the execution of a search-warrant, shall find any stolen or embezzled property, or shall seize any other things for which a search is allowed by this chapter, all the property and things so seized shall be safely kept by the direction of the court or magistrate so long as shall be necessary for the purpose of being produced in evidence on any trial; and as soon as may be afterward, all such stolen and embezzled property shall be restored to the owner thereof, and all other things seized by virtue of such warrant shall be destroyed under direction of the court or magistrate. [L. '54, p. 101, § 4; Cd. '81, § 970; 2 H. C., § 1386.]

CHAPTER XXIII.

Proceedings Relating to Fugitives from Justice.

§ 2241. Governor's Agent to Demand Fugitive — Proceedings.—The governor of this state may appoint agents to demand of the executive authority of any state or territory any fugitive from justice, or any other person charged with felony or any other crime in this state; and whenever an application shall be made to the governor for that purpose, the prosecuting attorney, when required by the governor, shall forthwith investigate the ground of such application, and report to the governor all material circumstances which may come to his knowledge, with an abstract of the evidence and his opinion as to the expediency of the demand; but the governor may, in any case, appoint such agents without requiring the opinion of or any report from the prosecuting attorney, and the accounts of the agents appointed for such purposes shall in all cases be audited by the state auditor and paid from the state treasury. [Cf. L. '54, p. 102, § 5; Cd. '81, § 971; L. '91, p. 65, § 98; 2 H. C., § 1387.]

§ 2242. Demand on Governor — Proceedings.—When a demand shall be made upon the governor of this state by the executive of any state or territory, in any case authorized by the Constitution and laws of the United States, for the delivery over of any person charged in such state or territory with treason, felony, or any other crime, the prosecuting attorney, or any other prosecuting officer, when required by the governor, shall forthwith investigate the ground of such demand, and report to the governor all material facts which may come to his knowledge as to the situation and circumstances of the person so demanded, especially as to whether he is held in custody or is under recognizance to answer for any offense against the laws of this state or of the United States, or by force of

any civil process, and also whether such demand is made according to law, so that such person ought to be delivered up; and if the governor be satisfied that such demand is conformable to law, and ought to be complied with, he shall issue his warrant, under the seal of the state, authorizing the agents who make such demand either forthwith, or at such time as shall be designated by the warrant, to take and transport such person to the line of the state at the expense of such agents, and shall also by such warrant require the civil officers within this state to afford all needful assistance in the execution thereof. [L. '54, p. 102, § 6; Cd. '81, § 972; 2 H. C., § 1388.]

§ 2243. Warrant for Fugitive, Issuance of.—Whenever any person shall be found within this state charged with an offense committed in any state or territory, and liable by the Constitution and laws of the United States to be delivered on the demand of the executive of such state or territory, any court or magistrate authorized to issue warrants in criminal cases may, upon complaint under oath setting forth the offense, and such other matters as are necessary to bring the offense within the provisions of law, issue a warrant to bring the person so charged before the same or some other court or magistrate so authorized within the state, to answer such complaint as in other cases. [L. '54, p. 102, § 7; Cd. '81, § 973; 2 H. C., § 1389.]

Cited in 40 Wash. 563.

§ 2244. Examination by Court or Magistrate.—If, upon the examination of the persons charged, it shall appear to the court or magistrate, by proof in addition to the oath of the complainant, that there is reasonable cause to believe that the complaint is true, and that such person may be lawfully demanded of the governor, he shall, if not charged with a capital crime, be required to recognize, with sufficient sureties, in a reasonable sum, to appear before such court or magistrate at a future day, allowing a reasonable time to obtain a warrant of the executive, and to abide the order of the court or magistrate; and if such person shall not so recognize, he shall be committed to prison, and there be detained until such day, in like manner as if the offense charged had been committed in this state; and if the person so recognizing shall fail to appear according to the conditions of his recognizance, he shall be defaulted, and the like proceedings shall be had as in the case of other recognizances entered into before such court or magistrate; but if such person be charged with a capital crime, he shall be committed to prison, and there be detained until the day so appointed for his appearance

before the court or magistrate. [L. '54, p. 103, § 8; Cd. '81, § 974; 2 H. C., § 1390.]

Cited in 40 Wash. 563.

§ 2245. Discharge, When.—If the person recognized or committed shall appear before the court or magistrate upon the day ordered, he shall be discharged, unless he be demanded by some persons authorized by the warrant of the executive to receive him, or unless the court or magistrate shall see cause to commit him, or require of him to recognize anew for his appearance at some other day; and if, when ordered, he shall not so recognize, he shall be committed and be detained as before provided. Whenever the person so appearing shall be recognized, committed, or discharged, any person authorized by the warrant of the executive may at all times take him into custody, and the same shall be a discharge of the recognizance, if any, and shall not be deemed an escape. [L. '54, p. 103, § 9; Cd. '81, § 975; 2 H. C., § 1391.]

§ 2246. Complainant Liable for Costs, When.—The complainant in such cases shall be answerable for the actual costs and charges, and for the support in prison of any person so committed, and shall advance to the jailer one week's board at the time of commitment, and so from week to week, so long as such person shall remain in jail; and if he fails to do so, the jailer may forthwith discharge the person from his custody. [L. '54, p. 103, § 10; Cd. '81, § 976; 2 H. C., § 1392.]

CHAPTER XXIV.

Rewards for the Apprehension of Fugitives.

§ 2247. Standing Rewards by Governor for Certain Offenses.—The governor shall offer a standing reward of two hundred dollars for the arrest of each person who shall place any obstruction on any railroad track, or who shall misplace any switch, rail, or ties on any such road, whereby the life of any person passing over said road may be endangered; and for the arrest of each person engaged in the robbing or attempting to rob any person upon, or having in charge, in whole or in part, any stage-coach, wagon, railroad train, or other conveyance engaged in carrying passengers, or any private conveyance within this state, the reward to be paid to the person making such arrest, out of any money in the [state] treasury not otherwise appropriated, immediately upon the conviction of the person so arrested; but no reward shall be paid except after such conviction. [L. '77, p. 283, § 1; Cd. '81, § 1290; 1 H. C., § 2941.]

See infra, § 8988, subd. 8, rewards for fugitives.

§ 2248. Auditor to Draw Warrant.—The auditor of state shall draw a warrant upon the treasurer for the amount of the reward,

upon presentation to him of a certificate of the clerk of the court where the conviction was had, of such conviction, and the finding of the court that the satisfactory proof was made that the person claiming the reward is entitled thereto, under the provision of the preceding section. [L. '77, p. 284, § 2; Cd. '81, § 1291; 1 H. C., § 2942.]

§ 2249. Rewards by County Commissioners, When.—The county commissioners in the several counties of this state, when in their opinion the public good requires it, are hereby authorized to offer and pay a suitable reward, not to exceed five hundred dollars in any one case, to any person or persons who, in consequence of such offer, apprehends, brings back, and secures any person or persons convicted of or charged with any criminal offense, if the offense be a felony. [L. '86, p. 124, § 1; 1 H. C., § 2943.]

§ 2250. Payment of Rewards Offered by Commissioners.—Whenever any such reward has been offered by any board of county commissioners for the apprehension of any person or persons convicted of or charged with any criminal offense, if the offense be a felony, the person or persons who shall first apprehend, bring back, and secure such person or persons so charged shall be entitled to such reward, and the board of county commissioners who have offered such reward are authorized to draw a warrant or warrants on the county treasurer for the amount of such reward, who shall pay the amount of said warrant or warrants out of any money in the county treasury not otherwise appropriated. [L. '86, p. 124, § 2; 1 H. C., § 2944.]

§ 2251. Conflicting Claims for, How Determined.—When more than one claimant applies for the payment of any reward, offered by any board of county commissioners, such commissioners shall determine, in their respective counties, to whom the same shall be paid, and if to more than one person, in what proportion to each, and their determination shall be final and conclusive. [L. '86, p. 124, § 3; 1 H. C., § 2945.]

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CHAPTER I.

General Provisions.

§ 2253. Classification of Crimes.—A crime is an act or omission forbidden by law and punishable upon conviction by death, imprisonment, fine, or other penal discipline. Every crime which may be punished by death or by imprisonment in the state penitentiary is a felony. Every crime punishable by a fine of not more than two hundred and fifty dollars, or by imprisonment in a county jail for not more than ninety days, is a misdemeanor. Every other crime is a gross misdemeanor. [L. '09, p. 890, § 1.]

Cited in 56 Wash. 406; 58 Wash. 422; 63 Wash. 298; 64 Wash. 124.

§ 2254. Persons Punishable. The following persons are liable to punishment:

1. A person who commits in the state any crime, in whole or in part.

2. A person who commits out of the state any act which, if after committed within it, would be larceny, and is afterward found in the state with any of the stolen property.

3. A person who, being out of the state, counsels, causes, procures, aids, or abets another to commit a crime in this state.

4. A person who, being out of the state, abducts or kidnaps, by force or fraud, any person, contrary to the laws of the place where the act is committed, and brings, sends or conveys such person into this state.

5. A person who commits an act without the state which affects persons or property within the state, or the public health, morals

or decency of the state, which, if committed within the state, would be a crime. [L. '09, p. 890, § 2.]

See, also, § 2010.

§ 2255. Duress of Married Woman No Defense.—It is no defense for a married woman charged with the commission of a crime, that the alleged act committed by her was committed in the presence of her husband. [L. '09, p. 891, § 3.]

§ 2256. Duress as a Defense.—Whenever any crime, except murder, is committed or participated in by two or more persons, any one of whom participates only under compulsion by another engaged therein, who by threats creates a reasonable apprehension in the mind of such participator that in case of refusal he is liable to instant death or grievous bodily harm, such threats and apprehension constitute duress, which will excuse such participator from criminal prosecution. [L. '09, p. 891, § 4.]

Cited in 66 Wash. 541.

§ 2257. Responsibility of Children.—Children under the age of eight years are incapable of committing crime. Children of eight and under twelve years of age are presumed to be incapable of committing crime, but this presumption may be removed by proof that they have sufficient capacity to understand the act or neglect, and to know that it was wrong. Whenever in legal proceedings it becomes necessary to determine the age of a child, he may be produced for inspection, to enable the court or jury to determine the age thereby; and the court may also direct his examination by one or more physicians, whose opinion shall be competent evidence upon the question of his age. [L. '09, p. 891, § 5.]

§ 2258. Intoxication No Defense.—No act committed by a person while in a state of voluntary intoxication shall be deemed less criminal by reason of his condition, but whenever the actual existence of any particular purpose, motive or intent is a necessary element to constitute a particular species or degree of crime, the fact of his intoxication may be taken into consideration in determining such purpose, motive or intent. [L. '09, p. 891, § 6.]

§ 2260. Principal Defined.—Every person concerned in the commission of a felony, gross misdemeanor or misdemeanor, whether he directly commits the act constituting the offense, or aids or abets in its commission, and whether present or absent; and every person who directly or indirectly counsels, encourages, hires, commands, induces or otherwise procures another to commit a felony, gross misdemeanor or misdemeanor, is a principal, and shall be proceeded against and punished as such. The fact that the person aided, abetted, coun-

seled, encouraged, hired, commanded, induced or procured, could not or did not entertain a criminal intent, shall not be a defense to any person aiding, abetting, counseling, encouraging, hiring, commanding, inducing or procuring him. [L. '09, p. 892, § 8.]

Cited in 66 Wash. 468; 80 Wash. 100; 82 Wash. 673, 674.
See, also, § 2008.

§ 2261. Accessory Defined.—Every person not standing in the relation of husband or wife, brother or sister, parent or grandparent, child or grandchild, to the offender, who after the commission of a felony shall harbor, conceal or aid such offender with intent that he may avoid or escape from arrest, trial, conviction or punishment, having knowledge that such offender has committed a felony or is liable to arrest, is an accessory to the felony. [L. '09, p. 892, § 9.]

§ 2262. Trial and Punishment of Accessories.—Every accessory to a felony may be indicted, tried and convicted either in the county where he became an accessory, or where the principal felony was committed; and whether the principal offender has or has not been convicted, or is or is not amenable to justice, or has been pardoned or otherwise discharged after conviction; and, except where a different punishment is specially provided by law, such accessory shall be punished by imprisonment in the state penitentiary for not more than five years, or by a fine of not more than one thousand dollars, or by both. [L. '09, p. 892, § 10.]

See, also, supra, §§ 2009, 2010.

§ 2263. Conviction of Lesser Crime.—Upon the trial of an indictment or information, the defendant may be convicted of the crime charged therein, or of a lesser degree of the same crime, or of an attempt to commit the crime so charged, or of any attempt to commit a lesser degree of the same crime. Whenever the jury shall find a verdict of guilty against a person so charged, they shall in their verdict specify the degree or attempt of which the accused is guilty. [L. '09, p. 893, § 11.]

Cited in 76 Wash. 587.
See, also, supra, § 2167.

§ 2264. Attempts, How Punished.—An act done with intent to commit a crime, and tending but failing to accomplish it, is an attempt to commit that crime; and every person who attempts to commit a crime, unless otherwise prescribed by statute, shall be punished as follows:

(1.) If the crime attempted is punishable by death or life imprisonment, the person convicted of the attempt shall be punished by imprisonment in the state penitentiary for not more than twenty years.

(2.) In every other case he shall be punished by imprisonment in such manner as may be prescribed for the commission of the completed offense, for not more than half the longest term, or by a fine of not more than half the largest sum, prescribed upon conviction for the commission of the offense attempted, or by both such fine and imprisonment; but nothing herein shall protect a person who, in an unsuccessful attempt to commit one crime, does commit another and different one, from the punishment prescribed for the crime actually committed; and a person may be convicted of an attempt to commit a crime, although it appears on the trial that the crime was consummated, unless the court in its discretion shall discharge the jury and direct the defendant to be tried for the crime itself. [L. '09, p. 893, § 12.]

Cited in 69 Wash. 591; 79 Wash. 264.

See infra, § 2361, attempt to suborn perjury.
See infra, § 2577, attempt to commit arson.
See infra, § 2651, attempt to commit train robbery.

§ 2265. Punishment of Felony When not Fixed by Statute.—Every person convicted of a felony for which no punishment is specially prescribed by any statutory provision in force at the time of conviction and sentence, shall be punished by imprisonment in the state penitentiary for not more than ten years, or by a fine of not more than five thousand dollars, or by both. [L. '09, p. 894, § 13.]

§ 2266. Punishment of Misdemeanor When not Fixed by Statute. Every person convicted of a misdemeanor for which no punishment is prescribed by any statute in force at the time of conviction and sentence, shall be punished by imprisonment in the county jail for not more than ninety days, or by a fine of not more than two hundred and fifty dollars. [L. '09, p. 894, § 14.]

Cited in 62 Wash. 246; 78 Wash. 588.

§ 2267. Punishment of Gross Misdemeanor When not Fixed by Statute.—Every person convicted of a gross misdemeanor for which no punishment is prescribed in any statute in force at the time of conviction and sentence, shall be punished by imprisonment in the county jail for not more than one year, or by a fine of not more than one thousand dollars, or by both. [L. '09, p. 894, § 15.]

Cited in 72 Wash. 655; 74 Wash. 249; 80 Wash. 94.

§ 2268. Nonfeasance in Office.—Whenever any duty is enjoined by law upon any public officer or other person holding any public trust or employment, their willful neglect to perform such duty, except where otherwise specially provided for, shall be a misdemeanor. [L. 09, p. 894, § 16.]

Cited in 82 Wash. 535.

§ 2269. Prohibited Acts.—Whenever the performance of any act is prohibited by any statute, and no penalty for the violation of such statute is imposed, the committing of such act shall be a misdemeanor. [L. '09, p. 894, § 17.]

§ 2270. Acts Punishable Elsewhere.—An act or omission punishable as a crime in this state is not less so because it is also punishable under the laws of another state, government or country, unless the contrary is expressly declared in the law relating thereto. [L. '09, p. 894, § 18.]

§ 2271. Foreign Conviction or Acquittal.—Whenever, upon the trial of any person for a crime, it appears that the offense was committed in another state or country, under such circumstances that the courts of this state had jurisdiction thereof, and that the defendant has already been acquitted or convicted upon the merits, upon a criminal prosecution under the laws of such state or country, founded upon the act or omission with respect to which he is upon trial, such former acquittal or conviction is a sufficient defense. [L. '09, p. 895, § 19.]

§ 2272. Conviction or Acquittal in Other County.—Whenever, upon the trial of any person for a crime, it shall appear that the defendant has already been acquitted or convicted upon the merits, of the same crime, in a court having jurisdiction of such offense in another county of this state, such former acquittal or conviction is a sufficient defense. [L. '09, p. 895, § 20.]

See, also, supra, § 2113; infra, § 2316.

§ 2273. Punishment for Contempt.—A criminal act which at the same time constitutes contempt of court, and has been punished as such, may also be punished as a crime, but in such case the punishment for contempt may be considered in mitigation. [L. '09, p. 895, § 21.]

See, also, "Contempts."

§ 2274. Sending Letter, When Complete.—Whenever any statute makes the sending of a letter criminal, the offense shall be deemed complete from the time it is deposited in any postoffice or other place, or delivered to any person, with intent that it shall be forwarded; and the sender may be proceeded against in the county wherein it was so deposited or delivered, or in which it was received by the person to whom it was addressed. [L. '09, p. 895, § 22.]

§ 2275. Omission, When not Punishable.—No person shall be punished for an omission to perform an act when such act has been performed by another acting in his behalf, and competent to perform it. [L. '09, p. 895, § 23.]

§ 2276. Commitment to Washington State Training School.—Whenever any boy between the ages of eight and sixteen years, or any girl between the ages of eight and eighteen years, shall be found guilty of any crime, except murder or manslaughter, the court may, in its discretion, order such person committed to the Washington state training school to remain, in case of a boy, until he shall arrive at the age of eighteen years and, in case of a girl, until she shall arrive at the age of nineteen years, unless sooner paroled or legally discharged. [L. '09, p. 896, § 24.]

See supra, § 1980, commitment of juvenile offenders to training school.
See supra, § 1986, commitment and effect of discharge.
See infra, § 8615, incorrigible truants, when to be committed.
See infra, commitments to state school for girls, § 4386–6.

§ 2277. Commitment to Washington State Reformatory.—Whenever any male person, between the ages of sixteen and thirty years, never before convicted in this state or elsewhere of any crime which under the laws of this state would amount to a felony, shall be convicted of any felony except murder, arson in the first degree, or robbery, the court may, in its discretion order such person to be committed to and confined in the Washington state reformatory. [L. '09, p. 896, § 25.]

Cited in 75 Wash. 203.

Compare supra, §§ 2194, 2195, and infra, § 8585, commitment to state reformatory.

§ 2278. Transfer of Prisoners.—Whenever in their judgment, the welfare of any prisoner or prisoners confined in any penal institution shall require that any prisoner be removed from one institution to another, the board having control of such institution shall have authority to order such removal. [L. '09, p. 896, § 26.]

Cited in 75 Wash. 203.

See infra, § 2284, transfer of insane prisoners.
See infra, §§ 8536 and 8955, transportation of convicts and insane.

§ 2279. Employment of Prisoners.—The sheriff of each county shall employ all male persons sentenced to imprisonment in the county jail thereof in such manner and at such places within the county as may be directed by the board of county commissioners of such county. [L.'09, p. 896, § 27.]

See supra, §§ 1933, 2209, fines, how worked out.
See infra, §§ 8493, 8494, prisoners sentenced to labor when.

§ 2280. Suspending Sentences.—Whenever any person under the age of twenty-one years shall be convicted of any crime except murder, burglary in the first degree, arson in the first degree, robbery, carnal knowledge of a female child under the age of ten years, or rape, the court may in its discretion, at the time of imposing sen-

tence upon such person, direct that such sentence be stayed and suspended until otherwise ordered by such court. [L. '09, p. 896, § 28.]

Cited in 65 Wash. 289.

§ 2281. Indeterminate Sentences.—Whenever any person shall be convicted of any felony for which no fixed period of confinement is imposed by law, the court shall, in addition to any fine or forfeiture which he may impose, direct that such person be confined in the state penitentiary, or in the Washington state reformatory, as the case may be, for a term not less than the minimum nor greater than the maximum term of imprisonment prescribed by law for the offense of which such person shall be convicted; and where no minimum term of imprisonment is prescribed by law, the court shall fix the same in his discretion at not less than six months nor more than five years; and where no maximum term of imprisonment is prescribed by law, the court shall fix such maximum term of imprisonment. [L. '09, p. 897, § 29.]

Cited in 71 Wash. 184; 75 Wash. 287, 288.

See supra, § 2195, indeterminate sentence to reformatory not repealed.

§ 2282. The Board Having Control to Determine Period of Imprisonment.—The state board of control, acting in conjunction with the warden of the state penitentiary, or the board of managers of the Washington state reformatory, acting in conjunction with the superintendent of such reformatory, as the case may be, may at any time after the expiration of the minimum term of imprisonment for which such prisoner was committed thereto, direct that any prisoner confined in such institution shall be released on parole upon such terms and conditions as in their judgment they may prescribe in each case. [L.'09, p. 897, § 30.]

Cited in 75 Wash. 205.

See supra, § 2223, pardons by governor.
See infra, § 8538, record of credits.
See infra, §§ 8545, 8551, 8588, paroles by governor.
See infra, § 8552, discharge.
See infra, §§ 8553, 8595, recommitment for violating paroles.

§ 2284. Removal of Insane Convict.—Whenever in the judgment of the state board of control the welfare of any person confined in any penal institution, or in any institution for the care of the insane, shall require that he be removed for treatment or confinement to another institution for the care of the insane, or to the insane ward of the state penitentiary, they shall be authorized to order such removal, but whenever a change is made in the location of any such inmate, a record open to the public shall be made and the relatives of such inmate shall be notified of the change. [L. '09, p. 898, § 32.]

§ 2285. Imprisonment on Two or More Convictions.—Whenever a person shall be convicted of two or more offenses before sentence

has been pronounced for either, the imprisonment to which he is sentenced upon the second or other subsequent conviction shall commence at the termination of the first or other prior term or terms of imprisonment to which he is sentenced; and whenever a person while under sentence of felony shall commit another felony and be sentenced to another term of imprisonment, such latter term shall not begin until the expiration of all prior terms. [L. '09, p. 898, § 33.]

§ 2286. Habitual Criminals.—Every person convicted in this state of any crime of which fraud or intent to defraud is an element, or of petit larceny, or of any felony, who shall previously have been convicted, whether in this state or elsewhere, of any crime which under the laws of this state would amount to a felony, or who shall previously have been twice convicted, whether in this state or elsewhere, of petit larceny, or of any misdemeanor or gross misdemeanor of which fraud or intent to defraud is an element, shall be adjudged to be an habitual criminal and shall be punished by imprisonment in the state penitentiary for not less than ten years.

Every person convicted in this state of any crime of which fraud or intent to defraud is an element, or of petit larceny, or of any felony, who shall previously have been twice convicted, whether in this state or elsewhere, of any crime which under the laws of this state would amount to a felony, or who shall previously have been four times convicted, whether in this state or elsewhere, of petit larceny, or of any misdemeanor or gross misdemeanor of which fraud or intent to defraud is an element, shall be punished by imprisonment in the state penitentiary for life. [L. '09, p. 899, § 34.]

Cited in 65 Wash. 489; 84 Wash. 162; 87 Wash. 614, 615, 616.
This section repeals Rem. & Bal. Code, §§ 2177, 2178.

§ 2287. Prevention of Procreation.—Whenever any person shall be adjudged guilty of carnal abuse of a female person under the age of ten years, or of rape, or shall be adjudged to be an habitual criminal, the court may, in addition to such other punishment or confinement as may be imposed, direct an operation to be performed upon such person, for the prevention of procreation. [L. '09, p. 899, § 35.]

Cited in 70 Wash. 67.

§ 2288. Convicts Protected—Forfeitures Abolished.—Every person sentenced to imprisonment in any penal institution shall be under the protection of the law, and any unauthorized injury to his person shall be punished in the same manner as if he were not so convicted or sentenced. A conviction of crime shall not work a forfeiture of any property, real or personal, or of any right or interest therein. All forfeitures in the nature of deodands, or in case

of suicide or where a person flees from justice, are abolished. [L. '09, p. 899, § 36.]

§ 2289. Conviction of Public Officer Forfeits Office.—The conviction of a public officer of any felony or malfeasance in office shall entail, in addition to such other penalty as may be imposed, the forfeiture of his office, and shall disqualify him from ever afterward holding any public office in this state. [L. '09, p. 900, § 37.]

§ 2290. Convict as Witness.—Every person convicted of a crime shall be a competent witness in any civil or criminal proceeding, but his conviction may be proved for the purpose of affecting the weight of his testimony, either by the record thereof, or a copy of such record duly authenticated by the legal custodian thereof, or by other competent evidence, or by his cross-examination, upon which he shall answer any proper question relevant to that inquiry, and the party cross-examining shall not be concluded by his answer thereto. [L. '09, p. 900, § 38.]

Cited in 64 Wash. 124; 66 Wash. 630; 68 Wash. 567.

§ 2291. Incriminating Testimony not to be Used.—In every case where it is provided in this act that a witness shall not be excused from giving testimony tending to criminate himself, no person shall be excused from testifying or producing any papers or documents on the ground that his testimony may tend to criminate or subject him to a penalty or forfeiture; but he shall not be prosecuted or subjected to a penalty or forfeiture for or on account of any action, matter or thing concerning which he shall so testify, except for perjury or offering false evidence committed in such testimony. [L. '09, p. 900, § 39.]

See, also, §§ 2149, 2150.
See infra, § 2330, in bribery and corruption.
See infra, § 2451, in abortion and selling drugs.
See infra, § 2480, in gambling and swindling.
See infra, § 2568, in criminal anarchy.

§ 2292. Intent to Defraud.—Whenever an intent to defraud shall be made an element of an offense, it shall be sufficient if an intent appears to defraud any person, association or body politic or corporate whatsoever. [L. '09, p. 900, § 40.]

§ 2293. Crimes on Railway Trains, Boats, etc.—The route traversed by any railway car, coach, train or other public conveyance, and the water traversed by any boat shall be criminal districts; and the jurisdiction of all public offenses committed on any such railway car, coach, train, boat or other public conveyance, or at any station or depot upon such route, shall be in any county through which said car, coach, train, boat or other public conveyance may

pass during the trip or voyage, or in which the trip or voyage may begin or terminate. [L. '09, p. 900, § 41.]

Cited in 58 Wash. 422.

§ 2294. Application to Prior Offenses.—Nothing contained in any provisions of this act shall apply to an offense committed or act done at any time before the day when this act shall take effect. Such an offense shall be punished according to, and such act shall be governed by, the provisions of law existing when it is done or committed, in the same manner as if this act had not been passed. [L. '09, p. 901, § 42.]

Cited in 58 Wash. 422; 59 Wash. 309.

See, supra, §§ 2006, 2221, saving clauses.

§ 2295. Application to Existing Civil Rights.—Nothing in this act shall be deemed to affect any civil right or remedy existing at the time when it shall take effect, by virtue of the common law or of the provision of any statute. [L. '09, p. 901, § 43.]

§ 2296. Civil Remedies Preserved.—The omission to specify or affirm in this act any liability to any damages, penalty, forfeiture or other remedy, imposed by law, and allowed to be recovered or enforced in any civil action or proceeding, for any act or omission declared punishable herein, shall not affect any right to recover or enforce the same. [L. '09, p. 901, § 44.]

§ 2297. Proceedings to Impeach, etc., Preserved.—The omission to specify or affirm in this act any ground of forfeiture of a public office or other trust or special authority conferred by law, or any power conferred by law to impeach, remove, depose or suspend any public officer or other person holding any trust, appointment or other special authority conferred by law, shall not affect such forfeiture or power, or any proceeding authorized by law to carry into effect such impeachment, removal, deposition or suspension. [L. '09, p. 901, § 45.]

§ 2298. Rule of Construction.—Every provision of this act shall be construed according to the fair import of its terms. [L. '09, p. 902, § 46.]

§ 2299. Common Law to Supplement Statute.—The provisions of the common law relating to the commission of crime and the punishment thereof, in so far as not inconsistent with the institutions and statutes of this state, shall supplement all penal statutes of this state and all persons offending against the same shall be tried in the superior courts of this state. [L. '09, p. 902, § 47.]

Cited in 82 Wash. 534.

§ 2300. To be Construed as Continuation of Former Acts.—The provisions of this act, in so far as they are substantially the same as existing statutes, shall be construed as continuations thereof and not as new enactments. [L. '09, p. 902, § 48.]

Cited in 86 Wash. 463.

§ 2301. Act as Measure of Law.—No statute, law or rule is continued in force because it is consistent with the provisions of this act on the same subject; but in all cases provided for by this act, all statutes, laws and rules heretofore in force in this state, whether consistent or not with the provisions of this act, unless expressly continued in force by it, are repealed and abrogated. [L. '09, p. 902, § 49.]

Cited in 86 Wash. 463.

§ 2302. Repeal Does not Revive Former Law.—The repeal or abrogation by this act of any existing law shall not revive any former law heretofore repealed, nor affect any right already existing or accrued or any action or proceeding already taken, except as in this act provided; nor does it repeal any private statute or statutes affecting civil rights or liabilities not expressly repealed. [L. '09, p. 902, § 50.]

§ 2303. Definition of Terms.—In construing the provisions of this act, save when otherwise plainly declared or clearly apparent from the context, the following rules shall be observed:

(1.) Each of the words "neglect," "negligence," "negligent," and "negligently" shall import a want of such attention to the nature or probable consequences of an act or omission as an ordinarily prudent man usually exercises in his own business.

(2.) Each of the words "corrupt" and "corruptly" shall import a wrongful desire to acquire or cause some pecuniary or other advantage to himself or another, by the person to whom applicable.

(3.) "Malice" and "maliciously" shall import an evil intent, wish or design to vex, annoy or injure another person. Malice may be inferred from an act done in willful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a willful disregard of social duty.

(4.) The word "knowingly" imports a knowledge that the facts exist which constitute the act or omission of a crime, and does not require knowledge of its unlawfulness; knowledge of any particular fact may be inferred from the knowledge of such other facts as should put an ordinarily prudent man upon inquiry.

(5.) Whenever an intent to defraud constitutes a part of a crime, it is not necessary to aver or prove an intent to defraud any particular person.

(6.) The word "boat" shall include ships, steamers and other structures adapted to navigation or movement from place to place by water.

(7.) The word "signature" shall include any memorandum, mark, or sign made with intent to authenticate any instrument or writing, or the subscription of any person thereto.

(8.) The word "writing" shall include printing.

(9.) The word "property" shall include both real and personal property.

(10.) The term "real property" shall include every estate, interest and right in lands, tenements and hereditaments, corporeal or incorporeal.

(11.) The term "personal property" shall include dogs and all domestic animals and birds, water, gas and electricity, all kinds or descriptions of money, chattels and effects, all instruments or writings completed and ready to be delivered or issued by the maker, whether actually delivered or issued or not, by which any claim, privilege, right, obligation or authority, or any right or title to property real or personal, is, or purports to be, or upon the happening of some future event may be evidenced, created, acknowledged, transferred, increased, diminished, encumbered, defeated, discharged or affected, and every right and interest therein.

(12.) The word "bond" shall include an undertaking.

(13.) Words in the present tense shall include the future tense; and in the masculine shall include the feminine and neuter genders; and in the singular shall include the plural; and in the plural shall include the singular.

(14.) The word "person" shall include a corporation or joint stock association; and whenever it is used to designate a party whose property may be the subject of the offense, it shall also include the state, or any other state, government or country which may lawfully own property within this state.

(15.) The term "judge" shall include every judicial officer authorized, alone or with others, to hold or preside over a court of record.

(16.) Any person shall be deemed an "owner" of any property who has a general or special property in the whole or any part thereof, or lawful possession thereof, either actual or constructive.

(17.) The words "dwelling-house" shall include every building or structure which shall have been usually occupied by a person lodging therein at night, and whenever it shall be so constructed as to consist of two or more parts or rooms occupied or intended

to be occupied, whether permanently or temporarily, by different tenants separately by usually lodging therein at night, or for any other separate purpose, each part shall be deemed a separate dwelling-house of the tenant occupying the same.

(18.) The word "building" shall include every house, shed, boat, water craft, railway car, tent or booth, whether completed or not, suitable for affording shelter for any human being, or as a place where any property is or shall be kept for use, sale or deposit.

(19.) The word "night-time" shall include the period between sunset and sunrise; the word "daytime" the period between sunrise and sunset.

(20.) The word "break," when used in connection with the crime of burglary, shall include:

(a) Breaking or violently detaching any part, internal or external, of a building;

(b) Opening, for the purpose of entering therein, any outer door of a building or of any room, apartment or set of apartments therein separately used and occupied, or any window, shutter, scuttle or other thing used for covering or closing any opening thereto or therein, or which gives passage from one part thereof to another;

(c) Obtaining entrance into such building or apartment by any threat or artifice, used for that purpose, or by collusion with any person therein;

(d) Entering such building, room or apartment by or through any pipe, chimney or other opening, or by excavating or digging through or under a building or the walls or foundation thereof.

(21.) The word "enter," when constituting an element or part of a crime, shall include the entrance of the offender, or the insertion of any part of his body, or of any instrument or weapon held in his hand and used or intended to be used to threaten or intimidate a person, or to detach or remove property.

(22.) The term "railway" or "railroad" shall include all railways, railroads and street railways, whether operated by steam, electricity or any other motive power.

(23.) The words "indicted" and "indictment" shall include "informed against" and "information"; and the words "informed against" and "information" shall include the words "indicted" and "indictment."

(24.) The words "officer" and "public officer" shall include all assistants, deputies, clerks and employees of any public officer and all persons exercising or assuming to exercise any of the powers or functions of a public officer.

(25.) The word "juror" shall include a talesman, and extend to jurors in all courts, whether of record or not.

(26.) The word "prisoner" shall include any person held in custody under lawful arrest.

(27.) The word "prison" shall mean any place designated by law for the keeping of persons held in custody under process of law, or under lawful arrest. [L. '09, p. 902, § 51.]

Cited in 62 Wash. 586; 67 Wash. 89; 76 Wash. 471; 82 Wash. 540; 84 Wash. 484.

§ 2304. Acts Repealed.—All acts or parts of acts enumerated in the following schedule, and all acts and parts of acts in conflict with the provisions hereof, are hereby repealed.

Cited in 62 Wash. 245; 63 Wash. 36; 64 Wash. 133; 84 Wash. 116, 117; 86 Wash. 463.

Schedule of Acts Repealed.

Ballinger's Annotated Codes and Statutes of Washington, sections 3485, 3486, 3766, 4372, 4376, 6724, 6727 to 6736, inclusive; 6773 to 6776 inclusive; 6866, 6908, 6910 to 6916, inclusive; 6925 to 6927, inclusive; 6945; 7035 to 7071, inclusive; 7073 to 7089, inclusive; 7094 to 7101, inclusive; 7103 to 7116, inclusive; 7118 to 7126, inclusive; 7128 to 7132, inclusive; 7136 to 7142, inclusive; 7144, 7145, 7146a, 7147, 7154, 7155, 7156, 7160, 7165 to 7168, inclusive; 7175, 7176, 7185 to 7231, inclusive; 7233 to 7256, inclusive; 7259, 7260, 7261, 7264, 7265, 7266, 7268, 7269, 7275 to 7286, inclusive; 7288, 7293 to 7296, inclusive; 7298 to 7301, inclusive; 7305, 7306, 7310 to 7317, inclusive; 7322, 7323, 7324, 7334 to 7343, inclusive; 7404, 7405, 7435 to 7440, inclusive;

Laws of Washington, 1901, chapters 17, 25, 34, 40, 59, 145, 154;

Laws of Washington, 1903, chapters 5, 13, 14, 45, 51, 52, 55, 56, 112, 123, 128, 131, section 1;

Laws of Washington, 1905, chapters 24, 33, 42, 49, 77, 98, 158, 179;

Laws of Washington, 1907, chapters 35, 39, 103, 128, 148, 155, 169, 170. [L. '09, p. 906, § 52.]

CHAPTER II.

Rights of Accused.

§ 2305. Right to Counsel.—Whenever a defendant shall be arraigned upon the charge that he has committed any felony, and shall request the court to appoint counsel to assist in his defense, and shall by his own oath or such other proof as may be required satisfy the court that he is unable, by reason of poverty, to procure counsel, the court shall appoint counsel, not exceeding two, for such defendant, to be paid, upon its order by the county in which such proceeding is had, compensation not exceeding ten dollars per day for each counsel, for the number of days such counsel is actually employed in court upon the trial. [L. '09, p. 906, § 53.]

See, also, supra, § 2095.

§ 2306. Witnesses.—Every person accused of crime shall have the right to meet the witnesses produced against him face to face: Provided, that whenever any witness whose deposition shall have been taken pursuant to law by a magistrate, in the presence of the defendant and his counsel, shall be absent, and cannot be found when required to testify upon any trial or hearing, so much of such deposition as the court shall deem admissible and competent shall be admitted and read as evidence in such case. [L. '09, p. 907, § 54.]

§ 2307. Right to Subpoena.—Every person charged with the commission of a crime shall have the right upon the trial of such charge to be heard in person or by counsel, and to produce witnesses and proofs in his favor and to have compulsory process to compel the attendance of all witnesses who may be necessary for his proper defense. [L. '09, p. 907, § 55.]

§ 2308. Presumption of Innocence—Conviction of Lowest Degree, When.—Every person charged with the commission of a crime shall be presumed innocent until the contrary is proved by competent evidence beyond a reasonable doubt; and when an offense has been proved against him, and there exists a reasonable doubt as to which of two or more degrees he is guilty, he shall be convicted only of the lowest. [L. '09, p. 907, § 56.]

Cited in 85 Wash. 223.
See, also, supra, § 2263.

§ 2309. Conviction, When had.—No person informed against or indicted for a crime shall be convicted thereof, unless by admitting the truth of the charge in his plea, by confession in open court, or by the verdict of a jury, accepted and recorded by the court. [L. '09, p. 907, § 57.]

Cited in 68 Wash. 12.

§ 2310. Bail, When Allowable.—Every person charged with an offense, except that of murder in the first degree, where the proof is evident or the presumption great, may be bailed by sufficient sureties, and bail shall justify and have the same rights as in civil cases, except as otherwise provided by law. The amount of bail in each case shall be determined by the court in its discretion and may from time to time be increased or decreased as circumstances may justify. [L. '09, p. 908, § 58.]

Cited in 64 Wash. 141.
See, also, supra, § 1957.

§ 2311. Proceedings Within Thirty Days.—Whenever a person has been held to answer to any criminal charge, if an indictment be not found or information filed against him within thirty days,

the court shall order the prosecution to be dismissed, unless good cause to the contrary be shown. [L. '09, p. 908, § 59.]

Cited in 64 Wash. 50.

§ 2312. Trial Within Sixty Days.—If a defendant indicted or informed against for an offense, whose trial has not been postponed upon his own application, be not brought to trial within sixty days after the indictment is found or the information filed, the court shall order it to be dismissed, unless good cause to the contrary is shown. [L. '09, p. 908, § 60.]

Cited in 64 Wash. 50; 65 Wash. 489; 71 Wash. 188; 72 Wash. 157, 450; 80 Wash. 337; 82 Wash. 332, 478.

§ 2313. Discharge of Defendant and Bail upon Dismissal.—Whenever the court shall direct any criminal prosecution to be dismissed, the defendant shall, if in custody, be discharged therefrom, or if admitted to bail, his bail shall be exonerated, and if money has been deposited instead of bail it shall be refunded to the person depositing the same. [L. '09, p. 908, § 61.]

§ 2314. Nolle Prosequi.—The court may, either upon its own motion or upon application of the prosecuting attorney, and in furtherance of justice, order any criminal prosecution to be dismissed; but in such case the reason of the dismissal must be set forth in the order, which must be entered upon the record. No prosecuting attorney shall hereafter discontinue or abandon a prosecution except as provided in this section. [L. '09, p. 908, § 62.]

Cited in 64 Wash. 50.

§ 2315. Dismissal, When a Bar.—An order dismissing a prosecution under the provisions of sections 2311, 2312, or 2314 shall bar another prosecution for a misdemeanor or gross misdemeanor where the prosecution dismissed charged the same misdemeanor or gross misdemeanor, but in no other case shall such order of dismissal bar another prosecution. [L. '09, p. 909, § 63.]

Cited in 64 Wash. 49; 65 Wash. 489; 82 Wash. 332.

§ 2316. Acquittal, When a Bar.—No order of dismissal or directed verdict of not guilty on the ground of a variance between the indictment or information and the proof, or on the ground of any defect in such indictment or information, shall bar another prosecution for the same offense. Whenever a defendant shall be acquitted or convicted upon an indictment or information charging a crime consisting of different degrees, he cannot be proceeded against or tried for the same crime in another degree, nor for an attempt to commit such crime, or any degree thereof. [L. '09, p. 909, § 64.]

Cited in 64 Wash. 49, 52; 84 Wash. 116.

See, also, supra, §§ 2113, 2271, 2272.

CHAPTER III.

Crimes Against the Sovereignty of the State.

§ 2317. Treason Defined—Penalty.—Treason against the people of the state consists in—

1. Levying war against the people of the state, or
2. Adhering to its enemies, or
3. Giving them aid and comfort.

Treason is punishable by death.

No person shall be convicted for treason unless upon the testimony of two witnesses to the same overt act or by confession in open court. [L. '09, p. 909, § 65.]

§ 2318. Levying War.—To constitute levying war against the state an actual act of war must be committed. To conspire to levy war is not enough. When persons arise in insurrection with intent to prevent, in general, by force and intimidation, the execution of a statute of this state, or to force its repeal, they shall be guilty of levying war. But an endeavor, although by numbers and force of arms, to resist the execution of a law in a single instance, and for a private purpose, is not levying war. [L. '09, p. 909, § 66.]

§ 2319. Misprision of Treason.—Every person having knowledge of the commission of treason, who conceals the same, and does not, as soon as may be, disclose such treason to the governor or a judge of the supreme court or a superior court, shall be guilty of misprision of treason and punished by a fine of not more than one thousand dollars, or by imprisonment in the state penitentiary for not more than five years or in a county jail for not more than one year. [L. '09, p. 910, § 67.]

CHAPTER IV.

Crimes by or Against Public Officers.

§ 2320. Bribery of Public Officer.—Every person who shall give, offer or promise, directly or indirectly, any compensation, gratuity or reward to any executive or administrative officer of the state, with intent to influence him with respect to any act, decision, vote, opinion or other proceeding, as such officer; or who shall give, offer or promise, directly or indirectly, any compensation, gratuity or reward to a member of the legislature, or attempt, directly or indirectly, by menace, deceit, suppression of truth or other corrupt means, to influence such member to give or withhold his vote, or to absent himself from the house of which he is a member or from any committee thereof; or who shall give, offer or promise, directly or indirectly, any compensation, gratuity or reward to a judicial officer, juror, referee, arbitrator, appraiser, assessor or other person author-

ized by law to hear or determine any question, matter, cause, proceeding or controversy, with intent to influence his action, vote, opinion or decision thereupon; or shall give, offer or promise, directly or indirectly, any compensation, gratuity or reward to a person executing any of the functions of a public officer other than as hereinbefore specified, with intent to influence him with respect to any act, decision, vote or other proceeding in the exercise of his powers or functions, shall be punished by imprisonment in the state penitentiary for not more than ten years, or by a fine of not more than five thousand dollars, or by both. [L. '09, p. 910, § 68.]

Cited in 66 Wash. 135; 67 Wash. 527.

See infra, § 2676, bribery of labor representative.

§ 2321. Asking or Receiving Bribe.—Every executive or administrative officer or person elected or appointed to an executive or administrative office who shall ask or receive, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, upon an agreement or understanding that his vote, opinion or action upon any matter then pending, or which may by law be brought before him in his official capacity, shall be influenced thereby; and every member of either house of the legislature of the state who shall ask or receive, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, upon an agreement or understanding that his official vote, opinion, judgment or action shall be influenced thereby, or shall be given in any particular manner, or upon any particular side of any question or matter upon which he may be required to act in his official capacity; and every judicial officer, and every person who executes any of the functions of a public office not hereinbefore specified, and every person employed by or acting for the state or for any public officer in the business of the state, who shall ask or receive, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, upon an agreement or understanding that his vote, opinion, judgment, action, decision or other official proceeding shall be influenced thereby, or that he will do or omit any act or proceeding or in any way neglect or violate any official duty, shall be punished by imprisonment in the state penitentiary for not more than ten years, or by a fine of not more than five thousand dollars, or by both. [L. '09, p. 911, § 69.]

Cited in 67 Wash. 506, 527.

§ 2322. Juror, etc., Accepting Bribe.—Every juror, referee, arbitrator, appraiser, assessor, or other person authorized by law to hear or determine any question, matter, cause, controversy or proceeding, who shall ask or receive, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, upon an agreement or understanding that his vote, opinion, action, judgment or decision

shall be influenced thereby, shall be punished by imprisonment in the state penitentiary for not more than ten years, or by fine of not more than five thousand dollars, or by both. [L. '09, p. 911, § 70.]

§ 2323. Bribing Witness.—Every person who shall give, offer or promise, directly or indirectly, any compensation, gratuity or reward to any witness or person who may be called as a witness upon an agreement or understanding that the testimony of such witness shall be thereby influenced, or who shall willfully attempt by any other means to induce any witness or person who may be called as a witness to give false testimony, or to withhold true testimony, shall be punished by imprisonment in the state penitentiary for not more than ten years, or by a fine of not more than five thousand dollars, or by both. [L. '09, p. 912, § 71.]

See infra, § 2363, tampering with witness.

§ 2324. Witness Accepting Bribe.—Every person who is or may be a witness upon a trial, hearing, investigation or other proceeding before any court, tribunal or officer authorized to hear evidence or take testimony, who shall ask or receive, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, upon an agreement or understanding that his testimony shall be influenced thereby, or that he will absent himself from the trial, hearing or other proceeding, shall be punished by imprisonment in the state penitentiary for not more than ten years, or by a fine of not more than five thousand dollars, or by both. [L. '09, p. 912, § 72.]

Cited in 82 Wash. 484.

§ 2325. Influencing Juror.—Every person who shall influence, or attempt to influence, improperly, a juror in a civil or criminal action or any proceeding, or any person chosen or appointed as an arbitrator or referee, in respect to his verdict, judgment, report, award or decision in any cause or matter pending or about to be brought before him, in any case or in any manner not hereinbefore provided for, shall be guilty of a gross misdemeanor. [L. '09, p. 912, § 73.]

§ 2326. Juror, etc., Promising Verdict, etc.—Every juror and every person chosen or appointed arbitrator or referee, who shall make any promise or agreement to give a verdict, judgment, report, award or decision for or against any party, or who shall willfully receive any communication, book, paper, instrument or information relating to a cause or matter pending before him, except according to the regular course of proceeding upon the trial or hearing of such cause or matter, shall be guilty of a gross misdemeanor. [L. '09, p. 913, § 74.]

§ 2327. Misconduct of Officer Drawing Jury.—Every person charged by law with the preparation of any jury list or list of names from which any jury is to be drawn, and every person authorized by law to assist at the drawing of a grand or petit jury to attend a court or term of court or to try any cause or issue, who shall—

(1.) Place in any such list any name at the request or solicitation, direct or indirect, of any person; or

(2.) Designedly put upon the list of jurors, as having been drawn, any name which was not lawfully drawn for that purpose; or

(3.) Designedly omit to place upon such list any name which was lawfully drawn; or

(4.) Designedly sign or certify a list of such jurors as having been drawn which were not lawfully drawn; or

(5.) Designedly and wrongfully withdraw from the box or other receptacle for the ballots containing the names of such jurors any paper or ballot lawfully placed or belonging there and containing the name of a juror, or omit to place therein any name lawfully drawn or designated, or place therein a paper or ballot containing the name of a person not lawfully drawn, and designated as a juror; or

(6.) In drawing or impaneling such jury, do any act which is unfair, partial or improper in any respect;

Shall be guilty of a gross misdemeanor. [L. '09, p. 913, § 75.]

§ 2328. Soliciting Jury Duty.—Every person who shall, directly or indirectly, solicit or request any person charged with the duty of preparing any jury list to put his name, or the name of any other person, on any such list, shall be guilty of a gross misdemeanor. [L. '09, p. 914, § 76.]

§ 2329. Misconduct of Officer in Charge of Jury.—Every person to whose charge a jury shall be committed by a court or magistrate, who shall knowingly, without leave of such court or magistrate, permit them or any one of them to receive any communication from any person, to make any communication to any person, to obtain or receive any book, paper or refreshment, or to leave the jury-room, shall be guilty of a gross misdemeanor. [L. '09, p. 914, § 77.]

§ 2330. Offender a Competent Witness.—Every person offending against any of the provisions of law relating to bribery or corruption shall be a competent witness against another so offending and shall not be excused from giving testimony tending to criminate himself. [L. '09, p. 914, § 78.]

See, also, §§ 2149, 2150.

§ 2331. Interfering With Public Officer.—Every person who, by means of any threat, force or violence, shall attempt to deter and

prevent any executive or administrative officer from performing any duty imposed upon him by law, or who shall knowingly resist by force or violence any executive or administrative officer in the performance of his duty, shall be guilty of a gross misdemeanor. [L. '09, p. 914, § 79.]

See, also, infra, § 2366.

§ 2332. Offering Reward for Appointment.—Every person who shall give, offer or promise, directly or indirectly, any compensation, gratuity or reward, in consideration that he or another person shall be appointed to a public office, or to a clerkship, deputation or other subordinate position in such office, or that he or any other person shall be permitted to exercise, perform or discharge any prerogative or duty or receive any emolument of such office, shall be guilty of a gross misdemeanor. [L. '09, p. 914, § 80.]

§ 2333. Grafting.—Every person who shall ask or receive any compensation, gratuity or reward, or any promise thereof, upon the representation that he can, directly or indirectly, or in consideration that he shall, or shall attempt to, directly or indirectly, influence any public officer, whether executive, administrative, judicial or legislative, to refuse, neglect, or defer the performance of any official duty; or who shall ask or receive any compensation, gratuity or reward, or any promise thereof, the right to retain or receive which shall be conditioned that such person shall, directly or indirectly, successfully influence by any means whatever any executive, administrative or legislative officer, in respect to any act, decision, vote, opinion or other proceeding, as such officer; or who shall ask or receive any compensation, gratuity or reward, or any promise thereof, upon the representation that he can, directly or indirectly, or in consideration that he shall, or shall attempt to, directly or indirectly, influence any public officer, whether executive, administrative, judicial or legislative, in respect to any act, decision, vote, opinion or other proceeding, as such officer, unless it be clearly understood and agreed in good faith between the parties thereto, on both sides, that no means or influence shall be employed except explanation and argument upon the merits, shall be guilty of a gross misdemeanor, and, in any prosecution, under the third clause of this section, evidence of the means actually employed to influence such officer shall be admitted as proof of the means originally contemplated by the defendant. [L. '09, p. 915, § 81.]

Cited in 68 Wash. 676; 78 Wash. 344.

§ 2334. Misconduct of Public Officer.—Every public officer who shall—

(1.) Ask or receive, directly or indirectly, any compensation, gratuity or reward, or promise thereof, for omitting or deferring the performance of any official duty; or for any official service which has not been actually rendered, except in case of charges for prospective costs or fees demandable in advance in a case allowed by law; or

(2.) Be beneficially interested, directly or indirectly, in any contract, sale, lease or purchase which may be made by, through or under the supervision of such officer, in whole or in part, or which may be made for the benefit of his office, or accept, directly or indirectly, any compensation, gratuity or reward from any other person beneficially interested therein; or

(3.) Employ or use any person, money or property under his official control or direction, or in his official custody, for the private benefit or gain of himself or another;

Shall be guilty of a gross misdemeanor, and any contract, sale, lease or purchase mentioned in subdivision 2 hereof shall be void. [L. '09, p. 915, § 82.]

§ 2335. Grant of Official Powers.—Every public officer who, for any reward, consideration or gratuity paid or agreed to be paid, shall, directly or indirectly, grant to another the right or authority to discharge any function of his office, or permit another to perform any of his duties, shall be guilty of a gross misdemeanor. [L. '09, p. 916, § 83.]

§ 2336. Intrusion into and Refusal to Surrender Public Office.—Every person who shall falsely personate or represent any public officer, or who shall willfully intrude himself into a public office to which he has not been duly elected or appointed, or who shall willfully exercise any of the functions or perform any of the duties of such officer, without having duly qualified therefor, as required by law, or who, having been an executive or administrative officer, shall willfully exercise any of the functions of his office after his right to do so has ceased, or wrongfully refuse to surrender the official seal or any books or papers appertaining to such office, upon the demand of his lawful successor, shall be guilty of a gross misdemeanor. [L. '09, p. 916, § 84.]

§ 2337. Disturbing Legislature or Intimidating Member.—Every person who shall willfully disturb the legislature of this state, or either house thereof, while in session, or who shall commit any disorderly conduct in the presence or view of either house thereof, tending to interrupt its proceedings or impair the respect due to its authority, or who willfully, by intimidation or otherwise, shall prevent any member of the legislature from attending any session of

the house of which he shall be a member or any committee thereof, or from giving his vote upon any question which may come before such house or committee, or from performing any other official act, shall be guilty of a gross misdemeanor. [L. '09, p. 916, § 85.]

§ 2338. Witness Refusing to Attend Legislature or Committee or to Testify.—Every person duly summoned to attend as a witness before either house of the legislature of this state, or any committee thereof authorized to summon witnesses, who shall refuse or neglect, without lawful excuse, to attend pursuant to such summons, or who shall willfully refuse to be sworn or to affirm or to answer any material or proper question, or to produce, upon reasonable notice, any material or proper books, papers or documents in his possession or under his control, shall be guilty of a gross misdemeanor. [L. '09, p. 917, § 86.]

See infra, §§ 6932–6934, penalties on same subject.

§ 2339. Rescuing Prisoner.—Every person who shall, by force or fraud, rescue from lawful custody, or from an officer or person having him in lawful custody, a prisoner held upon a charge, arrest, commitment, conviction or sentence for felony, shall be guilty of a felony; and every person who shall rescue a prisoner held upon a charge, arrest, commitment, conviction or sentence for a gross misdemeanor or misdemeanor shall be guilty of a misdemeanor. [L. '09, p. 917, § 87.]

§ 2340. Taking Property from an Officer.—Every person who shall take from the custody of any officer or other person any personal property in his charge under any process of law, or who shall willfully injure or destroy such property, shall be guilty of a misdemeanor. [L. '09, p. 917, § 88.]

§ 2341. Escaped Prisoner Recaptured.—Every person in custody, under sentence of imprisonment for any crime, who shall escape from custody, may be recaptured and imprisoned for a term equal to the unexpired portion of the original term. [L. '09, p. 917, § 89.]

§ 2342. Prisoner Escaping.—Every prisoner confined in a prison, or being in the lawful custody of an officer or other person, who shall escape or attempt to escape from such prison or custody, by force or fraud, if he is held on a charge, conviction or sentence of a felony, shall be guilty of a felony; if held on a charge, conviction or sentence of a gross misdemeanor or misdemeanor, he shall be guilty of a misdemeanor. [L. '09, p. 918, § 90.]

Cited in 69 Wash. 271, 272.

§ 2343. Aiding Prisoner to Escape.—Every person who, with intent to effect or facilitate the escape of a prisoner, whether such

escape shall be effected or attempted or not, shall convey or send to a prisoner any information or aid, or convey or send into a prison any disguise, instrument, weapon or other thing, or aid or assist a prisoner in escaping or attempting to escape from the lawful custody of a sheriff or other officer or person, shall be guilty of a felony if such prisoner is held upon a charge, arrest, commitment, conviction or a sentence for a felony, and shall be guilty of a misdemeanor if such prisoner is held upon a charge, arrest, commitment, conviction or sentence for a gross misdemeanor or misdemeanor. [L. '09, p. 918, § 91.]

See infra, § 8530, assisting prisoner to escape from penitentiary.
See infra, § 8531, supplying with weapons or drugs.

§ 2344. Custodian Suffering Escape. — Every person who shall allow a prisoner lawfully in his custody to escape, or shall connive at or assist such escape, or shall omit any act or duty by reason of which omission such escape is occasioned, contributed to or assisted, shall, if he connive at or assist such escape, be guilty of a felony; and in any other case, of a gross misdemeanor. [L. '09, p. 918, § 92.]

§ 2345. Ministerial Officer Permitting Escape.—Every officer who shall ask or receive, directly or indirectly, any compensation, gratuity or reward, or promise thereof, to procure, assist, connive at or permit any prisoner in his custody to escape, whether such escape shall be attempted or not, or shall commit any unlawful act tending to hinder justice, shall be guilty of a gross misdemeanor. [L. '09, p. 918, § 93.]

§ 2346. Concealing Escaped Prisoner.—Every person who shall conceal, or harbor for the purpose of concealment, a prisoner who has escaped or is escaping from custody, shall be guilty of a felony if the prisoner is held upon a charge or conviction or sentence of felony, and of a misdemeanor if the prisoner is held upon a charge or conviction of a gross misdemeanor or misdemeanor. [L. '09, p. 919, § 94.]

§ 2347. Injury to Public Record.—Every person who shall willfully and unlawfully remove, alter, mutilate, destroy, conceal or obliterate a record, map, book, paper, document or other thing filed or deposited in a public office, or with any public officer, by authority of law, shall be punished by imprisonment in the state penitentiary for not more than five years, or by a fine of not more than one thousand dollars, or by both. [L. '09, p. 919, § 95.]

§ 2348. Injury to and Misappropriation of Record.—Every officer who shall mutilate, destroy, conceal, erase, obliterate or falsify any record or paper appertaining to his office, or who shall fraudulently

appropriate to his own use or to the use of another person, or secrete with intent to appropriate to such use, any money, evidence of debt or other property intrusted to him by virtue of his office, shall be punished by imprisonment in the state penitentiary for not more than ten years, or by a fine of not more than five thousand dollars, or by both. [L. '09, p. 919, § 96.]

§ 2349. Offering False Instrument for Filing or Record.—Every person who shall knowingly procure or offer any false or forged instrument to be filed, registered or recorded in any public office, which instrument, if genuine, might be filed, registered or recorded in such office under any law of this state or of the United States, shall be punished by imprisonment in the state penitentiary for not more than five years, or by a fine of not more than five thousand dollars, or by both. [L. '09, p. 919, § 97.]

§ 2350. False Report.—Every public officer who shall knowingly make any false or misleading statement in any official report or statement, under circumstances not otherwise prohibited by law, shall be guilty of a gross misdemeanor. [L. '09, p. 920, § 98.]

See infra, § 2380, false certificates by officers.
See infra, § 6648, false appraisement of public lands.

§ 2351. Perjury—First Degree.—Every person who, in any action, proceeding, hearing, inquiry or investigation, in which an oath may lawfully be administered, shall swear that he will testify, declare, depose or certify truly, or that any testimony, declaration, deposition, certificate, affidavit or other writing by him subscribed is true, and who, in such action, proceeding, hearing, inquiry or investigation shall state or subscribe as true any material matter which he knows to be false, shall be guilty of perjury in the first degree and shall be punished by imprisonment in the state penitentiary for not more than fifteen years. [L. '09, p. 920, § 99.]

Cited in 83 Wash. 422–425.

§ 2352. Knowledge of Materiality not Necessary.—It shall be no defense to a prosecution for perjury in the first degree that the defendant did not know the materiality of his false statement or that it did not in fact affect the proceeding in or for which it was made. It shall be sufficient that it was material and might have affected such proceeding. [L. '09, p. 920, § 100.]

Cited in 83 Wash. 425.

§ 2353. Perjury — Second Degree.—Every person who, whether orally or in writing, and whether as a volunteer or in a proceeding or investigation authorized by law, shall knowingly swear falsely concerning any matter whatsoever, shall be guilty of perjury in the second degree and shall be punished by imprisonment in the

state penitentiary for not more than five years, or by imprisonment in the county jail for not more than one year. [L. '09, p. 920, § 101.]

Cited in 69 Wash. 86; 83 Wash. 423–425; 84 Wash. 116.

§ 2354. "Oath" and "Swear" Defined.—The term "oath" shall include an affirmation and every other mode authorized by law of attesting the truth of that which is stated. A person who shall state any matter under oath shall be deemed to "swear" thereto. [L. '09, p. 920, § 102.]

§ 2355. Irregularity in Administering Oath or Incompetency of Witness No Defense.—It shall be no defense to a prosecution for perjury that an oath was administered or taken in an irregular manner or that the defendant was not competent to give the testimony, deposition, certificate or affidavit of which falsehood is alleged. It shall be sufficient that he actually gave such testimony or made such deposition, certificate or affidavit. [L. '09, p. 921, § 103.]

§ 2356. Deposition—When Complete.—The making of a deposition, certificate or affidavit shall be deemed to be complete when it is subscribed and sworn to or affirmed by the defendant with intent that it be uttered or published as true. [L. '09, p. 921, § 104.]

§ 2357. Statement of What One Does not Know to be True.—Every unqualified statement of that which one does not know to be true is equivalent to a statement of that which he knows to be false. [L. '09, p. 921, § 105.]

§ 2358. Offering False Evidence.—Every person who, upon any trial, hearing, inquiry, investigation or other proceeding authorized by law, shall offer or procure to be offered in evidence, as genuine, any book, paper, document, record or other instrument in writing, knowing the same to have been forged or fraudulently altered, shall be punished by imprisonment in the state penitentiary for not more than ten years. [L. '09, p. 921, § 106.]

§ 2359. Committal of Witness—Detention of Documents.—Whenever it shall appear probable to a judge, justice of the peace, magistrate, or other officer lawfully authorized to conduct any hearing, proceeding or investigation, that a person who has testified before him has committed perjury in any testimony so given, or offered any false evidence, he may, by order or process for that purpose, immediately commit such person to jail or take a recognizance for his appearance to answer such charge. In such case he may detain any book, paper, document, record or other instrument produced before him or direct it to be delivered to the prosecuting attorney. [L. '09, p. 921, § 107.]

§ 2360. Subornation of Perjury.—Every person who shall willfully procure another to commit perjury, in either degree, or to offer any false evidence, shall be guilty of subornation of perjury and shall be punished in the same manner as if he had himself committed the perjury so procured or offered the false evidence so offered. [L. '09, p. 922, § 108.]

§ 2361. Attempt to Suborn Perjury.—Every person who, without giving, offering or promising a bribe, shall incite or attempt to procure another to commit perjury, in either degree, or to offer any false evidence, or to withhold true testimony, though no perjury be committed or false evidence or true testimony withheld, shall be guilty of a gross misdemeanor. [L. '09, p. 922, § 109.]

§ 2362. Destroying Evidence.—Every person who, with intent to conceal the commission of any felony, or to protect or conceal the identity of any person committing the same, or with intent to delay or hinder the administration of the law or to prevent the production thereof at any time, in any court or before any officer, tribunal, judge or magistrate, shall willfully destroy, alter, erase, obliterate or conceal any book, paper, record, writing, instrument or thing, shall be guilty of a gross misdemeanor. [L. '09, p. 922, § 110.]

§ 2363. Tampering With Witness.—Every person who shall willfully prevent or attempt to prevent, by persuasion, threats or otherwise, any person from appearing before any court, or officer authorized to subpoena witnesses, as a witness in any action, proceeding or investigation, with intent thereby to obstruct the course of justice, shall be guilty of a gross misdemeanor. [L. '09, p. 922, § 111.]

§ 2364. Neglect or Refusal to Receive a Person into Custody.—Every officer who, in violation of any legal duty, shall willfully neglect or refuse to receive a person into his official custody or into a prison under his charge, shall, in a case where no other punishment is specially provided by law, be guilty of a gross misdemeanor. [L. '09, p. 922, § 112.]

§ 2365. Refusal to Make Arrest or to Aid Officer.—Every person who, after having been lawfully commanded by any magistrate to arrest another person, shall willfully neglect or refuse so to do; and every person who, after having been lawfully commanded to aid an officer in arresting any person, or in retaking any person who has escaped from lawful custody, or in executing any lawful process, shall willfully neglect or refuse to aid such officer, shall be guilty of a misdemeanor. [L. '09, p. 923, § 113.]

§ 2366. Resisting Public Officer.—Every person who, in any case or under any circumstances not otherwise specially provided for,

shall willfully resist, delay or obstruct a public officer in discharging or attempting to discharge any legal duty of his office, shall be guilty of a misdemeanor. [L. '09, p. 923, § 114.]

See supra, § 2331, interfering with or resisting officer.
See supra, § 2365, resisting and refusing to aid in arrest.
See infra, § 2520, obstructing firemen.
See infra, § 2555, combination to resist process.
See infra, § 2672, obstructing officer.

§ 2367. Compounding Crimes.—Every person who shall ask or receive, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, upon an agreement or understanding that he will compound or conceal a crime or violation of a statute, or abstain from testifying thereto, delay a prosecution therefor or withhold any evidence thereof, except in a case where a compromise is allowed by law, shall be guilty—

(1.) Of a felony and punished by imprisonment in the state penitentiary for not more than five years, where the agreement or understanding relates to a felony;

(2.) Of a misdemeanor, where the agreement or understanding relates to a gross misdemeanor or misdemeanor, or to a violation of statute for which a pecuniary penalty or forfeiture is prescribed.

In any proceeding against a person for compounding a crime, it shall not be necessary to prove that any person has been convicted of the crime or violation of statute in relation to which an agreement or understanding herein prohibited was made. [L. '09, p. 923, § 115.]

§ 2368. Intimidating Public Officer.—Every person who shall, directly or indirectly, address any threat or intimidation to a public officer or to a juror, referee, arbitrator, appraiser or assessor, or to any other person authorized by law to hear or determine any controversy or matter, with intent to induce him, contrary to his duty to do or make or omit or delay any act, decision or determination, shall be guilty of a misdemeanor. [L. '09, p. 924, § 116.]

§ 2369. Malicious Prosecution.—Every person who shall, maliciously and without probable cause therefor, cause or attempt to cause another to be arrested or proceeded against for any crime of which he is innocent—

(1.) If such crime be a felony, shall be punished by imprisonment in the state penitentiary for not more than five years; and,

(2.) If such crime be a gross misdemeanor or misdemeanor, shall be guilty of a misdemeanor. [L. '09, p. 924, § 117.]

Cited in 85 Wash. 353, 354.

§ 2370. Barratry.—Every person who shall bring on his own behalf, or instigate, incite or encourage another to bring, any false

suit at law or in equity in any court of this state, with intent thereby to distress or harass a defendant therein; and every person, being an attorney or counselor at law, who shall personally, or through the agency of another, solicit employment as such attorney, in any suit pending or prospective, or, with intent to obtain such employment shall, directly or indirectly, loan any money or give or promise to give any money, property or other consideration to the person from whom such employment is sought; and every person who shall serve or send any paper or document purporting to be or resembling a judicial process, not in fact a judicial process shall be guilty of a misdemeanor; and in case the person offending is an attorney, he may, in addition thereto be disbarred from practicing law within this state. [L. '15, p. 492, § 1; L. '09, p. 924, § 118.]

§ 2371. Buying Demand or Promising Reward by Justice or Constable.—Every justice of the peace or constable who shall, directly or indirectly, buy or be interested in buying anything in action for the purpose of commencing a suit thereon before a justice of the peace, or who shall give or promise any valuable consideration to any person as an inducement to bring, or as a consideration for having brought, a suit before a justice of the peace, shall be guilty of a misdemeanor. [L. '09, p. 924, § 119.]

§ 2372. Criminal Contempt.—Every person who shall commit a contempt of court of any one of the following kinds shall be guilty of a misdemeanor:

(1.) Disorderly, contemptuous or insolent behavior committed during the sitting of the court, in its immediate view and presence, and directly tending to interrupt its proceeding or to impair the respect due to its authority; or,

(2.) Behavior of like character in the presence of a referee, while actually engaged in a trial or hearing pursuant to an order of court, or in the presence of a jury while actually sitting in the trial of a cause or upon an inquest or other proceeding authorized by law; or,

(3.) Breach of the peace, noise or other disturbance directly tending to interrupt the proceedings of a court, jury or referee; or,

(4.) Willful disobedience to the lawful process or mandate of a court; or,

(5.) Resistance, willfully offered, to its lawful process or mandate; or,

(6.) Contumacious and unlawful refusal to be sworn as a witness, or after being sworn, to answer any legal and proper interrogatory; or,

(7.) Publication of a false or grossly inaccurate report of its proceedings; or,

(8.) Assuming to be an attorney or officer of a court or acting as such without authority. [L. '09, p. 925, § 120.]

Cited in 63 Wash. 28; 79 Wash. 555.

See supra §§ 1049–1062, contempts and their punishment.

§ 2373. Grand Juror Acting After Challenge Allowed.—Every grand juror who, with knowledge that a challenge interposed against him by a defendant has been allowed, shall be present at, or take part, or attempt to take part, in the consideration of the charge against the defendant who interposed such challenge, or the deliberations of the grand jury thereon, shall be guilty of a misdemeanor. [L. '09, p. 925, § 121.]

§ 2374. Production of Pretended Heir.—Every person who shall fraudulently or falsely pretend that any infant child was born of a parent whose child is or would be entitled to inherit real property or to receive any personal property, or who shall falsely represent himself or another to be a person entitled to an interest or share in the estate of a deceased person as executor, administrator, husband, wife, heir, legatee, devisee, next of kin or relative of such deceased person, shall be punished by imprisonment in the state penitentiary for not more than ten years. [L. '09, p. 926, § 122.]

§ 2375. Substitution of a Child.—Every person to whom a child has been confided for nursing, education or any other purpose, who, with intent to deceive a person [parent], guardian or relative of such child, shall substitute or produce to such parent, guardian or relative, another child or person in the place of the child so confided, shall be punished by imprisonment in the state penitentiary for not more than ten years. [L. '09, p. 926, § 123.]

§ 2376. Instituting Suit in Name of Another.—Every person who shall institute or prosecute any action or other proceeding in the name of another, without his consent and contrary to law, shall be guilty of a gross misdemeanor. [L. '09, p. 926, § 124.]

§ 2377. Unauthorized Communication With Prisoner.—Every person who, not being authorized by law or by any officer authorized thereto, shall have any verbal communication with any prisoner in any jail, reformatory, penitentiary, or other penal institution, or shall bring into or convey out of the same any writing, clothing, food, tobacco or any article whatsoever, shall be guilty of a misdemeanor. [L. '09, p. 926, § 125.]

§ 2378. Disclosing Transaction of Grand Jury.—Every judge, grand juror, prosecuting attorney, clerk, stenographer or other officer who, except in the due discharge of his official duty, shall disclose the fact that a presentment has been made or indictment found or

ordered against any person, before such person shall be in custody; and every grand juror, clerk or stenographer who, except when lawfully required by a court or officer, shall disclose any evidence adduced before the grand jury, or any proceeding, discussion or vote of the grand jury or any member thereof, shall be guilty of a misdemeanor. [L. '09, p. 927, § 126.]

See, also, § 2046, supra.

§ 2379. Disclosure of Deposition Returned by Grand Jury.—Every clerk of any court or other officer who shall willfully permit any deposition, or the transcript of any testimony, returned by a grand jury and filed with such clerk or officer, to be inspected by any person except the court, the deputies or assistants of such clerk, and the prosecuting attorney and his deputies, until after the arrest of the defendant, shall be guilty of a misdemeanor. [L. '09, p. 927, § 127.]

§ 2380. Public Officer Making False Certificate.—Every public officer who, being authorized by law to make or give a certificate or other writing, shall knowingly make and deliver as true such a certificate or writing containing any statement which he knows to be false, in a case where the punishment thereof is not expressly prescribed by law, shall be guilty of a gross misdemeanor. [L. '09, p. 927, § 128.]

See supra, § 2350, false reports by officers.
See infra, § 2584, false certificates to certain instruments.

§ 2381. Falsely Auditing and Paying Claims.—Every public officer or person holding or discharging the duties of any public office or place of trust under the state or in any county, town or city, a part of whose duty it is to audit, allow or pay, or take part in auditing, allowing or paying, claims or demands upon the state or such county, town or city, who shall knowingly audit, allow or pay, or, directly or indirectly, consent to or in any way connive at the auditing, allowance or payment of any claim or demand against the state or such county, town or city, which is false or fraudulent or contains any charge, item or claim which is false or fraudulent, shall be guilty of a gross misdemeanor. [L. '09, p. 927, § 129.]

§ 2382. Conspiracy.—Whenever two or more persons shall conspire—

(1.) To commit a crime; or

(2.) Falsely and maliciously to procure another to be arrested or proceeded against for a crime; or

(3.) Falsely to institute or maintain any action or proceeding; or

(4.) To cheat or defraud another out of any property by unlawful or fraudulent means; or

(5.) To prevent another from exercising any lawful trade or calling, or from doing any other lawful act, by force, threats or intimidation, or by interfering or threatening to interfere with any tools, implements or property belonging to or used by another, or with the use or employment thereof; or

(6.) To commit any act injurious to the public health, public morals, trade or commerce, or for the perversion or corruption of public justice or the due administration of the law; or

(7.) To accomplish any criminal or unlawful purpose, or to accomplish a purpose, not in itself criminal or unlawful, by criminal or unlawful means;

Every such person shall be guilty of a gross misdemeanor. [L. '09, p. 928, § 130.]

Cited in 72 Wash. 655; 79 Wash. 206.

§ 2383. Overt Act not Necessary.—In any proceeding for [a] violation of section 2382, it shall [not] be necessary to prove that any overt act was done in pursuance of such unlawful conspiracy or combination. [L. '09, p. 928, § 131.]

Cited in 79 Wash. 206.

§ 2384. Corporation to Forfeit Franchise. — Every corporation, whether foreign or domestic, which shall violate any provision of section 2382, shall forfeit every right and franchise to do business in this state. The attorney general shall begin and conduct all actions and proceedings necessary to enforce the provisions of this section. [L. '09, p. 928, § 132.]

CHAPTER V.

Crimes Against the Person.

§ 2385. Suicide Defined.—Suicide is the intentional taking of one's own life. [L. '09, p. 929, § 133.]

§ 2386. Attempting Suicide.—Every person who, with intent to take his own life, shall commit upon himself any act dangerous to human life, or which, if committed upon or toward another person and followed by death as a consequence, would render the perpetrator chargeable with homicide, shall be punished by imprisonment in the state penitentiary for not more than two years, or by a fine of not more than one thousand dollars. [L. '09, p. 929, § 134.]

§ 2387. Aiding Suicide.—Every person who, in any manner, shall willfully advise, encourage, abet or assist another in taking his own life shall be guilty of manslaughter. [L. '09, p. 929, § 135.]

§ 2388. Abetting Attempt at Suicide.—Every person who, in any manner, shall willfully advise, encourage, abet or assist another

person in attempting to take the latter's life shall be punished by imprisonment in the state penitentiary for not more than ten years. [L. '09, p. 929, § 136.]

§ 2389. Incapacity of Person Aided No Defense.—The fact that the person attempting to take his own life was incapable of committing crime shall not be a defense to a prosecution under either of sections 2387 or 2388. [L. '09, p. 929, § 137.]

§ 2390. Homicide—Defined and Classified.—Homicide is the killing of a human being by the act, procurement or omission of another and is either (1) murder, (2) manslaughter, (3) excusable homicide or (4) justifiable homicide. [L. '09, p. 929, § 138.]

§ 2391. Proof of Death and of Killing by Defendant.—No person shall be convicted of murder or manslaughter unless the death of the person alleged to have been killed and the fact of killing by the defendant, as alleged, are each established as independent facts beyond a reasonable doubt. [L. '09, p. 930, § 139.]

§ 2392. Murder in the First Degree.—The killing of a human being, unless it is excusable or justifiable, is murder in the first degree when committed either—

1. With a premeditated design to effect the death of the person killed, or of another; or,

2. By an act imminently dangerous to others and evincing a depraved mind, regardless of human life, without a premeditated design to effect the death of any individual; or,

3. Without design to effect death, by a person engaged in the commission of, or in an attempt to commit, or in withdrawing from the scene of, a robbery, rape, burglary, larceny or arson in the first degree; or,

4. By maliciously interfering or tampering with or obstructing any switch, frog, rail, roadbed, sleeper, viaduct, bridge, trestle, culvert, embankment, structure or appliance pertaining to or connected with any railway, or any engine, motor or car of such railway.

Murder in the first degree shall be punishable by imprisonment in the state penitentiary for life. [L. '13, p. 581, § 1; L. '09, p. 930, § 140.]

Cited in 61 Wash. 637; 64 Wash. 129, 130; 65 Wash. 597; 66 Wash. 541; 83 Wash. 3.

§ 2393. Murder in the Second Degree.—The killing of a human being, unless it is excusable or justifiable, is murder in the second degree when—

(1.) Committed with a design to effect the death of the person killed or of another, but without premeditation; or

(2.) When perpetrated by a person engaged in the commission of, or in an attempt to commit, or in withdrawing from the scene of, a felony other than those enumerated in section 2392.

Murder in the second degree shall be punished by imprisonment in the state penitentiary for not less than ten years. [L. '09, p. 931, § 141.]

Cited in 64 Wash. 129.

§ 2394. Killing in Duel.—Every person who shall fight or participate in, as second or assistant, any duel within this state, in which any person is killed, or who, by previous appointment made within this state, shall fight or participate in, as second or assistant, any duel out of the state, in which any person is killed, shall be guilty of murder in the second degree; and, in the latter case, may be proceeded against in any county in this state. [L. '09, p. 931, § 142.]

§ 2395. Manslaughter.—In any case other than those specified in sections 2392, 2393 and 2394, homicide, not being excusable or justifiable, is manslaughter.

Manslaughter is punishable by imprisonment in the state penitentiary for not more than twenty years, or by imprisonment in the county jail for not more than one year, or by a fine of not more than one thousand dollars, or by both fine and imprisonment. [L. '09, p. 931, § 143.]

Cited in 64 Wash. 129, 130; 66 Wash. 470; 80 Wash. 534.

§ 2396. Killing Unborn Quick Child.—The willful killing of an unborn quick child, by any injury committed upon the mother of such child, is manslaughter. [L. '09, p. 931, § 144.]

§ 2397. Killing Unborn Quick Child by Administering Drugs.—Every person who shall provide, supply or administer to a woman, whether pregnant or not, or shall prescribe for or advise or procure a woman to take any medicine, drug or substance, or shall use or employ, or cause to be used or employed, any instrument or other means, with intent thereby to procure the miscarriage of a woman, unless the same is necessary to preserve her life, in case the death of the woman or of any quick child of which she is pregnant is thereby produced, shall be guilty of manslaughter. [L. '09, p. 931, § 145.]

§ 2398. Woman Taking Drugs.—Every woman quick with child who shall take or use, or submit to the use of, any drug, medicine or substance, or any instrument or other means, with intent to procure her own miscarriage, unless the same is necessary to preserve her own life or that of the child whereof she is pregnant, and thereby causes the death of such child, shall be guilty of manslaughter. [L. '09, p. 932, § 146.]

§ 2399. Owner of Vicious Animal.—If the owner or custodian of any vicious or dangerous animal, knowing its propensities, shall willfully or negligently allow it to go at large, and such animal while at large shall kill a human being not himself in fault, such owner or custodian shall be guilty of manslaughter. [L. '09, p. 932, § 147.]

§ 2400. Killing by Overloading Passenger Vessel.—Every person navigating a vessel for gain who shall willfully or negligently receive so many passengers or such a quantity of other lading on board, that by means thereof such vessel shall sink, be overset or injured, and thereby a human being shall be drowned or otherwise killed, shall be guilty of manslaughter. [L. '09, p. 932, § 148.]

§ 2401. Reckless Operation of Steamboat or Engine. — Every person having charge of a steamboat used for the conveyance of passengers, or of a boiler or engine thereof, who, from ignorance, recklessness or gross negligence, or for the purpose of excelling another boat in speed, shall create or allow to be created such an undue quantity of steam as to burst the boiler or other apparatus in which it is generated or contained, or to break any apparatus or machinery connected therewith, whereby the death of a human being is occasioned; and every engineer or other person having charge of a steam boiler, steam engine or other apparatus for generating or applying steam, who, willfully or from ignorance or gross negligence, shall create or allow to be created such an undue quantity of steam as to burst the boiler, engine or apparatus, or to cause any other accident, whereby the death of a human being is occasioned, shall be guilty of manslaughter. [L. '09, p. 932, § 149.]

§ 2402. Liability of Intoxicated Physician.—Every physician or surgeon, or person practicing as such, who, being in a state of intoxication, or under the influence of any narcotic drug, shall prescribe or administer any poison, drug or medicine, or do any other act as a physician, to another person, which, though done without design, shall cause the death of the latter, shall be guilty of manslaughter. [L. '09, p. 933, § 150.]

§ 2403. Keeping Explosive Unlawfully.—Every person who shall make or keep gunpowder, or any other explosive substance, in a city or village, in any quantity or manner prohibited by law or by ordinance of such municipality, if an explosion thereof shall occur whereby the death of a human being is occasioned, shall be guilty of manslaughter. [L. '09, p. 933, § 151.]

§ 2404. Homicide, When Excusable.—Homicide is excusable when committed by accident or misfortune in doing any lawful act by lawful means, with ordinary caution and without any unlawful intent. [L. '09, p. 933, § 152.]

§ 2405. Justifiable Homicide by Public Officer.—Homicide is justifiable when committed by a public officer, or person acting under his command and in his aid, in the following cases:

(1.) In obedience to the judgment of a competent court.

(2.) When necessary to overcome actual resistance to the execution of the legal process, mandate or order of a court or officer, or in the discharge of a legal duty.

(3.) When necessary in retaking an escaped or rescued prisoner who has been committed, arrested for, or convicted of a felony; or in arresting a person who has committed a felony and is fleeing from justice; or in attempting, by lawful ways or means, to apprehend a person for a felony actually committed; or in lawfully suppressing a riot or preserving the peace. [L. '09, p. 933, § 153.]

§ 2406. Homicide by Other Person, When Justifiable.—Homicide is also justifiable when committed either—

(1.) In the lawful defense of the slayer, or his or her husband, wife, parent, child, brother or sister, or of any other person in his presence or company, when there is reasonable ground to apprehend a design on the part of the person slain to commit a felony or to do some great personal injury to the slayer or to any such person, and there is imminent danger of such design being accomplished; or

(2.) In the actual resistance of an attempt to commit a felony upon the slayer, in his presence, or upon or in a dwelling, or other place of abode, in which he is. [L. '09, p. 934, § 154.]

Cited in 64 Wash. 126; 66 Wash. 397, 399.

§ 2407. "Maiming" Defined—How Punished.—Every person who, with intent to commit a felony, or to injure, disfigure or disable another, shall willfully inflict upon him an injury which—

(1.) Seriously disfigures his person by any mutilation thereof; or

(2.) Destroys or displaces any member or organ of his body; or

(3.) Seriously diminishes his physicial vigor by the injury of any member or organ;

Shall be guilty of maiming and be punished by imprisonment in the state penitentiary for not more than ten years, and the willful infliction of the injury shall be prima facie evidence of the intent. [L. '09, p. 934, § 155.]

Cited in 62 Wash. 71.

§ 2408. Instrument or Manner of Maiming.—To constitute maiming it is immaterial by what means or instrument or in what manner the injury was inflicted. [L. '09, p. 934, § 156.]

§ 2409. Recovery from Injury, When a Defense.—Whenever upon a trial for maiming another person it shall appear that the injury inflicted will not result in any permanent disfiguration of

appearance, diminution of vigor, or other permanent injury, no conviction for maiming shall be had, but the defendant may be convicted of assault in any degree. [L. '09, p. 934, § 157.]

§ 2410. Kidnaping Defined—How Punished.—Every person who shall willfully—

(1.) Seize, confine or inveigle another with intent to cause him without authority of law to be secretly confined or imprisoned, or in any way held to service, or with intent to extort or obtain money or reward for his return, release, or disposition, or to lead, take, entice away, or detain, a child under the age of sixteen years with intent to conceal him from his parent, guardian or other person having lawful care or control of him, or to steal any article upon his person; or

(2.) Abduct, entice, or by force or fraud unlawfully take or carry away another to or from a place without the state, and shall afterward send, bring or keep such person, or cause him to be kept or secreted within this state;

Shall be guilty of kidnaping, and punished by imprisonment in the state penitentiary for not less than ten years. [L. '09, p. 935, § 158.]

§ 2411. Selling Services of Person Kidnaped.—Every person, who within this state or elsewhere, shall sell or in any manner transfer for any term, the services or labor of any person who has been forcibly taken, inveigled, or kidnaped in or from this state, shall be punished by imprisonment in the state penitentiary for not more than ten years. [L. '09, p. 935, § 159.]

§ 2412. Venue—Effect of Consent.—Any proceeding for kidnaping may be instituted either in the county where the offense was committed or in any county through or in which the person kidnaped or confined was taken or kept while under confinement or restraint. Upon a trial for violation of section 2410 or 2411, the consent thereto of the person kidnaped or confined shall not be a defense unless it appears satisfactorily to the jury that such person was above the age of sixteen years and that his consent was not extorted by threats, duress or fraud. [L. '09, p. 935, § 160.]

§ 2413. Assault in First Degree Defined—How Punished.—Every person who, with intent to kill a human being, or to commit a felony upon the person or property of the one assaulted, or of another—

(1.) Shall assault another with a firearm or any deadly weapon or by any force or means likely to produce death; or

(2.) Shall administer to or cause to be taken by another, poison or any other destructive or noxious thing so as to endanger the life of another person, shall be guilty of assault in the first degree

and shall be punished by imprisonment in the state penitentiary for not less than five years. [L. '09, p. 936, § 161.]

Cited in 60 Wash. 111; 66 Wash. 245; 69 Wash. 563, 564; 79 Wash. 226; 83 Wash. 471; 84 Wash. 172.

§ 2414. Assault in the Second Degree—How Punished.—Every person who, under circumstances not amounting to assault in the first degree—

(1.) With intent to injure, shall unlawfully administer to or cause to be taken by another, poison or any other destructive or noxious thing, or any drug or medicine the use of which is dangerous to life or health; or

(2.) With intent thereby to enable or assist himself or any other person to commit any crime, shall administer to, or cause to be taken by, another, chloroform, ether, laudanum or any other intoxicating narcotic or anaesthetic; or

(3.) Shall willfully inflict grievous bodily harm upon another with or without a weapon; or

(4.) Shall willfully assault another with a weapon or other instrument or thing likely to produce bodily harm; or

(5.) Being armed with a deadly weapon shall willfully assault another with a whip; or

(6.) Shall assault another with intent to commit a felony, or to prevent or resist the execution of any lawful process or mandate of any court officer, or the lawful apprehension or detention of himself or another person; or

(7.) While hunting any game or other animals or birds, shall shoot another;

Shall be guilty of assault in the second degree and be punished by imprisonment in the state penitentiary for not more than ten years or by a fine of not more than one thousand dollars, or by both. [L. '09, p. 936, § 162.]

Cited in 59 Wash. 530; 60 Wash. 543; 61 Wash. 630; 64 Wash. 126; 66 Wash. 159, 246; 69 Wash. 563, 564; 79 Wash. 226; 83 Wash. 471; 84 Wash. 172; 85 Wash. 222.

§ 2415. Assault in the Third Degree—How Punished.—Every person who shall commit an assault or an assault or battery not amounting to assault in either the first or second degrees, shall be guilty of assault in the third degree, and shall be punished as for a gross misdemeanor. [L. '09, p. 937, § 163.]

Cited in 60 Wash. 543; 69 Wash. 563, 564; 80 Wash. 15; 83 Wash. 471; 84 Wash. 172.

§ 2416. Force, When Lawful.—The use, attempt, or offer to use force upon or toward the person of another shall not be unlawful in the following cases:

(1.) Whenever necessarily used by a public officer in the performance of a legal duty, or a person assisting him and acting under his direction;

(2.) Whenever necessarily used by a person arresting one who has committed a felony and delivering him to a public officer competent to receive him into custody;

(3.) Whenever used by a party about to be injured, or by another lawfully aiding him, in preventing or attempting to prevent an offense against his person, or a malicious trespass, or other malicious interference with real or personal property lawfully in his possession, in case the force is not more than shall be necessary;

(4.) Whenever used in a reasonable and moderate manner by a parent or his authorized agent, a guardian, master, or teacher in the exercise of lawful authority to restrain or correct his child, ward, apprentice or scholar;

(5.) Whenever used by a carrier of passengers or his authorized agent or servant, or other person assisting them at their request in expelling from a carriage, railway car, vessel, or other vehicle, a passenger who refuses to obey a lawful and reasonable regulation prescribed for the conduct of passengers, if such vehicle has first been stopped and the force used is not more than shall be necessary to expel the offender with reasonable regard to his personal safety;

(6.) Whenever used by any person to prevent an idiot, lunatic or insane person from committing an act dangerous to himself or another, or in enforcing necessary restraint for the protection of his person, or his restoration to health, during such period only as shall be necessary to obtain legal authority for the restraint or custody of his person. [L. '09, p. 937, § 164.]

Cited in 64 Wash. 128.

§ 2417. Provoking Assault.—Every person who shall by word, sign or gesture, willfully provoke, or attempt to provoke, another person to commit an assault or breach of the peace, shall be guilty of misdemeanor. [L. '09, p. 938, § 165.]

§ 2418. Robbery Defined.—Robbery is the unlawful taking of personal property from the person of another, or in his presence, against his will, by means of force or violence or fear of injury, immediate or future, to his person or property, or the person or property of a member of his family, or of anyone in his company at the time of the robbery. Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking; in either of which cases the degree of force is immaterial. If used merely as a means of escape, it does not constitute robbery. Such taking constitutes robbery whenever

it appears that, although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear. Every person who shall commit robbery shall be punished by imprisonment in the state penitentiary for not less than five years. [L. '09, p. 938, § 166.]

Cited in 63 Wash. 397; 64 Wash. 126; 69 Wash. 591; 84 Wash. 160.

§ 2419. Duel, How Punished.—Every person who shall fight a duel or engage in any combat with another with a deadly weapon, by previous agreement, or upon a previous quarrel, although no death or wound shall ensue, shall be punished by imprisonment in the state penitentiary for not more than ten years. [L. '09, p. 938, § 167.]

§ 2420. Challenger, Abettor, etc.—Every person who shall challenge another to fight a duel, or who shall send a written or verbal message purporting or intended to be a challenge to fight a duel, or an invitation to a combat with deadly weapons, or shall accept such a challenge or message, or shall knowingly carry or deliver such challenge or message, or be present at the time appointed for such duel or combat, or when the same is fought, either as second, aide, or surgeon, or who shall advise, or abet, or give any countenance or assistance to such duel or combat upon previous agreement, shall be punished by imprisonment in the state penitentiary for not more than five years. [L. '09, p. 939, § 168.]

Cited in 62 Wash. 658.

§ 2421. Attempt to Induce Challenge, Posting.—Every person who shall send or use to another any word or sign whatever with intent to provoke or induce such person to give or receive a challenge to fight a duel, or who shall post or advertise another for not fighting a duel or for not sending or accepting a challenge to fight a duel, or who, in writing or in print, shall use reproachful or contemptuous language to or concerning anyone for not sending or accepting a challenge to fight a duel, or for not fighting a duel, shall be guilty of a gross misdemeanor. [L. '09, p. 939, § 169.]

§ 2422. Duel Outside State, Venue.—Every person who shall leave the state with intent to elude any provision of sections 2419 or 2420, or to commit any act outside of the state punished by the provisions thereof, if committed in the state, shall be guilty of the same offense and subject to the same punishment as if the act had been committed or was to have been consummated in the state and may be proceeded against and tried in any county therein, but a former conviction or acquittal in another state or county for the same offense shall be a bar to further proceedings against him for such offense. [L. '09, p. 939, § 170.]

§ 2423. Witnesses.—Every person offending against any provision contained in sections 2419 to 2422, inclusive, shall be a competent witness against any other offender in the same transaction, and shall not be excused from giving testimony tending to incriminate himself. [L. '09, p. 940, § 171.]

§ 2424. Libel Defined.—Every malicious publication by writing, printing, picture, effigy, sign or otherwise than by mere speech, which shall tend:

(1.) To expose any living person to hatred, contempt, ridicule or obloquy, or to deprive him of the benefit of public confidence or social intercourse; or

(2.) To expose the memory of one deceased to hatred, contempt, ridicule or obloquy; or

(3.) To injure any person, corporation or association of persons in his or their business or occupation, shall be a libel. Every person who publishes a libel shall be guilty of a gross misdemeanor. [L. '09, p. 940, § 172.]

Cited in 63 Wash. 308; 64 Wash. 694; 74 Wash. 97; 82 Wash. 534; 85 Wash. 514, 515; 86 Wash. 223.

§ 2425. How Justified or Excused—Malice, When Presumed.—Every publication having the tendency or effect mentioned in section 2424 shall be deemed malicious unless justified or excused. Such publication is justified whenever the matter charged as libelous charges the commission of a crime, is a true and fair statement, and was published with good motives and for justifiable ends. It is excused when honestly made in belief of its truth and fairness and upon reasonable grounds for such belief, and consists of fair comments upon the conduct of any person in respect of public affairs, made after a fair and impartial investigation. [L. '09, p. 940, § 173.]

Cited in 82 Wash. 535, 538, 539; 85 Wash. 515.

§ 2426. Publication Defined. — Any method by which matter charged as libelous may be communicated to another shall be deemed a publication thereof. [L. '09, p. 940, § 174.]

Cited in 74 Wash. 97, 99.

§ 2427. Liability of Editors and Others.—Every editor or proprietor of a book, newspaper or serial, and every manager of a copartnership or corporation by which any book, newspaper or serial is issued, is chargeable with the publication of any matter contained in any such book, newspaper or serial, but in every prosecution for libel the defendant may show in his defense that the matter complained of was published without his knowledge or fault and against his wishes by another who had no authority from him to make such

publication, and was retracted by him as soon as known with an equal degree of publicity. [L. '09, p. 941, § 175.]

§ 2428. Report of Proceedings Privileged.—No prosecution for libel shall be maintained against a reporter, editor, proprietor, or publisher of a newspaper for the publication therein of a fair and true report of any judicial, legislative or other public and official proceeding, or of any statement, speech, argument or debate in the course of the same, without proving actual malice in making the report. The editor or proprietor of a book, newspaper or serial shall be proceeded against in the county where such book, newspaper or serial is published. [L. '09, p. 941, § 176.]

Cited in 74 Wash. 97, 98; 82 Wash. 538, 540.

§ 2429. Venue.—Every other person publishing a libel in this state may be proceeded against in any county where such libelous matter was published or circulated, but a person shall not be proceeded against for the publication of the same libel against the same person in more than one county. [L. '09, p. 941, § 177.]

Cited in 74 Wash. 98.

§ 2430. Privileged Communications.—Every communication made to a person entitled to or concerned in such communication, by one also concerned in or entitled to make it, or who stood in such relation to the former as to offer a reasonable ground for supposing his motive to be innocent, shall be presumed not to be malicious, and shall be termed a privileged communication. [L. '09, p. 941, § 178.]

Cited in 82 Wash. 536.

§ 2431. Furnishing Libelous Information.—Every person who shall willfully state, deliver or transmit by any means whatever, to any manager, editor, publisher, reporter or other employee of a publisher of any newspaper, magazine, publication, periodical or serial, any statement concerning any person or corporation, which, if published therein, would be a libel, shall be guilty of a misdemeanor. [L. '09, p. 941, § 179.]

§ 2432. Threatening to Publish Libel.—Every person who shall threaten another with the publication of a libel concerning the latter, or his spouse, parent, child, or other member of his family, and every person who offers to prevent the publication of a libel upon another person upon condition of the payment of, or with intent to extort money or other valuable consideration from any person, shall be guilty of a gross misdemeanor. [L. '09, p. 942, § 180.]

§ 2432-1. Slander of Financial Institutions.—Any person who shall willfully and maliciously instigate, make, circulate, or transmit to another or others any false statements concerning the moral or

financial condition or affecting the solvency or financial standing of any bank, banking institution or trust company doing business in this state, or who shall willfully counsel, aid, procure, or induce another to start, transmit or circulate any such statement or rumor, shall be guilty of a gross misdemeanor. [L. '13, p. 278, § 1.]

§ 2433. Slander of Woman.—Every person who, in the presence or hearing of any person other than the female slandered, whether she be present or not, shall maliciously speak of or concerning any female of the age of twelve years or upward, not a common prostitute, any false or defamatory words or language which shall injure or impair the reputation of any such female for virtue or chastity or which shall expose her to hatred, contempt or ridicule, shall be guilty of a misdemeanor. Every slander herein mentioned shall be deemed to be malicious unless justified, and shall be justified when the language charged as slanderous, false or defamatory is true and fair, and was spoken with good motives and for justifiable ends. [L. '09, p. 942, § 181.]

Cited in 80 Wash. 604.

§ 2434. Testimony Necessary to Convict.—No conviction shall be had under the provisions of the preceding sections of this act, upon the testimony of the woman slandered unsupported by other evidence. [L. '09, p. 942, § 182.]

Cited in 64 Wash. 133, 137; 80 Wash. 605.

CHAPTER VI.

Crimes Against Morality, Decency, etc.

§ 2435. Rape.—Rape is an act of sexual intercourse with a female not the wife of the perpetrator committed against her will and without her consent. Every person who shall perpetrate such an act of sexual intercourse with a female of the age of ten years or upward not his wife:

(1.) When, through idiocy, imbecility or any unsoundness of mind, either temporary or permanent, she is incapable of giving consent; or

(2.) When her resistance is forcibly overcome; or

(3.) When her resistance is prevented by fear of immediate and great bodily harm which she has reasonable cause to believe will be inflicted upon her; or

(4.) When her resistance is prevented by stupor or weakness of mind produced by an intoxicating narcotic or anesthetic agent administered by or with the privity of the defendant; or

(5.) When she is at the time unconscious of the nature of the act, and this is known to the defendant;

Shall be punished by imprisonment in the state penitentiary for not less than five years. [L. '09, p. 942, § 183.]

Cited in 69 Wash. 102; 81 Wash. 389; 82 Wash. 608; 83 Wash. 471.

§ 2436. Carnal Knowledge of Children.—Every person who shall carnally know and abuse any female child under the age of eighteen years, not his wife, shall be punished as follows:

(1.) When such child is under the age of ten years, by imprisonment in the state penitentiary for life;

(2.) When such child is ten and under fifteen years of age, by imprisonment in the state penitentiary for not less than five years;

(3.) When such child is fifteen and under eighteen years of age, and of previously chaste character, by imprisonment in the state penitentiary for not more than ten years, or by imprisonment in the county jail for not more than one year. [L. '09, p. 943, § 184.]

Cited in 59 Wash. 239; 62 Wash. 693, 694; 66 Wash. 293; 69 Wash. 102; 70 Wash. 66; 81 Wash. 388, 390; 86 Wash. 241; 87 Wash. 276.

§ 2437. Sexual Intercourse and Carnal Knowledge Defined.—Any sexual penetration, however slight, is sufficient to complete sexual intercourse or carnal knowledge. [L. '09, p. 943, § 186 (185).]

Cited in 69 Wash. 276; 70 Wash. 66; 82 Wash. 431.

§ 2438. Compelling a Woman to Marry.—Every person who, by force, menace, or duress, shall compel a woman against her will to marry him or to marry any other person, or to be defiled, shall be punished by imprisonment in the state penitentiary for not more than twenty years, or by a fine of not more than one thousand dollars, or by both. [L. '09, p. 943, § 186.]

§ 2439. Abduction.—Every person who—

(1.) Shall take a female under the age of eighteen years for the purpose of prostitution or sexual intercourse, or without the consent of her father, mother, guardian or other person having legal charge of her person, for the purpose of marriage; or

(2.) Shall inveigle or entice an unmarried female of previously chaste character into a house of ill fame or assignation, or elsewhere, for the purpose of prostitution; or

(3.) Shall take or detain a woman unlawfully against her will, with intent to compel her by force, menace or duress, to marry him or another person, or to be defiled; or

(4.) Being the parent, guardian or other person having legal charge of the person of a female under the age of eighteen years, shall consent to her taking or detention by any person for the purpose of prostitution or sexual intercourse or for any obscene, indecent or immoral purpose;

Shall be guilty of abduction and punished by imprisonment in the state penitentiary for not more than ten years or by a fine of not more than one thousand dollars, or by both. [L. '09, p. 944, § 187.]

Cited in 68 Wash. 680.

§ 2440. Placing Female in House of Prostitution.—Every person who—

(1.) Shall place a female in the charge or custody of another person for immoral purposes, or in a house of prostitution, with intent that she shall live a life of prostitution, or who shall compel any female to reside with him or with any other person for immoral purposes, or for the purposes of prostitution, or shall compel any such female to reside in a house of prostitution or to live a life of prostitution; or

(2.) Shall ask or receive any compensation, gratuity or reward, or promise thereof, for or on account of placing in a house of prostitution or elsewhere any female for the purpose of causing her to cohabit with any male person or persons not her husband; or

(3.) Shall give, offer, or promise any compensation, gratuity or reward, to procure any female for the purpose of placing her for immoral purposes in any house of prostitution, or elsewhere, against her will; or

(4.) Being the husband of any woman, or the parent, guardian or other person having legal charge of the person of a female under the age of eighteen years, shall connive at, consent to, or permit her being or remaining in any house of prostitution or leading a life of prostitution; or

(5.) Shall live with or accept any earnings of a common prostitute, or entice or solicit any person to go to a house of prostitution for any immoral purpose, or to have sexual intercourse with a common prostitute;

Shall be punished by imprisonment in the state penitentiary for not more than five years or by a fine of not more than two thousand dollars. [L. '09, p. 944, § 188.]

Cited in 59 Wash. 692; 69 Wash. 547, 548; 74 Wash. 293, 296; 84 Wash. 438, 439, 602, 603.

§ 2441. Seduction.—Every person who shall seduce and have sexual intercourse with any female of previously chaste character, shall be punished by imprisonment in the state penitentiary for not more than five years or by imprisonment in the county jail for not more than one year or by a fine of not more than one thousand dollars, or by both fine and imprisonment. Provided, that if at any time before judgment upon an information or indictment, a defendant shall marry such female, the court shall order all further proceedings stayed; and if at any time within three years from the

date of such marriage the defendant shall wrongfully fail to support or provide for or shall wrongfully desert or abandon such wife, said proceeding shall be revived and continued in the same manner as though no marriage had taken place, and in the trial of such cause the wife shall be competent to testify and may testify against her husband. [L. '09, p. 945, § 189.]

Cited in 80 Wash. 599.

§ 2442. Indecent Assault.—Every person who shall take any indecent liberties with, or on the person of any female of chaste character, without her consent, or with or on the person of any female under the age of eighteen years, of chaste character, with or without her consent, shall be guilty of a gross misdemeanor. [L. '09, p. 946, § 190.]

§ 2445. Keepers of Concert Saloons, etc.—Every person who—

(1) Shall admit to or allow to remain in any concert saloon, or in any place owned, kept, or managed by him where intoxicating liquors are sold, given away or disposed of—except a restaurant or dining-room, any person under the age of twenty-one years; or,

(2) Shall admit to, or allow to remain in any dance-house, public pool or billiard hall, or in any place of entertainment injurious to health or morals, owned, kept or managed by him, any person under the age of twenty-one years; or

(3) Shall suffer or permit any such person to play any game of skill or chance, in any such place, or in any place adjacent thereto, or to be or remain therein, or admit or allow to remain in any reputed house of prostitution or assignation, or in any place where opium, or any preparation thereof, is smoked, or where any narcotic drug is used, any person under the age of twenty-one years; or,

(4) Shall sell or give, or permit to be sold, or given to any person under the age of twenty-one years any intoxicating liquor, cigar, cigarette, cigarette paper or wrapper, or tobacco in any form; or,

(5) Shall sell, or give, or permit to be sold or given to any person under the age of eighteen years, any revolver, pistol, or toy pistol;

Shall be guilty of a gross misdemeanor.

It shall be no defense to a prosecution for a violation of this section that the person acted, or was believed by the defendant to act, as agent or representative of another.

Any person under the age of twenty-one years who shall purchase, or shall have in his or her possession, any intoxicating liquor, cigar, cigarette, cigarette paper or wrapper, or tobacco in any form, shall be guilty of a misdemeanor. [L. '11, p. 649, § 1. Cf. L. '09, p. 947, § 193; L. '09, Ex. Sess., p. 66, § 1.]

Cited in 61 Wash. 674.

§ 2446. Employment of Minors Prohibited.—Every person who shall employ, or cause to be employed, exhibit or have in his custody for exhibition or employment any minor actually or apparently under the age of eighteen years; and every parent, relative, guardian, employer or other person having the care, custody, or control of any such minor, who shall in any way procure or consent to the employment of such minor—

(1.) In begging, receiving alms, or in any mendicant occupation; or,

(2.) In any indecent or immoral exhibition or practice; or,

(3.) In any practice or exhibition dangerous or injurious to life, limb, health or morals; or,

(4.) As a messenger for delivering letters, telegrams, packages or bundles, to any known house of prostitution or assignation;

Shall be guilty of a misdemeanor. [L. '09, p. 948, § 194.]

§ 2447. Employment of Children.—Every person who shall employ, and every parent, guardian or other person having the care, custody or control of such child, who shall permit to be employed, by another, any male child under the age of fourteen years or any female child under the age of sixteen years at any labor whatever, in or in connection with any store, shop, factory, mine or any inside employment not connected with farm or house work, without the written permit thereto of a judge of a superior court of the county wherein such child may live, shall be guilty of a misdemeanor. [L. '09, p. 948, § 195.]

Cited in 63 Wash. 404.

§ 2448. Abortion Defined.—Every person who, with intent thereby to produce the miscarriage of a woman, unless the same is necessary to preserve her life or that of the child whereof she is pregnant, shall—

(1.) Prescribe, supply, or administer to a woman, whether pregnant or not, or advise or cause her to take any medicine, drug or substance; or,

(2.) Use, or cause to be used, any instrument or other means;

Shall be guilty of abortion, and punished by imprisonment in the state penitentiary for not more than five years, or in the county jail for not more than one year. [L. '09, p. 948, § 196.]

Cited in 74 Wash. 121.

§ 2449. Pregnant Woman Attempting Abortion.—Every pregnant woman who shall take any medicine, drug or substance, or use or submit to the use of any instrument or other means, with intent thereby to produce her own miscarriage, unless the same is necessary to preserve her life or that of the child whereof she is preg-

nant, shall be punished by imprisonment in the state penitentiary for not more than five years or by a fine of not more than one thousand dollars. [L. '09, p. 948, § 197.]

§ 2450. Selling Drugs, etc.—Every person who shall manufacture, sell or give away any instrument, drug, medicine, or other substance, knowing or intending that the same may be unlawfully used in procuring the miscarriage of a woman, shall be guilty of a gross misdemeanor. [L. '09, p. 949, § 198.]

§ 2451. Evidence.—In any prosecution for abortion, attempting abortion, or selling drugs unlawfully, no person shall be excused from testifying as a witness on the ground that said testimony would tend to incriminate himself. [L. '09, p. 949, § 199.]

§ 2452. Concealing Birth.—Every person who shall endeavor to conceal the birth of a child by any disposition of its dead body, whether the child died before or after its birth, shall be guilty of a gross misdemeanor. [L. '09, p. 949, § 200.]

§ 2453. Bigamy Defined — How Punished — Exceptions.—Every person who, having a husband or wife living, shall marry another person, or continue to cohabit with such second husband or wife in this state, shall be guilty of bigamy and be punished by imprisonment in the state penitentiary for not more than five years: Provided, that this section shall not extend to a person—

(1.) Whose former husband or wife has been absent for five years exclusively then last past, without being known to him or her within that time to be living, and believed to be dead; or,

(2.) Whose former marriage has been pronounced void, annulled or dissolved by a court of competent jurisdiction. [L. '09, p. 949, § 201.]

§ 2454. Punishment of Consort.—Every person who shall knowingly enter into a bigamous marriage with another, or, after such marriage, continue to cohabit with such other, shall be punished by imprisonment in the state penitentiary for not more than five years, or by a fine of not more than one thousand dollars. [L. '09, p. 950, § 202.]

§ 2455. Incest.—Whenever any male and female persons, nearer of kin to each other than second cousins, computing by the rules of the civil law, whether of the half or the whole blood, shall have sexual intercourse together, both shall be guilty of incest and punished by imprisonment in the state penitentiary for not more than ten years. [L. '09, p. 950, § 203.]

Cited in 62 Wash. 687, 688; 86 Wash. 461–464.

§ 2456. Crime Against Nature.—Every person who shall carnally know in any manner any animal or bird; or who shall carnally know any male or female person by the anus, or with the mouth or tongue; or who shall voluntarily submit to such carnal knowledge; or who shall attempt sexual intercourse with a dead body, shall be guilty of sodomy and shall be punished by imprisonment in the state penitentiary for not more than ten years. [L. '09, p. 950, § 204.]

Cited in 66 Wash. 159.

§ 2457. Adultery.—Whenever any married woman shall have sexual intercourse with a man other than her husband, whether married or not, both shall be guilty of adultery and punished by imprisonment in the state penitentiary for not more than two years or by a fine of not more than one thousand dollars: Provided, that no prosecution for violation of this section shall be commenced except on complaint of the husband or wife, nor after one year from the commission of the offense. [L. '09, p. 950, § 205.]

Cited in 51 Wash. 572, 574; 64 Wash. 416.

§ 2458. Lewdness.—Every person who shall lewdly and viciously cohabit with another not the husband or wife of such person, and every person who shall be guilty of open or gross lewdness, or make any open and indecent or obscene exposure of his person, or of the person of another, shall be guilty of a gross misdemeanor. [L. '09, p. 950, § 206.]

Cited in 82 Wash. 331.

§ 2459. Obscene Literature.—Every person who—

(1.) Shall sell, lend, or give away, or have in his possession with intent to sell, lend, give away or show any obscene or indecent book, magazine, pamphlet, newspaper, story paper, writing, picture, drawing, photograph, or any article or instrument of indecent or immoral character; or who shall design, copy, draw, photograph, print, utter, publish or otherwise prepare such a book, picture, drawing, paper or other article; or write or print any circular, advertisement or notice of any kind, or give oral information stating when, where, how or of whom such an indecent or obscene article or thing can be purchased or obtained; or,

(2.) Shall sell, lend, give away or have in his possession with intent to sell, lend, give away or show any book, pamphlet, magazine, newspaper or other printed paper devoted to the publication, or largely made up of criminal news, police reports, accounts of criminal deeds, or pictures and stories of deeds of bloodshed, lust or crime; or,

(3.) Shall exhibit within the view of any minor any of the books, papers or other things, hereinbefore enumerated; or,

(4.) Shall hire, use or employ; or having custody or control of his person shall permit any minor to sell, give away, or in any manner distribute any article hereinbefore mentioned; or,

(5.) Shall cause to be performed or exhibited, or engage in the performance or exhibition of any obscene, indecent or immoral show, act or performance;

Shall be guilty of a gross misdemeanor. [L. '09, p. 951, § 207.]

§ 2460. Indecent Articles, etc.—Every person who shall expose for sale, loan or distribution, any instrument or article, or any drug or medicine, for the prevention of conception, or for causing unlawful abortion; or shall write, print, distribute, or exhibit any card, circular, pamphlet, advertisement or notice of any kind, stating when, where, how, or of whom such article or medicine can be obtained, shall be guilty of a misdemeanor. [L. '09, p. 951, § 208.]

§ 2461. Prohibited Publications.—Every person who shall publish, and every proprietor, manager or editor who shall permit to be published, in any book, newspaper, magazine or other printed publication circulated wholly or in part in this state—

(1.) Any detailed account of the commission or attempted commission of the crime of rape, carnal knowledge, seduction, adultery, sodomy or any other sexual crime, or of the trial of any person charged therewith; or,

(2.) Any detailed account of the execution of any person convicted of crime; or,

(3.) Any detailed statement of any evidence of indecent, obscene or immoral acts offered in any trial or proceeding; or,

(4.) Any interview with, advertisement for, communication from or account of the actions of any public prostitute, except upon a matter concerning public welfare;

Shall be guilty of a misdemeanor. [L. '09, p. 952, § 209.]

§ 2462. Advertising Cures.—Every person who shall publish, and every proprietor, manager or editor who shall permit to be published in any publication whatever, and every person who shall cause to be displayed or distributed in any public manner any card or notice advertising any treatment or cure for any venereal disease or any disease or weakness of the sexual organs caused by sexual vice or abuse, shall be guilty of a misdemeanor. [L. '09, p. 952, § 210.]

See, also, infra, § 2710.

§ 2463. Advertising for Divorce Business.—Every person who shall cause to be published in any newspaper, magazine or other publication, or who shall cause or allow to be posted or distributed in any place frequented by the public any card or notice offering to procure or obtain, or to aid in procuring or obtaining any divorce or

the dissolution or nullification of any marriage, or offering to appear or act as attorney or counsel in any suit for divorce, alimony, or the dissolution or nullification of any marriage, either in this state or elsewhere, shall be guilty of a misdemeanor. [L. '09, p. 952, § 211.]

§ 2464. Lotteries Defined—A Nuisance—Drawing, How Punished. A lottery is a scheme for the distribution of money or property by chance, among persons who have paid or agreed to pay a valuable consideration for the chance, whether it shall be called a lottery, raffle, gift enterprise, or by any other name, and is hereby declared unlawful and a public nuisance.

Every person who shall contrive, propose or draw a lottery, or shall assist in contriving, proposing or drawing a lottery, shall be punished by imprisonment in the state penitentiary for not more than five years, or by a fine of not more than one thousand dollars, or by both. [L. '09, p. 953, § 212.]

§ 2465. Selling Tickets, Advertising.—Every person who shall sell, give, or in any way whatever furnish or transfer to or for another, a ticket, chance, share or interest, or any paper, certificate or instrument purporting to be or to represent a ticket, chance, share or interest in, or dependent upon the event of, a lottery, to be drawn within or without the state; or who by writing, printing, circular or letter, or in any other way shall advertise or publish the account of a lottery in or out of the state, stating how, when or where the same is to be or has been drawn, or what are the prizes therein, or any of them, or the price of a ticket, or any share or interest therein, or where or how it may be obtained, shall be guilty of a gross misdemeanor. [L. '09, p. 953, § 213.]

§ 2466. Disposal of Property by Lottery — Keeping Office — Letting Building.—Every person who shall offer for sale or distribution in any way any real or personal property, or any interest therein, to be determined by lot or chance, dependent upon the drawing of a lottery in or out of the state; or who shall sell, furnish or procure in any manner a chance or share, or any interest in property offered for sale or distribution in violation of this section, or a ticket or other evidence of any such chance, share or interest; or who shall open, set up, or keep for himself or another, an office or place for registering the number of tickets in a lottery in or out of the state, or for making, receiving, or registering any bets or stakes for the drawing or result of such lottery; or who shall advertise or in any way publish any account of an opening, setting up, or keeping of such an office or place; or who shall knowingly let, or permit to be used, any building or portion thereof for any of the purposes specified in this subdivision;

Shall be guilty of a gross misdemeanor. [L. '09, p. 953, § 214.]

§ 2467. Insuring Lottery Tickets—Advertising Offers to Insure.—Every person who shall insure, or receive any consideration for insuring, for or against the drawing of a ticket, share or interest in a lottery, or a number of such ticket, share or interest; or who shall receive any valuable consideration, upon an agreement to pay money or deliver property in the event that a ticket, share or interest, or a number of such a ticket, share or interest in a lottery shall prove fortunate or unfortunate, or shall be drawn or not drawn in a proper way or in a proper order; or who shall promise or agree or offer to pay money or deliver property, or to do or forbear to do any act for the benefit of any person, with or without consideration, upon any accident or contingency dependent upon the drawing thereof, or of any number or ticket therein, or who, by writing, printing, circular or letter, or in any way, shall advertise or publish an offer, notice or proposition in violation of the provisions of this section;

Shall be guilty of a gross misdemeanor. [L. '09, p. 954, § 215.]

§ 2468. Lotteries Out of State—Advertisement by Nonresidents. The provisions of this subdivision are applicable to lotteries drawn, or to be drawn out of the state, whether authorized or not by the laws of the state or country where they are to be drawn, in the same manner as to those in the state, and every provision of law relating to advertising lotteries or offers to insure lottery tickets, shall be applicable, whenever the advertisement was published, or the letter or circular sent or delivered, through or in the state, though the person causing or procuring the same to be published, sent or delivered was out of the state at the time of so doing. [L. '09, p. 954, § 216.]

§ 2469. Conducting Gambling.—Every person who shall open, conduct, carry on or operate, whether as owner, manager, agent, dealer, clerk, or employee, and whether for hire or not, any gambling game or game of chance, played with cards, dice, or any other device, or any scheme or device whereby any money or property or any representative of either, may be bet, wagered or hazarded upon any chance, or any uncertain or contingent event, shall be a common gambler, and shall be punished by imprisonment in the state penitentiary for not more than five years. [L. '09, p. 955, § 217.]

Cited in 63 Wash. 36, 37; 74 Wash. 563.

§ 2470. Gambling.—Every person who shall bet, wager or hazard any money or property, or any representative of either, upon any game, scheme or device, opened, conducted, carried on or operated in violation of the last section shall be guilty of a misdemeanor. [L. '09, p. 955, § 218.]

Cited in 63 Wash. 37.

§ 2471. Swindling.—Every person who, by color, or aid of any trick or sleight-of-hand performance, or by any fraud or fraudulent scheme, cards, dice, or device, shall win for himself or for another any money or property, or representative of either, shall be punished by imprisonment in the state penitentiary for not more than ten years. [L. '09, p. 955, § 219.]

Cited in 72 Wash. 113.

§ 2472. Possession of Gambling Devices.—Every person who shall have in his possession or shall permit to be placed or kept in any building or boat, or part thereof, owned, leased or occupied by him, any table, slot machine, or any other article, device or apparatus of a kind commonly used for gambling, or operated for the losing or winning of any money or property, or any representative of either, upon any chance or uncertain or contingent event, shall be guilty of a gross misdemeanor. [L. '09, p. 955, § 220.]

§ 2473. Poolselling and Book-making.—Every person, whether acting in his own behalf, or as an agent, servant or employee of another person within or outside of this state, who shall sell any pool, make any book, or receive, record, register, transmit or forward any bet or wager, or any money or property or thing of value designed or intended to be bet, wagered or hazarded, upon the result of any contest or trial of skill, speed or endurance between men or beasts, whether such contest or trial take place within or outside of this state, or upon the result of any lot, chance, casualty, or uncertain or contingent event whatever, shall be punished by imprisonment in the state penitentiary for not more than five years. [L. '09, p. 956, § 221.]

See, also, infra, § 2721.

§ 2474. Allowing Building to be Used.—Every person being in possession or control of any tent, building, float or vessel, or part thereof, who shall knowingly permit the same, or any part thereof, to be used for gambling, swindling, poolselling, or book-making, or for betting, wagering or hazarding money or property, or any representative of either, upon any game, scheme or device, or upon the result of any lot, chance, or uncertain or contingent event whatever, shall be guilty of a gross misdemeanor. [L. '09, p. 956, § 222.]

§ 2475. Bucket-shop Defined.—A bucket-shop is hereby defined to be a shed, tent, tenement, booth, building, float or vessel, or any part thereof, wherein may be made contracts respecting the purchase or sale upon margin or credit of any commodities, securities, or property, or option for the purchase thereof, wherein both parties intend

that such contract shall or may be terminated, closed and settled; either;

(1.) Upon the basis of the market prices quoted or made on any board of trade or exchange upon which such commodities, securities or property may be dealt in; or,

(2.) When the market prices for such commodities, securities or property shall reach a certain figure in any such board of trade or exchange; or,

(3.) On the basis of the difference in the market prices at which said commodities, securities or property are, or purport to be, bought and sold. [L. '09, p. 956, § 223.]

§ 2476. Maintaining Bucket-shop — Penalty. — Every person, whether in his own behalf, or as agent, servant or employee of another person, within or outside of this state, who shall open, conduct or carry on any bucket-shop, or make or offer to make any contract described in the last section, or with intent to make such a contract, or assist therein, shall receive, exhibit, or display, any statement of market prices of any commodities, securities, or property, shall be punished by imprisonment in the state penitentiary for not more than five years. [L. '09, p. 957, § 224.]

§ 2477. Written Statement to be Furnished — Presumption. — Every person, whether in his own behalf, or as the servant, agent or employee of another person, within or outside of this state, who shall buy or sell for another, or execute any order for the purchase or sale of any commodities, securities or property, upon margin or credit, whether for immediate or future delivery, shall, upon written demand therefor, furnish such principal or customer with a written statement containing the names of the persons from whom such property was bought, or to whom it has been sold, as the case may be, the time when, the place where, the amount of, and the price at which the same was either bought or sold; and if such person shall refuse or neglect to furnish such statement within forty-eight hours after such written demand, such refusal shall be prima facie evidence as against him that such purchase or sale was made in violation of section 2476. [L. '09, p. 957, § 225.]

§ 2478. Seizure and Disposition of Gambling Devices.—It shall be the duty of all peace officers to search for and seize all tables, slot machines, or other article, machine, device or apparatus of the kind commonly used for gambling, or operated for the winning or losing of money or property, or any representative of either, upon any chance or uncertain or contingent event, and all property useful in the operation or maintenance of a bucket-shop, and take the same before a magistrate. If in the judgment of such magistrate any of

such articles may be useful as evidence in the trial of any case, he may order the same held for such trial or delivered to the prosecuting attorney; otherwise, he shall order the same to be forthwith destroyed. After the final hearing and disposition of any case in which any of said articles may be held or used as evidence, whether such case result in a conviction or acquittal, the magistrate or judge having jurisdiction of such case shall forthwith order all such articles destroyed. [L. '09, p. 957, § 226.]

§ 2479. Bunco-steering.—Every person who shall entice or induce another, upon any pretense, to go to any place where any gambling game, scheme or device, or any trick, sleight-of-hand performance, fraud or fraudulent scheme, cards, dice or device, is being conducted or operated; or while in such place shall entice or induce another to bet, wager or hazard any money or property, or representative of either, upon any such game, scheme, device, trick, sleight-of-hand performance, fraud or fraudulent scheme, cards, dice, or device, or to execute any obligation for the payment of money, or delivery of property, or to lose, advance, or loan any money or property, or representative of either, shall be punished by imprisonment in the state penitentiary for not more than ten years. [L. '09, p. 957, § 227.]

§ 2480. Evidence—Testimony of Player.—No person shall be excused from giving testimony concerning any offense committed by another against any of the provisions of sections 2469 or 2473, inclusive by reason of his having bet or played at the prohibited game or device. [L. '09, p. 957, § 228.]

§ 2481. Pawnbrokers and Second-hand Dealers—Duty to Record Transactions.—It shall be the duty of every pawnbroker and second-hand dealer doing business in any city of the first class in this state to maintain in his place of business a book or other permanent record in which shall be legibly written in the English language, at the time of each loan, purchase or sale, a record thereof containing—

(1.) The date of the transaction;

(2.) The name of the person or employee conducting the same;

(3.) The name, age, street and house number, and a general description of the dress, complexion, color of hair, and facial appearance of the person with whom the transaction is had:

(4.) The name and street and house number of the owner of the property bought or received in pledge;

(5.) The street and house number of the place from which the property bought or received in pledge was last removed;

(6.) A description of the property bought or received in pledge, which in the case of watches shall contain the name of the maker

and the number of both the works and the case, and in the case of jewelry shall contain a description of all letters and marks inscribed thereon: Provided, that when the article bought or received is furniture, or the contents of any house or room actually inspected on the premises, a general record of the transaction shall be sufficient;

(7.) The price paid or the amount loaned;

(8.) The names and street and house numbers of all persons witnessing the transaction; and

(9.) The number of any pawn ticket issued therefor. [L. '09, p. 959, § 229.]

Cited in 80 Wash. 173.

§ 2482. Inspection of Records and Goods.—Such record, and all goods received, shall at all times during the ordinary hours of business be open to the inspection of the prosecuting attorney or of any peace officer. [L. '09, p. 959, § 230.]

Cited in 80 Wash. 173.

§ 2483. Report to Chief of Police.—Every pawnbroker and second-hand dealer doing business in any city of the first and second class shall, before noon of each day, furnish to the chief of police of such city, on such forms as such chief of police may provide therefor, a full, true and correct transcript of the record of all transactions had on the preceding day, and having good cause to believe that any property in his possession has been previously lost or stolen, he shall forthwith report such fact to the chief of police, together with the name of the owner, if known, and the date when, and the name of the person from whom the same was received by him. [L. '09, p. 960, § 231.]

Cited in 80 Wash. 173.

§ 2484. Retention of Property.—No property bought or received in pledge by any pawnbroker or second-hand dealer shall be removed from his place of business, except when redeemed by the owner thereof, within four days after the receipt thereof shall have been reported to the chief of police as herein provided. [L. '09, p. 960, § 232.]

§ 2485. Penalty.—Every pawnbroker or second-hand dealer, and every clerk, agent or employee of such pawnbroker or second-hand dealer, who shall—

(1.) Fail to make an entry of any material matter in his book or record kept as provided for in section 2483; or,

(2.) Make any false entry therein; or,

(3.) Falsify, obliterate, destroy or remove from his place of business such book or record; or,

(4.) Refuse to allow the prosecuting attorney or any peace officer to inspect the same, or any goods in his possession, during the ordinary hours of business; or,

(5.) Report any material matter falsely to the chief of police; or,

(6.) Having forms provided therefor, shall fail before noon of each day to furnish the chief of police with a full, true and correct transcript of the record of all transactions had on the previous day, it being the intent of this section that Saturday's business may be reported on Monday; or,

(7.) Fail to report forthwith to the chief of police the possession of any property which he may have good cause to believe has been lost or stolen, together with the name of the owner, if known, and the date when, and the name of the person from whom the same was received by him; or,

(8.) Remove, or allow to be removed from his place of business, except upon redemption by the owner thereof, any property received, within four days after the receipt thereof shall have been reported to the chief of police; or,

(9.) Receive any property from any person under the age of twenty-one years, any common drunkard, any habitual user of narcotic drugs, any habitual criminal, any person in an intoxicated condition, any known thief or receiver of stolen property, or any known associate of such thief or receiver of stolen property, whether such person be acting in his own behalf or as the agent of another;

Shall be guilty of a misdemeanor. [L. '09, p. 960, § 233.]

§ 2486. Rates of Interest and Sale of Pledged Property.—All pawnbrokers are authorized to charge and receive interest at the rate of three per cent a month for money loaned on the security of personal property actually received in pledge, and every person who shall ask or receive a higher rate of interest or discount on any such loan, or on any actual or pretended sale, or redemption of personal property, or who shall sell any property held for redemption within ninety days after the period for redemption shall have expired, shall be guilty of a misdemeanor. [L. '09, p. 961, § 234.]

See infra, § 6251, legal rate of interest .

§ 2487. "Pawnbroker" Defined.—Every person engaged, in whole or in part, in the business of loaning money on the security of pledges, deposits or conditional sales of personal property, shall be deemed to be a pawnbroker. [L. '09, p. 961, § 235.]

§ 2488. "Second-hand Dealer" Defined.—Every person engaged in whole or in part in the business of buying or selling second-hand personal property, metal junk, or melted metals, shall be deemed to be a second-hand dealer. [L. '09, p. 961, § 236.]

§ 2489. Rights of Sepulture—Dissection, When Permitted.—The right to dissect the dead body of a human being shall be limited to cases specially provided by statute or by the direction or will of the deceased; cases where a coroner is authorized to hold an inquest upon the body, and then only as he may authorize dissection; and cases where the husband, wife or next of kin charged by law with the duty of burial shall authorize dissection for the purpose of ascertaining the cause of death, and then only to the extent so authorized. Every person who shall make, cause or procure to be made any dissection of the body of a human being, except as hereinbefore provided, shall be guilty of a gross misdemeanor. [L. '09, p. 962, § 237.]

See, also, infra, § 8411.

§ 2490. Burial or Cremating.—Except in cases of dissection provided for in the last section, and where a dead body shall rightfully be carried through or removed from the state for the purpose of burial elsewhere, every dead body of a human being lying within this state, and the remains of any dissected body, after dissection, shall be decently buried, or cremated within a reasonable time after death. [L. '09, p. 962, § 238.]

See infra, § 5443, burial without permit.

§ 2491. Opening Grave—Stealing Body—Receiving Same.—Every person who shall remove the dead body of a human being, or any part thereof, from a grave, vault, or other place where the same has been buried or deposited awaiting burial or cremation, without authority of law, with intent to sell the same, or for the purpose of securing a reward for its return, or for dissection, or from malice or wantonness, shall be punished by imprisonment in the state penitentiary for not more than five years, or by a fine of not more than one thousand dollars, or by both.

Every person who shall purchase or receive, except for burial or cremation, any such dead body, or any part thereof, knowing that the same has been removed contrary to the foregoing provisions, shall be punished by imprisonment in the state penitentiary for not more than three years, or by a fine of not more than one thousand dollars, or by both.

Every person who shall open a grave or any other place of interment, temporary or otherwise, or a building where such dead body is deposited while awaiting burial or cremation, with intent to remove said body or any part thereof, for the purpose of selling or demanding money for the same, for dissection, from malice or wantonness, or with intent to sell or remove the coffin or of any part thereof, or anything attached thereto, or any vestment, or other article interred, or intended to be interred with the body, shall be

punished by imprisonment in the state penitentiary for not more than three years or by a fine of not more than one thousand dollars, or by both. [L. '09, p. 962, § 239.]

§ 2492. Interfering With Dead Body or Funeral.—Every person who shall arrest or attach the dead body of a human being upon a debt or demand, or shall detain or claim to detain it for any debt or demand, or upon any pretended lien or charge; or who, without authority of law, shall obstruct or detain a person engaged in carrying or accompanying the dead body of a human being to a place of burial or cremation shall be guilty of a misdemeanor. [L. '09, p. 963, § 240.]

§ 2493. Opening Road Through Cemetery.—Every person who shall make or open any road, or construct any railway, turnpike, canal, or other public easement over, through, in, or upon, such part of any inclosure as may be used for the burial of the dead, without authority of law or the consent of the owner thereof, shall be guilty of a misdemeanor. [L. '09, p. 963, § 241.]

§ 2494. Sabbath-breaking Defined.—Every person who, on the first day of the week, shall promote any noisy or boisterous sport or amusement, disturbing the peace of the day; or who shall conduct or carry on, or perform or employ any labor about any trade or manufacture, except livery-stables, garages and works of necessity or charity conducted in an orderly manner so as not to interfere with the repose and religious liberty of the community; or who shall open any drinking saloon, or sell, offer or expose for sale, any personal property, shall be guilty of a misdemeanor: Provided, that meals, without intoxicating liquors, may be served on the premises or elsewhere by caterers, and prepared tobacco, milk, fruit, confectionery, newspapers, magazines, medical and surgical appliances may be sold in a quiet and orderly manner. In works of necessity or charity is included whatever is needful during the day for the good order or health or comfort of a community; but keeping open a barber-shop, shaving or cutting hair shall not be deemed a work of necessity or charity, and nothing in this section shall be construed to permit the sale of uncooked meats, groceries, clothing, boots or shoes. [L. '09, p. 963, § 242.]

Cited in 60 Wash. 278; 80 Wash. 104, 105, 107.

§ 2495. Obstructing View of Saloon.—Every person being the owner or manager of or an employee in any drinking saloon who shall obstruct the view of the inside thereof from the outside by means of any screen, shade or other devices on any day shall be guilty of a misdemeanor. [L. '09, p. 964, § 243.]

§ 2496. Observance of Other Day.—It shall be a sufficient defense to a prosecution for performing work or labor on the first day of the week that the defendant uniformly keeps another day of the week as holy time and that the act complained of was done in such manner as [will] not disturb others in the observance of the Sabbath. [L. '09, p. 964, § 244.]

§ 2497. Service of Process on the Sabbath Prohibited.—Every person who shall serve any legal process on the Sabbath day, except in case of a breach, or apprehended breach, of the peace, or when sued out for the apprehension of a person charged with a crime, or where such service is expressly authorized by statute, shall be guilty of a misdemeanor. [L. '09, p. 964, § 245.]

§ 2498. Preventing Religious Act.—Every person who by threats or violence shall willfully prevent another person from performing any lawful act enjoined upon or recommended to him by the religion which he professes, shall be guilty of a misdemeanor. [L. '09, p. 965, § 246.]

§ 2499. Disturbing Religious Meeting.—Every person who shall willfully disturb, interrupt, or disquiet any assemblage of people met for religious worship—

(1.) By noisy, rude or indecent behavior, profane discourse, either within the place where such meeting is held, or so near it as to disturb the order and solemnity of the meeting; or,

(2.) By exhibiting shows or plays, or promoting any racing of animals, or gaming of any description, or engaging in any boisterous or noisy amusement; or,

(3.) By disturbing in any manner, without authority of law within one mile thereof, free passage along a highway to the place of such meeting, or by maliciously cutting or otherwise injuring or disturbing a harness, conveyance, tent or other property belonging to any person in attendance upon such meeting;

Shall be guilty of a misdemeanor. [L. '09, p. 965, § 247.]

See, also, infra, § 2547.

CHAPTER VII.

Crimes Against Public Health and Safety.

§ 2500. Public Nuisance.—A public nuisance is a crime against the order and economy of the state. Every place

(1.) Wherein any gambling, swindling game or device, book-making, poolselling, or bucket-shop or any agency therefor shall be conducted, or any article, apparatus or device useful therefor shall be kept; or,

(2.) Wherein any fighting between men or animals or birds shall be conducted; or,

(3.) Wherein any intoxicating liquors are kept for unlawful use, sale or distribution; or,

(4.) Where vagrants resort; and

Every act unlawfully done and every omission to perform a duty, which act or omission

(1.) Shall annoy, injure or endanger the safety, health, comfort, or repose of any considerable number of persons; or,

(2.) Shall offend public decency; or,

(3.) Shall unlawfully interfere with, befoul, obstruct, or tend to obstruct, or render dangerous for passage, a lake, navigable river, bay, stream, canal or basin, or a public park, square, street, alley or highway; or,

(4.) Shall in any way render a considerable number of persons insecure in life or the use of property;

Shall be a public nuisance. [L. '09, p. 965, § 248.]

§ 2501. Unequal Damage.—An act which affects a considerable number of persons in any of the ways specified in section 2500, is not less a public nuisance because the extent of the damages is unequal. [L. '09, p. 966, § 249.]

§ 2502. Maintaining or Permitting Nuisance.—Every person who shall commit or maintain a public nuisance, for which no special punishment is prescribed; or who shall willfully omit or refuse to perform any legal duty relating to the removal of such nuisance; and every person who shall let, or permit to be used, any building or boat, or portion thereof, knowing that it is intended to be, or is being used, for committing or maintaining any such nuisance, shall be guilty of a misdemeanor. [L. '09, p. 966, § 250.]

§ 2503. Abatement of Nuisance.—Any court or magistrate before whom there may be pending any proceeding for a violation of section 2502, shall, in addition to any fine or other punishment which it may impose for such violation, order such nuisance abated, and all property unlawfully used in the maintenance thereof destroyed by the sheriff at the cost of the defendant. [L. '09, p. 966, § 251.]

§ 2504. Keeping Explosives Unlawfully.—Every person who shall make or keep any explosive or combustible substance in any city or village, or carry it through the streets thereof in a quantity, or manner prohibited by law, or by ordinance of such municipality; and every person who, by careless, negligent or unauthorized use or management of any such explosive or combustible substance, shall injure or cause injury to the person or property of another, shall be guilty of a misdemeanor. [L. '09, p. 966, § 252.]

See, also, infra, § 2403.

§ 2505. Possession of Uninspected Oils and Effacing Brands from Oil Barrels.—Every person who shall sell, or offer for sale, or have in his possession with intent to sell, or who shall knowingly use for illuminating purposes, any oil, or other petroleum product, which shall not have been tested and approved by the state oil inspector, or who shall sell or dispose of any empty oil barrel, cask or package without thoroughly removing and effacing all inspection brands thereon, shall be guilty of a misdemeanor. [L. '09, p. 967, § 253.]

§ 2506. Transporting Explosives.—Any person who shall put up for sale, or who shall deliver to any warehouseman, dock, depot, or common carrier, any package, cask or can containing benzine, gasoline, naphtha, nitroglycerine, dynamite, powder or other explosive or combustible substance, without having printed thereon in a conspicuous place in large letters the word "Explosive," shall be guilty of a misdemeanor. [L. '09, p. 967, § 254.]

§ 2507. Person Omitting to Label Drugs, or Labeling Them Wrongly.—Every person who, in putting up any drug, medicine, or food, or preparation used in medical practice, or making up any prescription, or filling any order for drugs, medicines, food or preparation shall put any untrue label, stamp or other designation of contents upon any box, bottle or other package containing a drug, medicine, food or preparation used in medical practice, or substitute or dispense a different article for or in lieu of any article prescribed, ordered, or demanded, or put up a greater or less quantity of any ingredient specified in any such prescription, order or demand than that prescribed, ordered, or demanded, or otherwise deviate from the terms of the prescription, order, or demand by substituting one drug for another, shall be guilty of a misdemeanor: Provided, however, that, except in the case of physicians' prescriptions, nothing herein contained shall be deemed or construed to prevent or impair or in any manner affect the right of an apothecary, druggist, pharmacist or other person to recommend the purchase of an article other than that ordered, required or demanded, but of a similar nature, or to sell such other articles in place or in lieu of an article ordered, required or demanded, with the knowledge and consent of the purchaser. [L. '09, p. 967, § 255.]

§ 2508. Selling Poison Without Labeling and Recording the Sale. It shall be unlawful for any person to sell at retail or furnish any of the poisons named in the schedules hereinafter set forth, without affixing or causing to be affixed to the bottle, box, vessel or package, a label containing the name of the article and the word "poison" distinctly shown, with the name and place of business of the seller, all printed in red ink, together with the name of such poison printed

or written thereon in plain, legible characters, which schedules are as follows, to wit:

SCHEDULE "A."

Arsenic, cyanide of potassium, hydrocyanic acid, cocaine, morphine, strychnia and all other poisonous vegetable alkaloids and their salts, oil of bitter almonds, containing hydrocyanic acid, opium and its preparations, except paregoric and such others as contain less than two grains of opium to the ounce.

SCHEDULE "B."

Aconite, belladona, cantharides, colchicum, conium, cotton root, digitalis, ergot, hellebore, henbane, phytolacca, strophanthus, oil of tansy, veratrum viride and their pharmaceutical preparations, arsenical solutions, carbolic acid, chloral hydrate, chloroform, corrosive sublimate, creosote, croton oil, mineral acids, oxalic acid, paris green, salts of lead, salts of zinc, white hellebore or any drug, chemical or preparation which, according to standard works on medicine or materia medica, is liable to be destructive to adult human life in quantities of sixty grains or less. Every person who shall dispose of or sell at retail or furnish any poisons included under schedule A shall, before delivering the same, make or cause to be made an entry in a book kept for that purpose, stating the date of sale, the name and address of the purchaser, the name and the quantity of the poison, the purpose for which it is represented by the purchaser to be required and the name of the dispenser, such book to be always open for inspection by the proper authorities, and to be preserved for at least five years after the last entry. He shall not deliver any of said poisons to any minor, intoxicated person, or person known to be of unsound mind, or to any person without satisfying himself that the purchaser is aware of its poisonous character and that the said poison is to be used for a legitimate purpose. The foregoing portions of this section shall not apply to the dispensing of medicines, or poisons on physicians' prescriptions. Wholesale dealers in drugs, medicines, pharmaceutical preparations or chemicals shall affix or cause to be affixed to every bottle, box, parcel or outer inclosure of an original package containing any of the articles enumerated under said schedule A, a suitable brand in red ink with the word "poison" upon it. Every person who shall violate any of the provisions of this section shall be guilty of a misdemeanor. [L. '09, p. 968, § 256.]

See infra, § 8458, sale of adulterated drugs.
See infra, § 8459, sale of poisons without recording.
See infra, § 5453, sale of adulterated articles prohibited.

§ 2509. Regulating the Sale of Narcotic Drugs.—It shall be unlawful for any person to sell, furnish or dispose of any opium,

morphine, alkaloid cocaine, or alpha or beta eucaine, or any derivative, mixture or preparation of any of them, except upon the signed prescription of a physician duly licensed under the laws of this state, which prescription shall be retained by the person dispensing the same, shall be filled but once, and of which no copy shall be taken by any person. The person dispensing the same shall at the time thereof indorse on the back of such prescription the name and street and house number of the person to whom dispensed; and the proprietor or manager of the store where dispensed shall keep all such prescriptions in a permanent file, separate from all other prescriptions, in his place of business for the period of two years after the same shall have been dispensed, and shall at any time allow the same to be inspected, and copies thereof to be made by any peace officer, the prosecuting attorney of the county where sold, or any authorized inspector of drugs: Provided, that nothing herein contained shall prohibit any manufacturer or licensed druggist from selling or delivering any of the drugs named to a person known to be a licensed physician or licensed druggist, nor prohibit a physician from dispensing the same in good faith to his patients, nor prohibit the sale of patent or proprietary medicines containing opium or morphine, in combination or compound with other active elements wherein the dose of opium is less than one-quarter grain, or the dose of morphine is less than one-twentieth grain. Every person who shall violate any of the provisions of this section shall be guilty of a gross misdemeanor. [L. '09, p. 969, § 257.]

§ 2510. Fraudulent Prescription by Physician.—Every physician who shall sell or give to or prescribe for any person any opium, morphine, alkaloid cocaine, or alpha or beta eucaine, or any derivative, mixture or preparation of any of them, or any intoxicating liquor, except to a patient believed in good faith to require the same for medicinal use, and in quantities proportioned to the needs of such patient, shall be guilty of a gross misdemeanor. [L. '09, p. 970, § 258.]

See infra, § 8406, deception in treating sick.
See infra, § 8401, false personation by, a felony.
See infra, § 8400, practicing without a license.

§ 2511. Presenting Fraudulent Prescription.—Every person who shall falsely make, forge or alter, or, knowing the same to have been falsely made, forged or altered, shall present to any druggist a physician's prescription with intent by means thereof to procure from such druggist any opium, morphine, alkaloid cocaine, or alpha or beta eucaine, or any derivative, mixture or preparation of any of them, or any intoxicating liquor, shall be guilty of a misdemeanor. [L. '09, p. 970, § 259.]

§ 2512. Regulating the Sale of Milk and Cream in Cities.—Every person, firm or corporation, who, in any city of the first class, shall sell or deliver, or offer for sale, or have in his, their or its possession, with intent to sell or deliver, any milk or cream, without having a permit therefor duly issued by the commissioner of health, health officer or inspector of milk in such city, or without having such permit displayed in a conspicuous manner in his, their or its place of business, or without having the number of such permit and the name of the owner thereof or the name of the firm or corporation thereof, as the case may be, painted in a conspicuous manner on both outer sides of every wagon or other vehicle used for the sale or delivery of milk or cream by any such person, firm or corporation, shall be guilty of a misdemeanor. [L. '11, p. 61, § 1; L. '09, p. 971, § 260.]

See on this subject infra, § 5469.

§ 2513. Regulating the Sale of Milk and Cream Generally.—Every person who shall sell, or deliver, or offer for sale, or have in his possession with intent to sell or deliver—

(1.) Any unwholesome milk or cream; or,

(2.) Any milk containing less than 8.75 per cent of milk solids, exclusive of fat, or less than 3.25 per cent of fat, except in the manner and under the conditions prescribed for the sale of skimmed milk; or,

(3.) Any skimmed milk, except under the title "skimmed milk" and in cans or bottles plainly stamped in some prominent and conspicuous manner with the words, "skimmed milk"; and every person who shall sell or serve or keep for sale or service in any hotel, restaurant or boarding-house any skimmed milk without having displayed in a conspicuous manner in every room where so sold or served, placards bearing in large letters the words, "Skimmed Milk Sold Here"; or,

(4.) Any skimmed milk containing less than 9.3 per cent of milk solids, exclusive of fat; or,

(5.) Any cream containing less than eighteen per cent of fat, shall be guilty of a misdemeanor. [L. '09, p. 971, § 261.]

Cited in 71 Wash. 200.

See, also, "Food."

§ 2514. "Unwholesome" Defined.—Milk or cream shall be deemed unwholesome in the following cases:

(1.) When any foreign substance has been added thereto or placed therein for the purpose of thickening, coloring or preserving the same; or,

(2.) When it contains any pathogenic bacteria or germs, pus cells, or blood cells; or,

(3.) When it contains more than two hundred thousand bacteria or germs of all kinds to the cubic centimetre; or,

(4.) When any water has been added thereto; or,

(5.) When any part of it has been drawn from a cow fed on refuse or unwholesome food; or,

(6.) When any part of it has been drawn from a dirty cow or cow kept in an unclean shed, barn or yard, or has been milked by unclean milkers; or,

(7.) When any part of it has been contaminated; or,

(8.) When any part of it has been drawn from an unhealthy cow; or,

(9.) When any part of it has been exposed to any contagious or infectious disease; or,

(10.) When any part of it has been drawn from a cow within ten days before or five days after parturition, or in any case before such cow shall be free from fever.

No milk or cream once unwholesome can thereafter be rendered wholesome or salable. [L. '09, p. 971, § 262.]

See, also, "Food."

§ 2515. "Skimmed Milk" Defined.—Any milk from which the cream has been removed or which contains less than 3.25 per cent. of butter fat shall be deemed to be "skimmed milk." [L. '09, p. 972, § 263.]

§ 2516. Willfully Poisoning Food.—Every person who shall willfully mingle poison in any food, drink or medicine intended or prepared for the use of a human being, and every person who shall willfully poison any spring, well or reservoir of water, shall be punished by imprisonment in the state penitentiary for not less than five years, or by a fine of not less than one thousand dollars. [L. '09, p. 972, § 264.]

§ 2517. Dangerous Weapons—Evidence.—Every person who shall manufacture, sell or dispose of or have in his possession any instrument or weapon of the kind usually known as slung shot, sand club, or metal knuckles; shall furtively carry, or conceal any dagger, dirk, knife, pistol, or other dangerous weapon; or who shall use any contrivance or device for suppressing the noise of any firearm, shall be guilty of a gross misdemeanor. [L. '09, p. 972, § 265.]

§ 2517-1. Aliens—Firearms Without License Prohibited.—It shall be unlawful for any person who is not a citizen of the United States, or who has not declared his intention to become a citizen of the United States, to carry or have in his possession at any time any shotgun, rifle or other firearm, without first having obtained a license from the state auditor, and said license is not to be issued by said

state auditor except upon the certificate of the consul domiciled in the state of Washington and representing the country of such alien, that he is a responsible person and upon the payment for said license of the sum of fifteen dollars ($15); nothing in this section contained shall be construed to allow aliens to hunt or fish in this state without first having obtained a regular hunting or fishing license. Any person violating the provisions of this section shall be guilty of a misdemeanor. [L. '11, p. 303, § 1.]

§ 2518. Setting Spring-gun.—Every person who shall set a so-called trap, spring pistol, rifle, or other deadly weapon, shall be punished as follows:

(1.) If no injury result therefrom to any human being, by imprisonment in the county jail for not more than one year or by a fine of not more than one thousand dollars, or by both.

(2.) If injuries not fatal result therefrom to any human being, by imprisonment in the state penitentiary for not more than twenty years.

(3.) If the death of a human being results therefrom, by imprisonment in the state penitentiary for not more than twenty years. [L. '09, p. 973, § 266.]

§ 2519. Obstruction of Extinguishment of Fire.—Every person who, with intent to prevent or obstruct the extinguishment of any fire, shall cut or remove any bell rope, wire or other apparatus for communicating an alarm of fire, or cut, injure or destroy any engine, hose, or other fire apparatus, and otherwise prevent or obstruct the extinguishment of any fire, shall be punished by imprisonment in the state penitentiary for not more than five years, or by imprisonment in the county jail for not more than one year, or by a fine of not more than one thousand dollars. [L. '09, p. 973, § 267.]

§ 2520. Obstructing Firemen.—Every person who at the burning of any building shall be guilty of any disobedience to the lawful orders of a public officer or fireman or of resistance to or interference with the lawful efforts of any fireman, or company of firemen to extinguish the same, or of disorderly conduct likely to interfere with the extinguishment thereof, or who shall forbid, prevent or dissuade others from assisting to extinguish such fire, shall be guilty of a misdemeanor. [L. '09, p. 973, § 268.]

§ 2521. Smoking, Where Prohibited.—Every person who shall light a pipe, cigar or cigarette in, or who shall enter with a lighted pipe, cigar or cigarette, any mill or other building on which is posted in a conspicuous place over and near each principal entrance a notice in plain, legible characters, stating that no smoking is allowed in

such building, shall be guilty of a misdemeanor. [L. '09, p. 974, § 269.]

§ 2522. Setting Prohibited Fire. — Every person who, within a county where there is a deputy fire-warden, shall burn any wood or brush between the 1st day of June and the 1st day of October in each year, without first obtaining a permit thereto from such deputy fire-warden, or who, in setting, guarding or extinguishing any fire in such wood or brush, shall willfully or negligently fail to observe any precaution prescribed by such deputy fire-warden, shall be guilty of a misdemeanor: Provided, that nothing herein contained shall prevent any person from burning any logs, stumps, drift or brush heaps in small quantities isolated from other inflammable material under personal supervision and such other safeguard as shall prevent such fires from spreading. [L. '09, p. 974. § 270.]

See on this subject "Forests and Forest Fires."

§ 2523. Negligent Fires.—Every person who shall willfully or negligently set, or fail to carefully guard or extinguish any fire, whether on his own land or the land of another, whereby the timber or property shall be endangered, or who shall fail to respond to any lawful summons to aid in guarding or extinguishing any fire, shall be guilty of a misdemeanor. [L. '09, p. 974, § 271.]

§ 2524. Operating Dangerous Engine.—Every person who shall operate or permit to be operated in dangerous proximity to any brush, grass or other inflammable material, any engine or boiler which is not equipped with a modern spark-arrester, in good condition, shall be guilty of a misdemeanor. [L. '09, p. 974, § 272.]

§ 2525. Door of Public Buildings to Swing Outward.—The doors of all theaters, opera houses, school buildings, churches, public halls, or places used for public entertainments, exhibitions or meetings, which are used exclusively or in part for admission to or egress from the same, or any part thereof, shall be so hung and arranged as to open outwardly, and during any exhibition, entertainment or meeting, shall be kept unlocked and unfastened, and in such condition that in case of danger or necessity, immediate escape from such building shall not be prevented or delayed; and every agent or lessee of any such building who shall rent the same or allow it to be used for any of the aforesaid public purposes without having the doors thereof hung and arranged as hereinbefore provided, shall, for each violation of any provision of this section, be guilty of a misdemeanor. [L. '09, p. 974, § 273.]

§ 2526. Engineer Who cannot Read.—Every person who, as an officer of a corporation or otherwise, shall knowingly employ as an

engineer or engine driver, to run a locomotive or train on any railway, any person who cannot read time tables and ordinary handwriting; and every person who, being unable to read time tables and ordinary handwriting, shall act as an engineer or run a locomotive or train on any railway, shall be guilty of a gross misdemeanor. [L. '09, p. 975, § 274.]

§ 2527. Intoxication of Employees.—Every person who, being employed upon any railway, as engineer, motorman, gripman, conductor, switch-tender, fireman, bridge-tender, flagman or signalman, or having charge of stations, starting, regulating or running trains upon a railway, or being employed as captain, engineer or other officer of a vessel propelled by steam, or being the driver of any animal or vehicle upon any public highway, street, or other public place, shall be intoxicated while engaged in the discharge of any duties, shall be guilty of a gross misdemeanor. [L. '15, p. 492, § 2. Cf. L. '09, p. 975, § 275.]

§ 2528. Failure to Ring Bell.—Every engineer driving a locomotive on any railway who shall fail to ring the bell or sound the whistle upon such locomotive, or cause the same to be rung or sounded at least eighty rods from any place where such railway crosses a traveled road or street on the same level (except in cities), or to continue the ringing of such bell or sounding of such whistle until such locomotive shall have crossed such road or street, shall be guilty of misdemeanor. [L. '09, p. 975, § 276.]

§ 2529. Other Violations of Duty.—Every engineer, motorman, gripman, conductor, brakeman, switch-tender, train-dispatcher or other officer, agent or servant of any railway company, who shall be guilty of any willful violation or omission of his duty as such officer agent, or servant, by which human life or safety shall be endangered, for which no punishment is specially prescribed, shall be guilty of a misdemeanor. [L. '09, p. 976, § 277.]

§ 2530. Obstructing and Delaying Train.—Every person who shall willfully obstruct, hinder or delay the passage of any car lawfully operated upon any railway, shall be guilty of a misdemeanor. [L. '09, p. 96, § 278.]

§ 2531. Speed of Automobile.—Every person who shall drive or operate, and every owner, lessee or other person in charge thereof who shall permit to be driven or operated, any automobile or motor vehicle on any public road, highway, park or parkway, street or avenue, within this state—

(1.) Within a thickly settled or business portion of any city or town, at a rate of speed faster than one mile in five minutes; or,

(2.) Over any crossing, cross-walk or street intersection within the limits of any city or town, when any person is upon the same, at a rate of speed faster than one mile in fifteen minutes; or,

(3.) At any other place, at a rate of speed faster than one mile in two and one-half minutes; or,

(4.) Upon any public road, highway, park or parkway, street or avenue, at any unsafe or unreasonable rate of speed, having proper regard to the safety of any other person or persons using the same, shall be guilty of a misdemeanor. [L. '09, p. 976, § 279.]

Cited in 64 Wash. 101; 80 Wash. 640.
See, also, "Highways."

§ 2532. Liability of Person Handling Steamboat or Steam Boiler. Every person who shall apply, or cause to be applied to a steam boiler a higher pressure of steam than is allowed by law, or by an inspector, officer or person authorized to limit the same; every captain or other person having charge of the machinery or boiler in a steamboat used for the conveyance of passengers on the waters of this state, who, from ignorance or gross neglect, or for the purpose of increasing the speed of such boat, shall create or cause to be created an undue or unsafe pressure of steam; and every engineer or other person having charge of a steam boiler, steam engine or other apparatus for generating or employing steam, who shall willfully or from ignorance or gross neglect, create or allow to be created such an undue quantity of steam as to burst the boiler, engine or apparatus, or cause any other accident, whereby human life is endangered, shall be guilty of a gross misdemeanor. [L. '09, p. 977, § 280.]

§ 2533. Endangering Life by Refusal to Labor.—Every person who shall willfully and maliciously, either alone or in combination with others, break a contract of service or employment, knowing or having reasonable cause to believe that the consequence of his so doing will be to endanger human life or cause grievious bodily injury, or to expose valuable property to destruction or serious injury, shall be guilty of a misdemeanor. [L. '09, p. 977, § 281.]

§ 2534. Disturbance on Highway.—Every person who shall ride or drive any horse upon a public highway, in a manner likely to endanger the safety or life of another, or on such highway shall create or participate in any noise, disturbance or other demonstration calculated or intended to frighten, intimidate or disturb any person, shall be guilty of a misdemeanor. [L. '09, p. 977, § 282.]

See infra, §§ 2718, 2719, unlawful use of bridges.
See infra, § 2720, throwing glass on highway.

§ 2535. Dangerous Exhibitions.—Every proprietor, lessee or occupant of any place of amusement, or any plat of ground or building,

who shall allow it to be used for the exhibition of skill in throwing any sharp instrument or in shooting any bow gun, pistol or firearm of any description, at or toward any human being, shall be guilty of a misdemeanor. [L. '09, p. 977, § 283.]

§ 2537. Deposit of Unwholesome Substance.—Every person who shall deposit, leave or keep, on or near a highway or route of public travel, on land or water, any unwholesome substance; or who shall establish, maintain or carry on, upon or near a highway or route of public travel, on land or water, any business, trade or manufacture which is noisome or detrimental to the public health; or who shall deposit or cast into any lake, creek or river, wholly or partly in this state, the offal from or the dead body of any animal, shall be guilty of a gross misdemeanor. [L. '09, p. 978, § 285.]

See, also, infra, § 8308.

§ 2538. Allowing Vicious Animal at Large.—Every person having the care or custody of any animal known to possess any vicious or dangerous tendencies, who shall allow the same to escape or run at large in any place or manner liable to endanger the safety of any person, shall be guilty of a misdemeanor; and any person may lawfully kill such animal reasonably necessary to protect his own or the public safety. [L. '09, p. 978, § 286.]

§ 2539. Exposing Contagious Disease.—Every person who shall willfully expose himself to another, or any animal affected with any contagious or infectious disease, in any public place or thoroughfare, except upon his or its necessary removal in a manner not dangerous to the public health; and every person so affected who shall expose any other person thereto without his knowledge, shall be guilty of a misdemeanor. [L. '09, p. 978, § 287.]

See infra, § 5553, regulations as to tuberculosis in cities.

§ 2540. Diseased Animals.—Every owner or person having charge thereof, who shall import or drive into this state, or who shall turn out or suffer to run at large upon any highway or uninclosed lands, or upon any lands adjoining the inclosed lands kept by any person for pasture; or who shall keep or allow to be kept in any barn with other animals, or water or allow to be watered at any public drinking fountain or watering place, any animal having any contagious or infectious disease; or who shall sell, let or dispose of any such animal knowing it to be so diseased, without first apprising the purchaser or person taking it of the existence of such disease, shall be guilty of a misdemeanor. [L. '09, p. 978, § 288.]

§ 2541. Diseased Animals—Disposal of Carcasses.—Every person owning or having in charge any animal that has died or been killed on

account of disease, shall immediately bury the carcass thereof at least three feet underground, or cause the same to be consumed by fire. No person shall sell or offer to sell or give away the carcass of any animal which died or was killed on account of disease, or convey the same along any public road or land not his own. Every violation of any provision of this section shall be a misdemeanor. [L. '09, p. 979, § 289.]

§ 2542. Polluting Water Supply.—Every person who shall deposit or suffer to be deposited in any spring, well, stream, river or lake, the water of which is or may be used for drinking purposes, or on any property owned, leased or otherwise controlled by any municipal corporation, corporation or person as a watershed or drainage basin for a public or private water system, any matter or thing whatever, dangerous or deleterious to health, or any matter or thing which may or could pollute the waters of such spring, well, stream, river, lake or water system, shall be guilty of a gross misdemeanor. [L. '09, p. 979, § 290.]

§ 2543. Furnishing Impure Water.—Every owner, agent, manager, operator or other person having charge of any waterworks furnishing water for public or private use, who shall knowingly permit any act or omit any duty or precaution by reason whereof the purity or healthfulness of the water supplied shall become impaired, shall be guilty of a gross misdemeanor. [L. '09, p. 979, § 291.]

§ 2544. Practicing Medicine Without a License.—Every person who shall practice medicine or surgery or dentistry without having obtained and filed in the office of the county clerk where he resides, a license as required by law, shall be guilty of a gross misdemeanor. [L. '09, p. 980, § 292.]

See infra, §§ 8400, 8411, practicing medicine without a license.
See infra, § 8421, practicing dentistry without a license.
See infra, §§ 8427, 8439, practicing veterinary without a license.

§ 2545. Unlicensed Pilotage.—Every person not duly licensed thereto, who shall pilot or offer to pilot any vessel into, within or out of the waters of Juan de Fuca Strait or Puget Sound, shall be guilty of a misdemeanor: Provided, that nothing herein shall prohibit a master of a vessel acting as his own pilot, nor compel a master or owner of any vessel to take out a pilot license for that purpose. [L. '09, p. 980, § 293.]

See infra, §§ 8243-8245, piloting without a license.

CHAPTER VIII.

Crimes Against the Public Peace.

§ 2546. Armed Association.—It shall not be lawful for any body of men other than the National Guard or troops of the United States, to associate themselves together as a military company with arms, without the consent of the governor; but members of social and benevolent associations are not prohibited from wearing swords. Every person who shall associate with others in violation of this section shall be guilty of a misdemeanor. [L. '09, p. 980, § 294.]

§ 2547. Disturbing Meeting.—Every person who, without [authority] of law, shall willfully disturb any assembly or meeting not unlawful in its character, shall be guilty of a misdemeanor. [L. '09, p. 980, § 295.]

See supra, § 2499, disturbing religious meeting.
See infra, § 4697, disturbing school.

§ 2548. Riot Defined.—Whenever three or more persons, having assembled for any purpose, shall disturb the public peace by using force or violence to any other person, or to property, or shall threaten or attempt to commit such disturbance, or to do any unlawful act by the use of force or violence, accompanied with the power of immediate execution of such threat or attempt, they shall be guilty of a riot. [L. '09, p. 980, § 296.]

§ 2549. Riot—Penalty.—Every person who shall be guilty of riot or of participating therein, by being present at, or by instigation, permitting or aiding the same shall be punished as follows:

(1.) If the purpose of the assembly or the acts done therein, or intended by the persons engaged, shall be to resist the enforcement of a statute of this state or of the United States, or to obstruct any public officer of this state or the United States in serving or executing any process or other mandate of a court, or in the performance of any other duty, or if at the time of the riot the offender shall carry a firearm or any other dangerous weapon, or shall be disguised, by imprisonment in the state penitentiary for not more than five years, or by a fine of not more than one thousand dollars.

(2.) If the offender shall direct, advise, encourage or solicit other persons present or participating in a riot or assembly to acts of force or violence, by imprisonment in the state penitentiary for not more than two years, or by a fine of not more than one thousand dollars.

(3.) In every other case, by imprisonment in the county jail for not more than one year, or by a fine of not more than one thousand dollars. [L. '09, p. 981, § 297.]

§ 2550. Unlawful Assembly.—Whenever three or more persons shall assemble with intent—

(1.) To commit any unlawful act by force; or,

(2.) To carry out any purpose in such manner as to disturb the public peace; or,

(3.) Being assembled, shall attempt or threaten any act tending toward a breach of the peace, or an injury to persons or property, or any unlawful act—such an assembly is unlawful, and every person participating therein by his presence, aid or instigation, shall be guilty of a gross misdemeanor. [L. '09, p. 981, § 298.]

§ 2551. Remaining After Warning.—Every person who shall remain present at the place of an unlawful meeting after having been warned to disperse by a magistrate or public officer, unless as a public officer or at the request of such officer he is assisting in dispersing the same, or in protecting persons or property or in arresting offenders, shall be guilty of a misdemeanor. [L. '09, p. 981, § 299.]

§ 2552. Destruction of Property.—Whenever any of the persons so unlawfully assembled, shall pull down or destroy any dwelling-house or other building, or any shop, steamboat or vessel, he shall be punished by imprisonment in the state penitentiary for not more than five years, or by a fine of not more than one thousand dollars. [L. '09, p. 982, § 300.]

§ 2553. Disguised and Masked Persons.—Any assemblage of three or more persons, disguised by having their faces painted, discolored, colored or concealed, shall be unlawful; and every person so disguised present thereat, shall be guilty of a gross misdemeanor; but nothing herein shall be construed as prohibiting any peaceful assemblage for a masquerade or fancy dress ball or entertainment. [L. '09, p. 982, § 301.]

§ 2554. Owner of Premises Allowing Masqueraders.—Every person, being the owner, lessee or occupant of any building, boat, or part thereof, who shall knowingly permit therein any unlawful assemblage of masked persons, shall be guilty of a gross misdemeanor. [L. '09, p. 982, § 302.]

§ 2555. Combination to Resist Process.—Every person who shall enter into a combination with another to resist the execution of any legal process or other mandate of a court of competent jurisdiction, under circumstances not amounting to a riot, shall be guilty of a gross misdemeanor. [L. '09, p. 982, § 303.]

§ 2556. Prize-fighting—Aiding, Betting or Stake-holding.—Every person who shall engage in, instigate, aid, encourage, or do any act to further an encounter or fight with or without weapons, between two or more persons, or a fight commonly called a ring or prize-fight, or an encounter commonly called a sparring match, with or

without gloves, or who shall send a challenge or acceptance of a challenge for such an encounter or fight; or who shall carry or deliver such a challenge or acceptance, or shall train or assist any person in training or preparing for such an encounter or fight; or who shall bet, stake or wager money or other property upon the result of such encounter or fight; or hold or undertake to hold any money or other property so staked or wagered, to be delivered to, or for the benefit of the winner thereof, shall be guilty of a gross misdemeanor: Provided, that nothing in this section shall be so construed as to interfere with members of private clubs sparring or fencing for exercise among themselves. [L. '09, p. 982, § 304.]

§ 2557. Apprehension of Persons About to Fight.—Whenever it shall be made to appear to any magistrate that there are reasonable grounds to apprehend that an offense specified in section 2556 is about to be committed within his jurisdiction, or by any person therein, he shall issue his warrant for the arrest of the person or persons so about to offend, and if upon any such person being brought before him it shall appear that there is reasonable ground to believe that he is about to commit such an offense he shall require him to give bond to the state, approved by him, in a sum not exceeding one thousand dollars, with or without sureties, conditioned that such person shall not within one year thereof commit such an offense. On failure to furnish such bond such person shall be committed to the county jail. [L. '09, p. 983, § 305.]

§ 2558. Forcible Entry and Detainer.—Every person who shall unlawfully use, or encourage or assist another in unlawfully using, any force or violence in entering upon or detaining any lands or other possessions of another; and every person who, having removed or been removed therefrom pursuant to the order or direction of any court, tribunal or officer, shall afterward return to settle or reside unlawfully upon or take possession of, such lands or possessions, shall be guilty of a misdemeanor. [L. '09, p. 983, § 306.]

§ 2559. Aiming or Discharging Firearms.—Every person who shall aim any gun, pistol, revolver or other firearm, whether loaded or not, at or toward any human being, or who shall willfully discharge any firearm, air-gun or other weapon, or throw any deadly missile in a public place, or in any place where any person might be endangered thereby, although no injury result, shall be guilty of a misdemeanor. [L. '09, p. 984, § 307.]

§ 2560. Use of Firearms by Minor.—No minor under the age of fourteen years shall handle or have in his possession or under his control, except while accompanied by or under the immediate charge of his parent or guardian, any firearm of any kind for hunting or

target practice or for other purposes. Every person violating any of the foregoing provisions, or aiding or knowingly permitting any such minor to violate the same, shall be guilty of a misdemeanor. [L. '09, p. 984, § 308.]

§ 2561. Offenses in Public Conveyances.—Every person who shall willfully use profane, offensive, or indecent language or engage in any quarrel in any public conveyance, or interfere with or annoy any passenger therein, or, having refused to pay the proper fare, shall fail to leave any such conveyance upon demand, or, with intent to avoid the payment of fare shall ride upon any car or engine not commonly used for the carriage of passengers, shall be guilty of a misdemeanor. [L. '09, p. 984, § 309.]

§ 2562. Criminal Anarchy Defined.—Criminal anarchy is the doctrine that organized government should be overthrown by force or violence, or by assassination of the executive head or of any of the executive officials of government, or by any unlawful means. The advocating of such doctrine either by word of mouth or writing is a felony. [L. '09, p. 984, § 310.]

§ 2563. Advocacy of Criminal Anarchy.—Every person who—

(1.) By word of mouth or writing shall advocate, advise or teach the duty, necessity or propriety of overthrowing or overturning organized government by force or violence, or by assassination of the executive head or of any of the executive officials of government, or by any unlawful means; or

(2.) Shall print, publish, edit, issue or knowingly circulate, sell, distribute or publicly display any book, paper, document, or written or printed matter in any form, containing or advocating, advising or teaching the doctrine that organized government should be overthrown by force, violence or any unlawful means; or

(3.) Shall openly, willfully and deliberately justify by word of mouth or writing the assassination or unlawful killing or assaulting of any executive or other officer of the United States or of any state or of any civilized nation having an organized government because of his official character, or any other crime, with intent to teach, spread or advocate the propriety of the doctrines of criminal anarchy; or

(4.) Shall organize or help to organize or become a member of or voluntarily assemble with any society, group or assembly of persons formed to teach or advocate such doctrine,

Shall be punished by imprisonment in the state penitentiary for not more than ten years, or by a fine of not more than five thousand dollars, or by both. [L. '09, p. 984, § 311.]

§ 2564. Publishing Matter Inciting Breach of Peace.—Every person who shall willfully print, publish, edit, issue, or knowingly circulate, sell, distribute or display any book, paper, document, or written or printed matter, in any form, advocating, encouraging or inciting, or having a tendency to encourage or incite the commission of any crime, breach of the peace or act of violence, or which shall tend to encourage or advocate disrespect for law or for any court or courts of justice, shall be guilty of a gross misdemeanor. [L. '09, p. 985, § 312.]

Cited in 71 Wash. 186.

§ 2565. Liability of Editors and Others.—Every editor or proprietor of a book, newspaper or serial and every manager of a partnership or incorporated association by which a book, newspaper or serial is issued, is chargeable with the publication of any matter contained in such book, newspaper or serial. But in every prosecution therefor, the defendant may show in his defense that the matter complained of was published without his knowledge or fault and against his wishes by another who had no authority from him to make the publication, and was retracted by him as soon as known. [L. '09, p. 985, § 313.]

§ 2566. Assemblages of Anarchists.—Whenever two or more persons assemble for the purpose of advocating or teaching the doctrines of criminal anarchy, as defined in section 2562, such an assembly is unlawful, and every person voluntarily participating therein by his presence, aid or instigation, shall be punished by imprisonment in the state penitentiary for not more than ten years, or by a fine of not more than five thousand dollars, or both. [L. '09, p. 986, § 314.]

§ 2567. Permitting Premises to be Used for Assemblages of Anarchists.—Every owner, agent, superintendent, janitor, caretaker or occupant of any place, building or room, who shall willfully and knowingly permit therein any assemblage of persons prohibited by section 2566, or who, after notification that the premises are so used, shall permit such use to be continued, shall be guilty of a gross misdemeanor. [L. '09, p. 986, § 315.]

§ 2568. Witness' Privilege.—No person shall be excused from giving evidence upon an investigation or prosecution for any of the offenses specified in sections 2563 or 2566, upon the ground that the evidence might tend to criminate himself. [L. '09, p. 986, § 316.]

CHAPTER IX.

Crimes Against Property.

§ 2569. Misappropriation and Falsification of Accounts by Public Officer.—Every public officer, and every other person receiving money on behalf or for or on account of the people of the state or of any department of the state government or of any bureau or fund created by law in which the people are directly or indirectly interested, or for or on account of any county, city, town or any school, diking, drainage or irrigation district, who—

(1.) Shall appropriate to his own use or the use of any person not entitled thereto, without authority of law, any money so received by him as such officer or otherwise; or

(2.) Shall knowingly keep any false account, or make any false entry or erasure in any account, of or relating to any money so received by him; or

(3.) Shall fraudulently alter, falsify, conceal, destroy or obliterate any such account; or

(4.) Shall willfully omit or refuse to pay over to the state, its officer or agent authorized by law to receive the same, or to such county, city, town or such school, diking, drainage or irrigation district or to the proper officer or authority empowered to demand and receive the same, any money received by him as such officer when it is a duty imposed upon him by law to pay over and account for the same, shall be punished by imprisonment in the state penitentiary for not more than fifteen years. [L. '09, p. 986, § 317.]

§ 2570. Other Violations by Officers.—Every officer or other person mentioned in section 2569, who shall willfully disobey any provision of law regulating his official conduct in cases other than those specified in said section, shall be guilty of a gross misdemeanor. [L. '09, p. 987, § 318.]

§ 2571. Misappropriation, etc., by Treasurer.—Every state, county, city or town treasurer who shall willfully misappropriate any moneys, funds or securities received by or deposited with him as such treasurer, or who shall be guilty of any other malfeasance or willful neglect of duty in his office, shall be punished by imprisonment in the state penitentiary for not more than five years or by a fine of not more than five thousand dollars. [L. '09, p. 987, § 319.]

See infra, § 9032, embezzlement by state treasurer.
See § 2569, misappropriation by public officer.

§ 2572. Arson—First Degree.—Every person who shall willfully—

(1.) Burn or set on fire in the night-time the dwelling-house of another, or any building in which there shall be at the time a human being; or

(2.) Set any fire manifestly dangerous to any human life, shall be guilty of arson in the first degree and be punished by imprisonment in the state penitentiary for not less than five years. [L. '09, p. 987, § 320.]

§ 2573. Arson—Second Degree.—Every person who, under circumstances not amounting to arson in the first degree, shall willfully burn or set on fire any building, or any structure or erection appurtenant to or adjoining any building, or any wharf, dock, threshing-machine, threshing-engine, bridge or trestle, or any hay, grain, crop or timber, whether cut or standing, or any lumber, shingle or other timber products, shall be guilty of arson in the second degree, and shall be punished by imprisonment in the state penitentiary for not more than ten years, or by a fine of not more than five thousand dollars. [L. '09, p. 988, § 321.]

§ 2574. Contiguous Fires.—Whenever any building or structure which may be the subject of arson in either the first or second degree shall be so situated as to be manifestly endangered by any fire and shall subsequently be set on fire thereby, any person participating in setting such fire shall be deemed to have participated in setting such building or structure on fire. [L. '09, p. 988, § 322.]

§ 2575. "Set on Fire" Defined.—A building, structure or any property mentioned in section 2573 shall be deemed "set on fire," whenever any part thereof or anything therein shall be scorched, charred or burned. [L. '09, p. 988, § 323.]

§ 2576. Ownership of Building.—To constitute arson it shall not be necessary that another person than the defendant should have had ownership in the building or structure set on fire. [L. '09, p. 988, § 324.]

§ 2577. Preparation is Attempt.—Any willful preparation made by any person with a view to setting fire to any building or structure shall be deemed to be an attempt to commit the crime of arson, and shall be punished as such. [L. '09, p. 988, § 325.]

§ 2578. Burglary—First Degree.—Every person who, with intent to commit some crime therein, shall enter in the night-time, the dwelling-house of another in which there shall be at the time a human being—

(1.) Being armed with a dangerous weapon; or

(2.) Arming himself therein with such weapon; or

(3.) Being assisted by a confederate actually present; or

(4.) Who, while engaged in the night-time in effecting such entrance, or in committing any crime in such building or in escaping therefrom, shall assault any person; or

(5.) Who, with intent to commit some crime therein, shall break and enter any bank, postoffice, railway express or railway mail-car, shall be guilty of burglary in the first degree and shall be punished by imprisonment in the state penitentiary for not less than five years. [L. '09, p. 989, § 326.]

Cited in 61 Wash. 414.

§ 2579. Burglary—Second Degree.—Every person who, with intent to commit some crime therein shall, under circumstances not amounting to burglary in the first degree, enter the dwelling-house of another or break and enter, or, having committed a crime therein, shall break out of, any building or part thereof, or a room or other structure wherein any property is kept for use, sale or deposit, shall be guilty of burglary in the second degree and shall be punished by imprisonment in the state penitentiary for not more than fifteen years. [L. '09, p. 989, § 327.]

Cited in 61 Wash. 414.

§ 2580. Presumption of Intent.—Every person who shall unlawfully break and enter or unlawfully enter any building or structure enumerated in sections 2578 and 2579 shall be deemed to have broken and entered or entered the same with intent to commit a crime therein, unless such unlawful breaking and entering or unlawful entry shall be explained by testimony satisfactory to the jury to have been made without criminal intent. [L. '09, p. 989, § 328.]

Cited in 82 Wash. 48.

§ 2581. Crime in Building—Punished Separately.—Every person who, in the commission of a burglary shall commit any other crime, shall be punished therefor as well as for the burglary, and may be prosecuted for each crime separately. [L. '09, p. 990, § 329.]

§ 2582. Making or Having Burglar Tools.—Every person who shall make or mend or cause to be made or mended, or have in his possession in the day or night-time, any engine, machine, tool, false key, pick lock, bit, nippers or implement adapted, designed or commonly used for the commission of burglary, larceny or other crime, under circumstances evincing an intent to use or employ, or allow the same to be used or employed in the commission of a crime, or knowing that the same is intended to be so used, shall be guilty of a gross misdemeanor. The possession thereof except by a mechanic, artificer or tradesman at and in his established shop or place of business, open to public view, shall be prima facie evidence that such possession was had with intent to use or employ or allow the same to be used or employed in the commission of a crime. [L. '09, p. 990, § 330.]

§ 2583. Forgery—First Degree.—Every person who, with intent to defraud, shall forge any writing or instrument by which any claim, privilege, right, obligation or authority, or any right or title to property, real or personal, is or purports to be, or upon the happening of some future event may be, evidenced, created, acknowledged, transferred, increased, diminished, encumbered, defeated, discharged or affected, or any request for the payment of money or delivery of property or any assurance of money or property, or any writing or instrument for the identification of any person, or any public record or paper on file in any public office, or any certified or authenticated copy of such record or paper, or any entry in any public or private record of account, or any judgment, decree, order, mandate, return, writ or process of any court, tribunal, judge, justice of the peace, commissioner or magistrate, or the official return or report of, or a license issued by, any public officer, or any pleading, demurrer, motion, affidavit, appearance, notice, cost-bill, statement of facts, bill of exceptions or proposed statement of facts, or bill of exceptions in any action or proceeding whether pending or not, or the draft of any bill or resolution that has been presented to either house of the legislature of this state, whether engrossed or not, or the great seal of this state, the seal of any public officer, court, notary public or corporation, or any public seal authorized or recognized by the laws of this or any other state or government, or any impression of any such seal; or shall forge or counterfeit any coin or money of any state or government, or any bank or treasury bill, any note or postage or revenue stamp; or who, without authority shall make or engrave any plate in the form or similitude of any writing, instrument, seal, coin, money, stamp or thing which may be the subject of forgery, shall be guilty of forgery in the first degree, and shall be punished by imprisonment in the state penitentiary for not more than twenty years. [L. '09, p. 990, § 331.]

Cited in 72 Wash. 394, 395; 75 Wash. 287; 77 Wash. 443.

§ 2584. False Certificate to Certain Instruments.—Every officer authorized to take a proof or acknowledgment of an instrument which by law may be recorded, who shall willfully certify falsely that the execution of such instrument was acknowledged by any party thereto, or that the execution thereof was proved, shall be guilty of forgery in the first degree. [L. '09, p. 991, § 332.]

§ 2585. Forgery—Second Degree.—Every person who, with intent to injure or defraud shall—

(1.) Make any false entry in any public or private record or account; or

(2.) Fail to make a true entry of any material matter in any public or private record or account; or

(3.) Forge any letter or written communication or copy or purported copy thereof, or send or deliver, or connive at the sending or delivery of any false or fictitious telegraph message or copy or purported copy thereof, whereby or wherein the sentiments, opinions, conduct, character, purpose, property, interests or rights of any person shall be misrepresented or may be injuriously affected, or, knowing any such letter, communication or message or any copy or purported copy thereof to be false, shall utter or publish the same or any copy or purported copy thereof as true, shall be guilty of forgery in the second degree, and shall be punished by imprisonment in the state penitentiary for not more than five years, or by a fine of not more than five thousand dollars. [L. '09, p. 991, § 333.]

§ 2586. Falsely Indicating Person as Corporate Officer.—The false making or forging of any instrument or writing purporting to have been issued by or in behalf of a corporation or association, state or government and bearing the pretended signature of any person therein falsely indicated as an agent or officer of such corporation, association, state or government, is forgery in the same degree as if that person were in truth such officer or agent of such corporation, association, state or government. [L. '09, p. 992, § 334.]

§ 2587. Uttering Forged Instruments, Coins, etc., Forgery.—Every person who, knowing the same to be forged or altered, and with intent to defraud, shall utter, offer, dispose of or put off as true, or have in his possession with intent so to utter, offer, dispose of or put off any forged writing, instrument or other thing, the false making, forging or altering of which is punishable as forgery, shall be guilty of forgery in the same degree as if he had forged the same. [L. '09, p. 992, § 335.]

Cited in 72 Wash. 395.

§ 2588. True Writing Signed by Wrongdoer's Name.—Whenever the false making or uttering of any instrument or writing is forgery in any degree, every person who, with intent to defraud shall offer, dispose of or put off such an instrument or writing subscribed or indorsed in his own name or that of any other person, whether such signature be genuine or fictitious, under the pretense that such subscription or indorsement is the act of another person of the same name, or that of a person not in existence, shall be forgery in the same degree. [L. '09, p. 992, § 336.]

§ 2539. Misconduct in Signing a Petition.—Every person who shall willfully sign the name of another person or of a fictitious person, or for any consideration, gratuity or reward shall sign his own name to or withdraw his name from any referendum or other petition circulated in pursuance of any law of this state or any municipal

ordinance; or in signing his name to such petition shall willfully subscribe to any false statement concerning his age, citizenship, residence or other qualifications to sign the same; or knowing that any such petition contains any such false or wrongful signature or statement, shall file the same, or put the same off with intent that it should be filed, as a true and genuine petition, shall be guilty of a misdemeanor. [L. '09, p. 993, § 337.]

§ 2590. Definitions.—Within the provisions of this subdivision relating to forgery, a "written instrument," or a "writing," shall include an instrument partly written and partly printed or wholly printed with a written signature thereto, or any signature or writing purporting to be a signature of or intended to bind an individual, partnership, corporation or association or an officer thereof.

The words "forge," "forgery," "forged," and "forging," shall include false making, "counterfeiting" and the alteration, erasure or obliteration of a genuine instrument in whole or in part, the false making or counterfeiting of the signature of a party or witness, real or fictitious, and the placing or connecting together with intent to defraud, of different parts or the whole of several genuine instruments.

A plate is in the "form and similitude," of the genuine instrument forged, if the finished parts of the engraving thereupon shall resemble or conform to the similar parts of the genuine instrument. [L. '09, p. 993, § 338.]

§ 2591. Possession of Counterfeit Coin.—Every person who shall have in his possession a counterfeit of any gold or silver coin, whether of the United States or any foreign country or government, knowing the same to be counterfeit, with intent to sell, utter, use, circulate or export the same as true or as false, or to cause the same to be so uttered or used, shall be punished by imprisonment in the state penitentiary for not more than five years, or by a fine of not more than five thousand dollars, or by both. [L. '09, p. 994, § 339.]

§ 2592. Advertising Counterfeit Money.—Every person who, with intent to defraud, shall print, circulate or distribute a letter, circular, card, pamphlet, handbill or any other written or printed matter offering or purporting to offer for sale, exchange or as a gift, counterfeit coin or paper money, or giving or purporting to give information where counterfeit coin or paper money can be procured, shall be punished by imprisonment in the state penitentiary for not more than five years, or by a fine of not more than five thousand dollars. [L. '09, p. 994, § 340.]

§ 2593. False Certificate of Registration of Animals—False Representation as to Breed.—Every person who, by color or aid of any

false pretense, representation, token or writing shall obtain from any club, association, society or company for the improvement of the breed of cattle, horses, sheep, swine, fowls or other domestic animals or birds, a certificate of registration of any animal or bird in a herd-book, or other register of any such association, society or company, or a transfer of any such registration, and every person who shall knowingly represent an animal or bird for breeding purposes to be of a greater degree of any particular strain of blood than such animal actually possesses, shall be guilty of a gross misdemeanor. [L. '09, p. 994, § 341.]

§ 2594. Removing Lawful Brands.—Every person who shall willfully deface, obliterate, remove or alter any mark or brand placed by or with the authority of the owner thereof on any shingle-bolt, log or stick of timber, or on any horse, mare, gelding, mule, cow, steer, bull, sheep, goat or hog, shall be punished by imprisonment in the state penitentiary for not more than five years, or by imprisonment in the county jail for not more than one year, or by a fine of not more than one thousand dollars, or by both fine and imprisonment. [L. '09, p. 994, § 342.]

§ 2595. Imitating Lawful Brand.—Every person who, in any county, shall place upon any property, any brand or mark in the likeness or similitude of another brand or mark filed with the county auditor of such county by the owner thereof as a brand or mark for the designation or identification of a like kind of property, shall—

(1.) If done with intent to confuse or commingle such property with, or to appropriate to his own use, the property of such other owner, be guilty of a felony, and be punished by imprisonment in the state penitentiary for not more than five years, or by imprisonment in the county jail for not more than one year, or by a fine of not more than one thousand dollars, or by both fine and imprisonment; or

(2.) If done without such intent, shall be guilty of a misdemeanor. [L. '09, p. 995, § 343.]

§ 2596. Counterfeiting Trademark, Brand, etc.—Every person who shall use or display or have in his possession with intent to use or display, the genuine label, trademark, term, design, device, or form of advertisement of any person, corporation, association or union, lawfully filed for record in the office of the secretary of state, or the exclusive right to use which is guaranteed to any person, corporation, association or union, by the laws of the United States, without the written authority of such person, corporation, association or union, or who shall willfully forge or counterfeit or use or

display or have in his possession with intent to use or display any representation, likeness, similitude, copy or imitation of any genuine label, trademark, term, design, device, or form of advertisement, so filed or protected, or any die, plate, stamp or other device for manufacturing the same, shall be guilty of a gross misdemeanor. [L. '09, p. 995, § 344.]

See infra, §§ 9492-9495, 9502, counterfeiting and unlawful use of trademarks, etc.

See infra, §§ 7096, 7097, counterfeiting marks and brands on logs.

§ 2597. Displaying Goods With False Trademark.—Every person who shall knowingly sell, display or advertise, or have in his possession with intent to sell, any goods, wares, merchandise, mixture, preparation or compound having affixed thereto any label, trademark, term, design, device, or form of advertisement lawfully filed for record in the office of the secretary of state by any person, corporation, association or union, or the exclusive right to the use of which is guaranteed to such person, corporation, association or union under the laws of the United States, which label, trademark, term, design, device or form of advertisement shall have been used or affixed thereto without the written authority of such person, counterfeit representation, likeness, similitude, copy or imitation thereof, shall be guilty of a misdemeanor. [L. '09, p. 996, § 345.]

§ 2598. When Deemed Affixed.—A label, trademark, term, design, device or form of advertisement shall be deemed to be affixed to any goods, wares, merchandise, mixture, preparation or compound whenever it is in any manner placed in or upon either the article itself, or the box, bale, barrel, bottle, case, cask or other vessel or package, or the cover, wrapper, stopper, brand, label or other thing in, by or with which the goods are packed, inclosed or otherwise prepared for sale or distribution. [L. '09, p. 996, § 346.]

§ 2599. Fraudulent Registration of Trademark.—Every person who shall for himself, or on behalf of any other person, corporation, association or union, procure the filing of any label, trademark, term, design, device or form of advertisement, with the secretary of state by any fraudulent means, shall be guilty of a misdemeanor. [L. '09, p. 996, § 347.]

§ 2600. Form and Similitude, Defined.—A plate, label, trademark, term, design, device or form of advertisement is in the form and similitude of the genuine instrument imitated if the finished parts of the engraving thereupon shall resemble or conform to the similar parts of the genuine instrument. [L. '09, p. 996, § 348.]

§ 2601. Larceny.—Every person who, with intent to deprive or defraud the owner thereof—

(1) Shall take, lead or drive away the property of another; or

(2.) Shall obtain from the owner or another the possession of or title to any property, real or personal, by color or aid of any order for the payment or delivery of property or money or any check or draft, knowing that the maker or drawer of such order, check or draft was not authorized or entitled to make or draw the same, or by color or aid of any fraudulent or false representation, personation or pretense or by any false token or writing or by any trick, device, bunco game or fortune-telling; or

(3) Having any property in his possession, custody or control, as bailee, factor, pledgee, servant, attorney, agent, employee, trustee, executor, administrator, guardian or officer of any person, estate, association or corporation, or as a public officer, or a person authorized by agreement or by competent authority to take or hold such possession, custody or control, or as a finder thereof, shall secrete, withhold or appropriate the same to his own use or to the use of any person other than the true owner or person entitled thereto; or

(4) Having received any property by reason of a mistake, shall with knowledge of such mistake secrete, withhold or appropriate the same to his own use or to the use of any person other than the true owner or person entitled thereto; and

(5) Every person who, knowing the same to have been so appropriated, shall bring into this state, or buy, sell, receive or aid in concealing or withholding any property wrongfully appropriated, whether within or outside of this state, in such manner as to constitute larceny under the provisions of this act—

Steals such property and shall be guilty of larceny. [L. '15, p. 493, § 3. Cf. L. '09, p. 997, § 349.]

Cited in 62 Wash. 584; 63 Wash. 619; 65 Wash. 354; 72 Wash. 114; 74 Wash. 512, 518; 76 Wash. 467, 471; 77 Wash. 79, 85; 84 Wash. 483, 484, 607, 612.

§ 2601–1. Taking Motor Vehicle Without Permission. — Every person who shall without the permission of the owner or person entitled to the possession thereof intentionally take or drive away any automobile or motor vehicle, whether propelled by steam, electricity or internal combustion engine, the property of another, shall be deemed guilty of a gross misdemeanor and every person voluntarily riding in or upon said automobile or motor vehicle with knowledge of the fact that the same was unlawfully taken shall be equally guilty with the person taking or driving said automobile or motor vehicle and shall be deemed guilty of a gross misdemeanor. [L. '15, p. 459, § 1.]

§ 2601–2. Unlawful Issuance of Bank Checks or Drafts.—Any person who shall with intent to defraud make, or draw, or utter, o.

deliver to another person any check, or draft, on a bank or other depository for the payment of money, knowing at the time of such drawing, or delivery, that he has not sufficient funds in, or credit with said bank or depository, to meet said check, in full upon its presentation, shall be guilty of larceny. The word "credit" as used herein shall be construed to mean an arrangement or understanding with the bank for the payment of such check or draft, and the uttering or delivery of such a check or draft to another person without such fund or credit to meet the same shall be prima facie evidence of an intent to defraud. [L. '15, p. 460, § 1.]

See, also, supra, § 2601.

§ 2602. Commission or Part Ownership No Defense.—It shall be no defense to a prosecution for larceny that the accused was entitled to a commission out of the money or property appropriated, as compensation for collecting or receiving the same for or on behalf of the owner thereof, or that the money or property appropriated was partly the property of another and partly the property of the accused; but it shall not be larceny for any bailee, factor, pledgee, servant, attorney, agent, employee, or trustee, executor, administrator, guardian, officer or other person to retain his reasonable collection fee or charges. [L. '09, p. 998, § 350.]

Cited in 84 Wash. 612.

§ 2603. Sale of Mortgaged Property — When Larceny.—Every person who shall sell or mortgage any personal property which is at the time mortgaged or upon which any lien has been or may lawfully be filed, without informing the purchaser or mortgagee thereof, before the payment of the purchase price or money loaned, of the several amounts of all such mortgages and liens, shall be deemed to have made a false representation within the meaning of section 2601, subdivision 2. [L. '09, p. 998, § 351.]

See infra, §§ 2629, 3669, removal of mortgaged property.

§ 2604. Contractor Failing to Pay for Labor or Material.—Every person having entered into a contract to supply any labor or materials for the value or price of which any lien might lawfully be filed upon the property of another, who shall receive the full price or consideration thereof, or the amount of any account stated thereon, shall be deemed within the meaning of section 2601, subdivision 3, to receive the same as the agent of the party with whom such contract was made, his successor or assign, for the purpose of paying all claims for labor and materials supplied. [L. '09, p. 998, § 352.]

§ 2605. Grand Larceny—Penalty.—Every person who shall steal or unlawfully obtain, appropriate, bring into this state, buy, sell, receive, conceal or withhold in any manner specified in section 2601—

(1.) Property of any value by taking the same from the person of another or from the body of a corpse; or

(2.) Property of any value by taking the same from any building that is on fire or by taking the same after it has been removed from a building in consequence of an alarm of fire; or

(3.) A record of a court or officer, or a writing, instrument or record kept, filed or deposited according to law with or in the keeping of any public officer or officers; or

(4.) From any range or pasture, any horse, mare, gelding, foal or filly, ass or mule, one or more head of neat cattle or any sheep; or

(5.) Property of the value of more than twenty-five dollars, in any manner whatever,

Shall be guilty of grand larceny and be punished by imprisonment in the state penitentiary for not more than fifteen years.

Every other larceny shall be petit larceny and shall be a gross misdemeanor. [L. '09, p. 998, § 353.]

Cited in 62 Wash. 584; 63 Wash. 619; 65 Wash. 354; 77 Wash. 438; 83 Wash. 660; 84 Wash. 483.

§ 2606. Value—How Ascertained.—The value of all instruments not having a market value, whether issued or delivered or not, by which any claim, privilege, right, obligation or authority or any right or title to property, real or personal, is, or purports to be, or upon the happening of some future event may be, evidenced, created, acknowledged, transferred, increased, diminished, encumbered, defeated, discharged or affected, shall be deemed to be the amount of money due thereon or secured to be paid thereby and unpaid, or which in any contingency might be collected thereon or thereby, or the value of the property transferred or affected or the title to which is shown thereby, or the sum which might be recovered for the want thereof, as the case may be. In every other case not otherwise regulated by statute, "value" shall be deemed to mean market value. [L. '09, p. 999, § 354.]

§ 2607. Stealing Railway Tickets.—If any person in the employ of a railway or steamboat company shall fraudulently neglect to cancel or to return to the proper officer or agent of such company, any ticket, coupon or pass, with intent to permit the same to be used in fraud of any railway or steamboat company, or if any person shall steal or fraudulently stamp, print, sign, sell or put into circulation any such ticket, coupon or pass, he shall be guilty of larceny. [L. '09, p. 1000, § 355.]

§ 2608. Claim of Title—When Ground of Defense.—In any prosecution for larceny it shall be a sufficient defense that the property was appropriated openly and avowedly under a claim of title pre-

ferred in good faith, even though the claim be untenable. [L. '09, p. 1000, § 356.]

Cited in 77 Wash. 439.

§ 2609. Restoration of Stolen Property—Duty of Officers.—The officer arresting any person charged as principal or accessory in any robbery or larceny shall use reasonable diligence to secure the property alleged to have been stolen, and after seizure shall be answerable therefor while it remains in his hands, and shall annex a schedule thereof to his return of the warrant.

Whenever the prosecuting attorney shall require such property for use as evidence upon the examination or trial, such officer, upon his demand, shall deliver it to him, and take his receipt therefor, after which such prosecuting attorney shall be answerable for the same. [L. '09, p. 1000, § 357.]

§ 2610. Extortion.—Every person, who, under circumstances not amounting to robbery, shall extort or gain any money, property or advantage, or shall induce or compel another to make, subscribe, execute, alter or destroy any valuable security or instrument or writing affecting or intended to affect any cause of action or defense, or any property, by means of force or any threat, either—

(1.) To accuse any person of a crime; or

(2.) To do any injury to any person or to any property; or

(3.) To publish or connive at publishing any libel; or

(4.) To expose or impute to any person any deformity or disgrace; or

(5.) To expose any secret,

Shall be guilty of extortion and shall be punished by imprisonment in the state penitentiary for not more than five years. [L. '09, p. 1000, § 358.]

Cited in 67 Wash. 89.

§ 2611. Oppression Under Color of Office.—Every officer, or person pretending to be such, who unlawfully and maliciously, under pretense or color of official authority, shall—

(1.) Arrest another or detain him against his will; or

(2.) Seize or levy upon another's property; or

(3.) Dispossess another of any lands or tenements; or

(4.) Do any act whereby another person shall be injured in his person, property or rights, commits oppression, shall be guilty of a gross misdemeanor.

(5.) No officer or person having the custody and control of the body or liberty of any person under arrest, shall refuse permission to such arrested person to communicate with his friends or with an attorney, nor subject any person under arrest to any form of per-

sonal violence, intimidation, indignity or threats for the purpose of extorting from such person incriminating statements or a confession. Any person violating the provisions of this section shall be guilty of a misdemeanor. [L. '09, p. 1001, § 359.]

Cited in 68 Wash. 245.

§ 2612. Extortion by Public Officer.—Every public officer who shall ask or receive, or agree to receive a fee or other compensation for his official service, either—

(1.) In excess of the fee or compensation allowed to him by statute therefor; or

(2.) Where no fee or compensation is allowed to him by statute therefor, commits extortion, and is guilty of a misdemeanor. [L. '09, p. 1001, § 360.]

§ 2613. Blackmail.—Every person who, with intent thereby to extort or gain any money or other property or to compel or induce another to make, subscribe, execute, alter or destroy any valuable security or instrument or writing affecting or intending to affect any cause of action or defense, or any property, or to influence the action of any public officer, or to do or abet or procure any illegal or wrongful act, shall threaten directly or indirectly—

(1.) To accuse any person of a crime; or

(2.) To do any injury to any person or to any property; or

(3.) To publish or connive at publishing any libel; or

(4.) To expose or impute to any person any deformity or disgrace; or

(5.) To expose any secret,

Shall be punished by imprisonment in the state penitentiary for not more than five years or by imprisonment in the county jail for not more than one year, or by a fine of not more than one thousand dollars, or by both fine and imprisonment. [L. '09, p. 1002, § 361.]

§ 2614. Coercion.—Every person who, with intent to compel another to do or abstain from doing any act which such other person has a right to do, or abstain from doing, shall wrongfully and unlawfully—

(1.) Use violence or inflict injury upon such other person or any of his family, or upon his property, or threaten such violence or injury; or

(2.) Deprive such person of any tool, implement or clothing, or hinder him in the use thereof; or

(3.) Attempt to intimidate such person by threats or force,

Shall be guilty of a misdemeanor. [L. '09, p. 1002, § 362.]

§ 2615. Falsely Personating Another.—Every person who shall falsely personate another, and in such assumed character, shall—

(1.) Marry or pretend to marry or sustain the marriage relation toward another; or

(2.) Become bail or surety for a party in an action or special proceeding, civil or criminal, before a court or officer authorized to take such bail or surety; or

(3.) Confess a judgment; or

(4.) Subscribe, verify, publish, acknowledge or approve a written instrument which by law may be recorded, with intent that the same may be delivered or issued as true; or

(5.) Appear for arraignment, trial or judgment in any criminal proceeding; or

(6.) Do any other act in the course of any action or proceeding wherein, if it were done by the person falsely personated such person might in any event become liable to an action or special proceeding, civil or criminal, or to pay a sum of money, or to incur a charge, forfeiture, or penalty, or whereby any benefit might accrue to the offender or to any other person,

Shall be punished by imprisonment in the state penitentiary for not more than ten years. [L. '09, p. 1003, § 363.]

§ 2616. Personating an Officer.—Every person who shall falsely personate a public officer, civil or military, or a policeman, or a private individual having special authority by law to perform an act affecting the rights or interests of another, or who, without authority shall assume any uniform or badge by which such an officer or person is lawfully distinguished, and in such assumed character shall do any act purporting to be official, whereby another is injured or defrauded, shall be guilty of a gross misdemeanor. [L. '09, p. 1003, § 364.]

§ 2617. Use of False Permit, License or Diploma.—Every person who shall conduct any business or perform any act under color of, or file for record with any public officer, any false or fraudulent permit, license, diploma or writing, or any permit, license, diploma or writing not lawfully belonging to such person, or who shall obtain any permit, license, diploma or writing by color or aid of any false representation, pretense, personation, token or writing, shall be guilty of a gross misdemeanor. [L. '09, p. 1003, § 365.]

§ 2618. Concealing Foreign Matter in Merchandise.—Every person who, with intent to defraud, shall place or conceal any foreign substance in any barrel, bag, bale, box or other package containing any article of merchandise, shall be guilty of a gross misdemeanor. [L. '09, p. 1004, § 366.]

§ 2619. Obtaining Signature by False Pretense.—Every person who, with intent to cheat or defraud another, shall designedly by

color or aid of any false token or writing or other false pretense, representation or presentation, obtain the signature of any person to a written instrument, shall be punished by imprisonment in the state penitentiary for not more than five years or in the county jail for not more than one year, or by a fine of not more than one thousand dollars, or by both fine and imprisonment. [L. '09, p. 1004, § 367.]

§ 2620. False Representation Concerning Credit.—Every person who, with intent thereby to obtain credit or financial rating, shall willfully make any false statement in writing of his assets or liabilities to any person with whom he may be either actually or prospectively engaged in any business transaction or to any commercial agency or other person engaged in the business of collecting or disseminating information concerning financial or commercial ratings, shall be guilty of a misdemeanor. [L. '09, p. 1004, § 368.]

§ 2621. False Representation Concerning Title.—Every person who shall maliciously or fraudulently execute or file for record any instrument, or put forward any claim, by which the right or title of another to any real property is, or purports to be transferred, encumbered or clouded, shall be guilty of a gross misdemeanor. [L. '09, p. 1004, § 369.]

§ 2622. Publishing False Statement to Affect Market Price.—Every person who, with intent to affect the market price of any security or property shall put off, circulate or publish any false or misleading writing, statement or intelligence, shall be guilty of a gross misdemeanor. [L. '09, p. 1005, § 370.]

§ 2622-1. False Advertising.—Any person, firm, corporation or association who, with intent to sell or in any wise dispose of merchandise, securities, service, or anything offered by such person, firm, corporation or association, directly or indirectly, to the public for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or an interest therein, makes, publishes, disseminates, circulates, or places before the public, or causes, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in this state, in a newspaper or other publication, or in the form of a book, notice, handbill, poster, bill, circular, pamphlet, or letter, or in any other way, an advertisement of any sort regarding merchandise, securities, service, or anything so offered to the public, which advertisement contains any assertion, representation or statement of fact which is untrue, deceptive or misleading, shall be guilty of a misdemeanor: Provided, that the provisions of this act shall not apply to any

owner, publisher, agent, or employee of a newspaper for the publication of such advertisement published in good faith and without knowledge of the falsity thereof. [L. '13, p. 91, § 1.]

§ 2623. Obtaining Employment by False Letter or Certificate.—Every person who shall obtain employment or appointment to any office or place of trust, by color or aid of any false or forged letter or certificate of recommendation, shall be guilty of a misdemeanor. [L. '09, p. 1005, § 371.]

§ 2624. Fraud by Employment Agent.—Every employment agent or broker who, with intent to influence the action of any person thereby, shall misstate or misrepresent verbally, or in any writing or advertisement, any material matter relating to the demand for labor, the conditions under which any labor or service is to be performed, the duration thereof or the wages to be paid therefor, shall be guilty of a misdemeanor. [L. '09, p. 1005, § 372.]

§ 2625. Frauds on Innkeeper.—Every person who shall obtain any food, lodging or accommodation at any hotel, restaurant, boarding-house or lodging-house without paying therefor, with intent to defraud the proprietor or manager thereof, or who shall obtain credit at a hotel, restaurant, boarding-house or lodging-house by color or aid of any false pretenses, representation, token or writing, or who after obtaining board, lodging or accommodation at a hotel, restaurant, boarding-house or lodging-house shall abscond or surreptitiously remove his baggage therefrom without paying for such food, lodging or accommodation, shall be guilty of a misdemeanor. [L. '09, p. 1005, § 373.]

§ 2626. Improper Use of Insignia.—Every person who shall willfully wear the badge, button, insignia or rosette of any military order or of any secret order or society, or any similitude thereof; or who shall use any such badge, button, insignia or rosette to obtain aid or assistance, or any other benefit or advantage, unless he shall be entitled to so wear or use the same under the constitution, by-laws, rules and regulations of such order or society, shall be guilty of a misdemeanor. [L. '09, p. 1005, § 374.]

§ 2627. Fraudulently Presenting Claim to Public Officer.—Every person who, with the intent to defraud, shall knowingly present for audit, allowance or payment to any officer or board of the state or of any county, city, town or school district, authorized to audit, allow or pay bills, claims or charges, any false or fraudulent claim, account, writing or voucher or any bill, account or demand containing false or fraudulent charges, items or claims, shall be guilty of a gross misdemeanor. [L. '09, p. 1005, § 375.]

§ 2628. Fraud by Bailee of Animal.—Every person who shall obtain from another the possession or use of any horse or other draft animal or any vehicle or automobile, without paying therefor, with intent to defraud the owner thereof, or who shall obtain the possession or use thereof by color or aid of any false or fraudulent representation, pretense, token or writing, or shall obtain credit for such use by color or aid of any false or fraudulent representation, pretense, token or writing; or who having hired property, shall recklessly, willfully, wantonly or by gross negligence injure or destroy or cause, suffer, allow or permit the same, or any part thereof, to be injured or destroyed; or who, having hired any horse or other draft animal upon an understanding or agreement that the same shall be ridden or driven a specified distance or to a specified place, shall willfully and fraudulently ride or drive or cause, permit or allow the same to be ridden or driven a longer distance, or to a different place, shall be guilty of a misdemeanor. [L. '09, p. 1006, § 376.]

§ 2629. Destruction or Removal of Mortgaged Property.—Every person being in possession thereof, who shall remove, conceal or destroy or connive at or consent to the removal, concealment or destruction of any personal property or any part thereof, upon which a mortgage, lien, conditional sales contract or lease exists, in such a manner as to hinder, delay or defraud the holder of such mortgage, lien or conditional sales contracts, or such lessor, or who, with intent to hinder, delay or defraud the holder of such mortgage, lien or conditional sales contract, or such lessor, shall sell, remove, conceal or destroy or connive at or consent to the removal, concealment or destruction of such property, shall be guilty of a gross misdemeanor.

In any prosecution under this section any allegation containing a description of the mortgage, lien, conditional sales contract or lease by reference to the date thereof and names of the parties thereto, shall be sufficiently definite and certain. [L. '09, p. 1006, § 377.]

See, supra, § 2603, sale of mortgaged property.
See infra, §§ 3669, 3672, removal of mortgaged personalty.

§ 2629-1. Removal of Timber from Land Delinquent for Taxes.—It shall be unlawful for any person, firm or corporation to remove any timber from timbered lands, no portion of which is occupied for farming purposes by the owner thereof, upon which taxes are delinquent until the taxes thereon have been paid. [L. '13, p. 346, § 1.]

§ 2629-2. Penalty.—Any person violating the provisions of this act shall be guilty of a gross misdemeanor and punished accordingly. [L. '13, p. 346, § 2.]

"This act" refers to this and the preceding section.

§ 2630. Mock Auctions.—Every person who shall obtain any money or property from another or shall obtain the signature of another to any writing the false making of which would be forgery, by color or aid of any false or fraudulent sale of property or pretended sale of property by auction, or by any of the practices known as mock auction, shall be punished by imprisonment in the state penitentiary for not more than five years or in the county jail for not more than one year, or by a fine of not more than one thousand dollars, or by both fine and imprisonment.

Every person who shall buy or sell or pretend to buy or sell any goods, wares or merchandise, exposed to sale by auction, if an actual sale, purchase and change of ownership therein does not thereupon take place, shall be guilty of a misdemeanor. [L. '09, p. 1007, § 378.]

§ 2631. Fraudulent Removal of Property.—Every person who, with intent to defraud a prior or subsequent purchaser thereof, or to prevent any of his property being made liable for the payment of any of his debts, or levied upon by an execution or warrant of attachment, shall remove any of his property, or secrete, assign, convey or otherwise dispose of the same, or with intent to defraud a creditor shall remove, secrete, assign, convey or otherwise dispose of any of his books or accounts, vouchers or writings in any way relating to his business affairs, or destroy, obliterate, alter or erase any of such books of account, accounts, vouchers or writing or any entry, memorandum or minute therein contained, shall be guilty of a gross misdemeanor. [L. '09, p. 1007, § 379.]

§ 2632. Knowingly Receiving Fraudulent Conveyance. — Every person who shall receive any property or conveyance thereof from another, knowing that the same is transferred or delivered to him in violation of, or with the intent to violate section 2631, shall be guilty of a misdemeanor. [L. '09, p. 1008, § 380.]

§ 2633. Fraud in Assignment for Benefit of Creditors.—Every person who, having made, or being about to make, a general assignment of his property to pay his debts, shall by color or aid of any false or fraudulent representation, pretense, token or writing induce any creditor to participate in the benefits of such assignments, or to give any release or discharge of his claim or any part thereof, or shall connive at the payment in whole or in part of any false, fraudulent or fictitious claim, shall be guilty of a gross misdemeanor. [L. '09, p. 1008, § 381.]

§ 2634. Willful Destruction of Vessel.—Every person who shall wreck, burn, sink, scuttle or otherwise injure or destroy a vessel or its cargo, or willfully permit the same to be done, with the intent to prejudice or defraud an insurer or any other person, or who shall fit out a vessel, or shall load any cargo on board thereof with intent to permit or cause the same to be wrecked, sunk or otherwise injured or destroyed, and thereby defraud or prejudice an insurer or other person, shall be punished by imprisonment in the state penitentiary for not more than twenty years. [L. '09, p. 1008, § 382.]

§ 2635. Making False Manifest, Invoice, etc.—Every person who shall prepare, make or subscribe a false or fraudulent manifest, invoice, bill of lading, ship's register, or protest, with intent to defraud another, shall be punished by imprisonment in the state penitentiary for not more than five years or by a fine of not more than one thousand dollars, or by both. [L. '09, p. 1009, § 383.]

§ 2636. Fraudulent Destruction of Insured Property.—Every person who, with intent to defraud or prejudice the insurer thereof, shall willfully injure or destroy any property not specified or included hereinbefore in this subdivision, which is insured at the time against loss or damage by fire or other causality [casualty], shall be punished by imprisonment in the state penitentiary for not more than ten years, or by a fine of not more than five thousand dollars, or by both. [L. '09, p. 1000, § 384.]

"This subdivision" in this section refers to §§ 2634 to 2636, inclusive.

§ 2637. Using False Weights and Measures.—Every person who shall injure or defraud another by using, with knowledge that the same is false, a false weight, measure or other apparatus for determining the quantity of any commodity or article of merchandise, or by knowingly misrepresenting the quantity thereof bought or sold; or who shall retain in his possession any weight or measure, knowing it to be false, unless it appears beyond a reasonable doubt that it was so retained without intent to use it or permit it to be used in violation of the foregoing provisions of this section, shall be guilty of a gross misdemeanor. [L. '09, p. 1009, § 385.]

See, also, "Weights and Measures."
See infra, § 7087, weights of lumber and shingles.

§ 2638. Fraud in Stock Subscription.—Every person who shall sign the name of a fictitious person to any subscription for or any agreement to take stock in any corporation existing or proposed, and every person who shall sign to any such subscription or agreement the name of any person, knowing that such person does not intend in good faith to comply with the terms thereof, or upon any understanding or agreement that the terms of such subscription or

agreement are not to be complied with or enforced, shall be guilty of a gross misdemeanor. [L. '09, p. 1009, § 386.]

See infra, §§ 3339, 3340, false pretenses as to incorporation.

§ 2639. Fraudulent Issue of Stock, Scrip, etc. — Every officer, agent or other person in the service of a joint stock company or corporation, domestic or foreign, who, willfully and knowingly with intent to defraud, shall—

(1.) Sell, pledge or issue or cause to be sold, pledged or issued, or sign or execute or cause to be signed or executed, with intent to sell, pledge or issue, or cause to be sold, pledged or issued, any certificate or instrument purporting to be a certificate or evidence of ownership of any share or shares of such company or corporation, or any conveyance or encumbrance of real or personal property, contract, bond, or evidence of debt, or writing purporting to be a conveyance or encumbrance of real or personal property, contract, bond or evidence of debt of such company or corporation, without being first duly authorized by such company or corporation, or contrary to the charter or laws under which such company or corporation exists, or in excess of the power of such company or corporation, or of the limit imposed by law or otherwise upon its power to create or issue stock or evidence of debt; or,

(2.) Reissue, sell, pledge or dispose of, or cause to be reissued, sold, pledged or disposed of, any surrendered or canceled certificate or other evidence of the transfer of ownership of any such share or shares:

Shall be punished by imprisonment in the state penitentiary for not more than ten years, or by a fine of not more than five thousand dollars, or by both. [L. '09, p. 1010, § 387.]

§ 2640. Insolvent Bank Receiving Deposit.—Every owner, officer, stockholder, agent or employee of any person, firm, corporation or association engaged, wholly or in part, in the business of banking or receiving money or negotiable paper or securities on deposit or in trust, who shall accept or receive, with or without interest, any deposit, or who shall consent thereto or connive thereat, when he knows or has good reason to believe that such person, firm, corporation or association is unsafe or insolvent, shall be punished by imprisonment in the state penitentiary for not more than ten years, or by a fine of not more than ten thousand dollars. [L. '09, p. 1010, § 388.]

Cited in 60 Wash. 385; 65 Wash. 252; 82 Wash. 673, 674.

See infra, § 3331, bank receiving deposit when insolvent.

See infra, § 3345–50, this and the next two sections made applicable to mutual savings banks.

§ 2641. Corporation Doing Business Without License.—Every corporation, whether domestic or foreign, and every person representing or pretending to represent such corporation as an officer, agent or employee thereof, who shall transact, solicit or advertise for any business in this state, before such corporation shall have obtained from the officer lawfully authorized to issue the same, a certificate that such corporation is authorized to transact business in this state, shall be guilty of a gross misdemeanor. [L. '09, p. 1011, § 389.]

See note to last section.

See infra, § 3723, failure to file charter and appointment of agent.

See infra, § 3729, foreign corporation doing business without registration.

§ 2642. False Report of Corporation.—Every director, officer or agent of any corporation or joint stock association, and every person engaged in organizing or promoting any enterprise, who shall knowingly make or publish or concur in making or publishing any written prospectus, report, exhibit or statement of its affairs or pecuniary condition, containing any material statement that is false or exaggerated, shall be punished by imprisonment in the state penitentiary for not more than ten years, or by a fine of not more than five thousand dollars. [L. '09, p. 1011, § 390.]

See note to section 2640.

§ 2643. Warehouseman or Carrier Refusing to Issue Receipt.—Every person or corporation, and every officer, agent and employee thereof, receiving any goods, wares or merchandise, for sale or on commission, for storage, carriage or forwarding, who, having an opportunity to inspect the same, shall fail or refuse to deliver to the owner thereof a receipt duly signed, bearing the date of issuance, describing the goods, wares or merchandise received and the quantity, quality and condition thereof, and specifying the terms and conditions upon which they are received, shall be guilty of a misdemeanor. [L. '09, p. 1011, § 391.]

See infra, § 9503–14, issuing unlawfully.

§ 2644. Fictitious Bill of Lading and Receipt.—Every person or corporation engaged wholly or in part in the business of a common carrier or warehouseman, and every officer, agent or employee thereof, who shall issue any bill of lading, receipt or other voucher by which it shall appear that any goods, wares or merchandise have been received by such carrier or warehouseman, unless the same have been so received and shall be at the time actually under his control, or who shall issue any bill of lading, receipt or voucher containing any false statement concerning any material matter, shall be guilty of a gross misdemeanor. But no person shall be convicted under this section for the reason that the contents of any barrel, box, case,

cask or other closed vessel or package mentioned in the bill of lading, receipt or voucher did not correspond with the description thereof in such instrument, if such description corresponds substantially with the mark on the outside of such barrel, box, case, cask, vessel or package, unless it appears that the defendant knew that such marks were untrue. [L. '09, p. 1012, § 392.]

§ 2645. Warehouseman Fraudulently Mixing Goods.—Every person mentioned in section 2644, who shall fraudulently mix or tamper with any goods, wares or merchandise under his control, shall be guilty of a gross misdemeanor. [L. '09, p. 1012, § 393.]

§ 2646. Duplicate Receipt.—Every person mentioned in section 2644, who shall issue any second or duplicate receipt or voucher of the kind specified in said section, while a former receipt or voucher for the goods, wares or merchandise specified in such second receipt is outstanding and uncanceled, without writing across the face of the same the word "Duplicate," in a plain and legible manner, shall be guilty of a misdemeanor. [L. '09, p. 1012, § 394.]

§ 2647. Bill of Lading or Receipt must be Canceled on Redelivery of Property.—Each person mentioned in section 2644, who shall deliver to another any goods, wares or merchandise for which a bill of lading, receipt or voucher has been issued, unless such bill of lading, receipt or voucher is surrendered and canceled or a lawful and sufficient bond or undertaking is given therefor at the time of such delivery, or unless, in case of a partial delivery, a memorandum thereof is indorsed upon such bill of lading, receipt or voucher, shall be guilty of a misdemeanor. [L. '09, p. 1013, § 395.]

§ 2648. Regulating Sale of Passage Tickets.—It shall be the duty of every person or corporation engaged wholly or in part in the business of carrying passengers for hire, to provide every agent authorized to sell its passage tickets in this state, with a certificate of his authority, attested by its seal and the signature of its manager, secretary or general passenger agent, which shall contain a designation of the place of business at which such authority shall be exercised.

Every person and every corporation or association, and every officer, agent or employee thereof who shall sell, exchange or transfer, or have in his possession with intent to sell, exchange or transfer, or maintain, conduct or operate any office or place of business for the sale, exchange or transfer of any passage ticket or pass or part thereof, or any other evidence of a right to travel upon any railroad or boat, whether the same be owned or operated within or without the limits of this state, in any place except his place of business, or within such place of business without having rightfully in his

possession and posted in a conspicuous place therein the certificate of authority hereinabove provided for, shall be guilty of a misdemeanor. [L. '09, p. 1013, § 396.]

See infra, §§ 8720–8724, sale of railroad tickets.

§ 2649. Redemption of Unused Passage Ticket.—Every person or corporation engaged wholly or in part in the business of carrying passengers for hire in this state, and every authorized ticket agent thereof, to whom there shall be presented by the holder thereof, within one year after its expiration, any passage ticket or part thereof, or other evidence of right to travel, wholly or in part upon the railroad or boat of such person or corporation, which shall be wholly or partially unused, who shall fail to redeem the same within three days after presentation, upon the following terms, to wit:

(1.) When wholly unused, for the price paid therefor; and

(2.) When partially unused, for the price paid therefor, less the regular toll or charge for the passage had;

Shall be punished by a fine of not more than five hundred dollars, and in addition thereto shall forfeit to the holder of such ticket or part thereof or other evidence of a right to travel, three times the redeemable value thereof. [L. '09, p. 1013, § 397.]

See infra, §§ 8725, 8726, redemption of unsold railroad tickets.

§ 2650. Malicious Mischief — Injury to Railway.—Every person who, in such manner as might, if not discovered, endanger the safety of any engine, motor, car or train, or any person thereon, shall in any manner interfere or tamper with or obstruct any switch, frog, rail, roadbed, sleeper, viaduct, bridge, trestle, culvert, embankment, structure or appliance pertaining to or connected with any railway, or any train, engine, motor, or car on such railway; and every person who shall discharge any firearm or throw any dangerous missile at any train, engine, motor or car on any railway, shall be punished by imprisonment in the state penitentiary for not more than twenty-five years. [L. '09, p. 1014, § 398.]

§ 2651. Attempt to Commit Train Robbery.—Every person who, with intent to commit any robbery, burglary or larceny, shall go upon or board any train, motor, car or engine; mask, extinguish or alter any light or other signal; exhibit or compel any other person to exhibit any false light or signal; or stop any such train, car or engine or slacken the speed thereof or compel or attempt to compel any other person in charge or control thereof to stop such train, car or engine or slacken the speed thereof, shall be punished by imprisonment in the state penitentiary for not less than five years. [L. '09, p. 1014, § 399.]

§ 2652. Endangering Life and Property by Explosives.—Every person who shall maliciously place any explosive substance or material in, upon, under, against or near any building, car, vessel, railroad track or structure, in such manner or under such circumstances as to destroy or injure the same if exploded, shall be guilty of a felony, and if the circumstances and surroundings are such that the safety of any person might be endangered by the explosion thereof, shall be punished by imprisonment in the state penitentiary for not more than twenty years; and in every other case by imprisonment in the state penitentiary for not more than five years. [L. '09, p. 1015, § 400.]

See supra, § 2403, killing by explosives unlawfully kept.
See supra, § 2504, keeping explosives unlawfully.
See supra, § 2506, transporting explosives.

§ 2653. Damaging Building, etc., by Explosion.—Every person who shall maliciously, by the explosion of gunpowder or any other explosive substance or material, destroy or damage any building, car, vessel, railroad track or structure, shall be punished as follows:

(1.) If thereby the life or safety of a human being is endangered, by imprisonment in the state penitentiary for not more than twenty years.

(2.) In every other case by imprisonment in the state penitentiary for not more than five years. [L. '09, p. 1015, § 401.]

§ 2654. False Signals for Vessels, etc.—Every person who, in such manner as might, if not discovered, endanger a vessel, railway engine, motor, train or car, shall show, mask, extinguish, alter or remove any light or signal, or exhibit any false light or signal, shall be punished by imprisonment in the state penitentiary for not more than ten years. [L. '09, p. 1015, § 402.]

§ 2655. Injury to United States Light.—Every person who shall willfully break, injure, deface or destroy any lighthouse station, post, platform, step, lamp or other structure pertaining to such lighthouse station, or shall extinguish or tamper with any light erected by the United States upon or along the navigable waters of this state to aid in the navigation thereof, in case no punishment is provided therefor by the laws of the United States, shall be punished as follows:

(1.) Whenever such act may endanger the safety of any vessel navigating such waters, or jeopardize the safety of any person or property in or upon such vessel, by imprisonment in the state penitentiary for not more than ten years.

(2.) In all other cases by imprisonment in the county jail for not more than one year, or by a fine of not more than one thousand dollars, or by both. [L. '09, p. 1015, § 403.]

§ 2656. Injuring Public Utilities.—Every person who shall willfully or maliciously remove, damage or destroy:

(1.) A highway or a private way laid out by authority of law, or a bridge upon such public or private road, or willfully or maliciously causes to be placed thereon any substance or thing dangerous to any person or animal traveling thereon or which might injure or puncture the tire of any vehicle; or,

(2.) A pile or other material fixed in the ground and used for securing any bank or dam of any river or other water, or any dike, dock, quay, jetty or lock; or,

(3.) A buoy or beacon lawfully placed in any waters within this state; or,

(4.) A tree, rock, post or other monument erected or marked for the purpose of designating a point on the boundary of the state, of a county, city, town or a farm, tract or lot of land, or any mark or inscription thereon; or,

(5.) A mile-board, mile-stone or guide-post erected upon a highway, or any inscription thereon; or,

(6.) A telegraph, telephone or electric transmission line or any part thereof, or any appurtenance thereto, or apparatus connected with the operation thereof; or,

(7.) A fence, gate, cattle-guard, bridge, water-tank, mile-post, car, engine, motor or other useful structure on the line of any railway; or,

(8.) A pipe or main for conducting gas, water or oil, or any works erected for the purpose of supplying buildings therewith, or any appurtenance or appendage thereto; or,

(9.) A sewer or drain, or a pipe or main connected therewith or forming a part thereof; or,

(10.) A ditch or flume lawfully erected for carrying water or draining land; or,

(11.) Any engine, hose, hose-cart, truck, ladder, extinguisher or other apparatus used by any fire company or fire department, or any rope, wire, bell, signal, instrument or apparatus for the communication of alarms of fire or police calls; or,

(12.) Any public building, or building used for educational, scientific, charitable or religious purpose, or any useful or ornamental thing therein; or,

(13.) Any work of literature or art or copy thereof, object of curiosity or scientific interest, statue, picture or engraving, displayed, kept or erected in any public building, street, park or other public place or in any collection, exhibition, museum, fair, gallery or library, or in any building devoted to educational, scientific, charitable or religious purposes; or,

(14.) A monument erected in any cemetery, street, park or other public place; or,

(15.) A sign or notice erected or posted by any officer under lawful authority, or by the owner or occupant of the premises where posted; or,

(16.) A legal notice or other legal paper posted in compliance with the requirement of any statute of this state, or under the direction or order of a court; and,

Every person—

(17.) Who shall moor any vessel, scow, barge, raft or boom to any bridge or to any buoy or beacon lawfully in any waters within this state; or,

(18.) Who shall intercept, read or in any manner interrupt or delay the sending of a message over any telegraph or telephone line; or,

(19.) Who shall erect or maintain any unlawful structure in any stream or river;

Shall be guilty of a misdemeanor. [L. '09, p. 1016, § 404.]

Cited in 76 Wash. 472, 474.

See infra, §§ 6824–6827, injury to public lands.
See infra, § 6981, mutilation of library, etc.

§ 2657. Unlawful Interference With Gas, Electric, Steam or Water Appliance.—Every person who, with intent to injure or defraud, shall—

(1.) Break or deface the seal of any gas, electric, steam or water meter; or,

(2.) Obstruct, alter, injure or prevent the action of any meter or other instrument used to measure or register the quantity of gas, electricity, steam or water supplied to a consumer thereof; or,

(3.) Make any connections by means of a wire, pipe, conduit or otherwise with any wire, main or pipe used for the delivery of gas, electricity, steam or water to a consumer thereof, in such manner as to take gas, electricity, steam or water from said wire, main or pipe without its passage through the meter or other instrument provided for registering the amount or quantity consumed; or use any gas, electricity, steam or water so obtained; or,

(4.) Make any connection or reconnection with such wire, main or pipe, or turn on or off, or in any manner interfere with any valve, stop-cock or other appliances connected therewith; or,

(5.) Prevent by the erection of any device or construction, or by any other means, free access to any meter or other instrument for registering or measuring the amount of gas, electricity, steam or water consumed, or interfere with, obstruct or prevent, by any means, the reading or inspection of such meter or instrument, by the person, company or corporation owning the same; or,

(6.) Take or use any water from any irrigation flume, ditch or lateral, without the consent of the owners thereof, or open, close or interfere with any gate connected therewith;

Shall be guilty of a misdemeanor. [L. '09, p. 1018, § 405.]

See, also "Irrigation."

§ 2658. Interfering With Dam, Reservoir, etc.—Every person who shall willfully or maliciously displace, remove, injure or destroy any pier, boom, or dam lawfully erected or maintained upon, in or across any water in this state, or any dam or reservoir lawfully maintained for impounding water; or hoist any gate in or about such dam or reservoir, shall be guilty of a gross misdemeanor. [L. '09, p. 1018, § 406.]

§ 2659. Injury to Property.—Every person who shall willfully—

(1.) Cut down, destroy or injure any wood, timber, grain, grass or crop, standing or growing, or which has been cut down and is lying upon the lands of another, or of the state; or,

(2.) Cut down, girdle or otherwise injure a fruit, shade or ornamental tree standing on the land of another or of the state, or in any road or street; or,

(3.) Dig, take or carry away without lawful authority or consent, from any lot or land in any city, or town, or from any lands included within the limits of a street or avenue in such city or town, any earth, soil or stone; or,

(4.) Enter without the consent of the owner or occupant, any orchard, garden or vineyard, with intent to take, injure or destroy anything there grown or growing; or,

(5.) Cut down, destroy or in any way injure any shrub, tree, vine or garden produce grown or growing within any such orchard, garden or vineyard, or any framework or erection therein; or,

(6.) Damage or deface any building or part thereof, or throw any stone or other missile at any building or part thereof; or,

(7.) Destroy or damage, with intent to prevent or delay the use thereof, any engine, machine, tool or implement intended for use in trade or husbandry; or,

(8.) Untie, unfasten or liberate, without authority, the horse or team of another; or lead, ride or drive away, without authority, the horse, team, automobile or other vehicle of another from the place where left by the owner or person in charge thereof; or,

(9.) Kill, maim or disfigure any animal belonging to another, or expose any poisons or noxious substance with intent that it should be taken by such animal; or,

(10.) Take, carry away, interfere with or disturb any oysters or other shell-fish of another in any river, bay, or other water of this

state, or remove, pull up or destroy any stake or buoy used for designating any oyster-bed; or,

(11.) Intrude or place any hovel, shanty or building upon or within the limits of any lot or piece of land within any city or town, without the consent of the owner, or within the boundaries of any street in such city or town; or,

(12.) Kill, wound or trap any animal or bird within the limits of any cemetery, park or pleasure ground, or remove therefrom or destroy the young of any such animal or the egg of any such bird; or,

(13.) Injure, destroy or tamper with any rope, line, cable or chain with which any vessel, scow, boom, beacon or buoy shall be anchored or moored, or the steering-gear, bell gear, engine, machinery, lights or other equipment of any vessel; or,

(14.) Place upon or affix to any real property or any rock, tree, wall, fence or other structure thereupon, without the consent of the owner thereof, any word, character or device designed to advertise any article, business, profession, exhibition, matter or event; or,

(15.) Suffer any animal to go upon the inclosed right of way of any railway company, or leave open any gate or bars so that an animal might stray upon such right of way;

Shall be guilty of a misdemeanor. [L. '09, p. 1019, § 407.]

See infra, §§ 3272, 3281, 3285, 3288, injury or cruelty to animals.
See infra, § 6981, mutilation of library.
See infra, § 3551, mutilation of monuments in cemeteries.
See infra, § 4699, mutilating school property.
See infra, § 5622, injury to trees in highway.

§ 2660. Tampering With Papers.—Every person who shall willfully or maliciously destroy, alter, erase, obliterate or conceal any letter, telegraph message, book or record of account, or any writing or instrument by which any claim, privilege, right, obligation or authority, or any right or title to property, real or personal, is, or purports to be, or upon the happening of some future event may be, evidenced, created, acknowledged, transferred, increased, diminished, encumbered, defeated, discharged or affected, shall be guilty of a gross misdemeanor. [L. '09, p. 1020, § 408.]

§ 2661. Falsifying Accounts.—Every person who shall willfully or maliciously make any false entry, or fail to make an entry of any material matter, in any book or record of account, shall be guilty of a gross misdemeanor. [L. '09, p. 1020, § 409.]

§ 2662. Divulging Telegram.—Every person who shall wrongfully obtain or attempt to obtain, any knowledge of a telegraphic message, by connivance with the clerk, operator, messenger or other employee of a telegraph company, and every clerk, operator, messenger or other employee of such company who shall willfully divulge

to any but the person for whom it was intended, any telegraphic message or dispatch intrusted to him for transmission, or delivery, or the nature or contents thereof, or shall willfully refuse, neglect or delay duly to transmit or deliver the same, shall be guilty of a misdemeanor. [L. '09, p. 1021, § 410.]

§ 2663. Opening Sealed Letter.—Every person who shall willfully open or read, or cause to be opened or read, any sealed message, letter or telegram intended for another person, or publish the whole or any portion of such a message, letter or telegram, knowing it to have been opened or read without authority, shall be guilty of a misdemeanor. [L. '09, p. 1021, § 411.]

§ 2664. Trespass on Railway Track.—Every person who, without permission from the person or corporation owning or operating the same, shall enter, or take any animal or vehicle upon any railway, bridge or trestle, or ride, operate or propel a handcar, velocipede, track bicycle or tricycle on or along the track of any railway, shall be guilty of a misdemeanor. [L. '09, p. 1021, § 412.]

§ 2664–1. Trespass on Double Track.—It shall be unlawful for any person to go upon or be upon that portion of any railroad right of way upon which is constructed and operated more than one main line track or upon which is constructed and operated an electric interurban line of one or more tracks where the electricity is transmitted by a third rail. [L. '13, p. 394, § 1.]

§ 2664–2. Exceptions.—The foregoing section shall not be construed to include that part of any right of way embraced in any highway crossing or any lawful private crossing; and shall not be construed to prohibit officers or employees of any such railroad or public officers from going or being upon any portion of the right of way in the performance of their duties. [L. '13, p. 395, § 2.]

§ 2664–3. Crossing Warnings.—The Public Service Commission of Washington shall require any company operating such a railroad as is described in section 2664–1, to erect and maintain upon such part of its line, at every point where a highway crosses such line, a sign or a warning, in form to be prescribed by such commission. [L. '13, p. 395, § 3.]

§ 2664–4. Penalty.—Any person violating the provisions of section 2664–1, shall be guilty of a misdemeanor. [L. '13, p. 395, § 4.]

§ 2665. Trespass upon Land of Another—Warning.—Every person who shall go upon the land of another with the intent to vex or annoy the owner, or occupant thereof, or to commit any unlawful act, or shall enter upon the inclosed land of another for the purpose of hunting or fishing without having first obtained the permission of

the owner or occupant of said land, or shall enter upon any land of another bounded on one or more sides by water when notices not to trespass thereon have been posted as often as every seven hundred feet on or near the other boundaries thereof for either of said purposes, or shall willfully go or remain upon any land after having been warned by the owner or occupant thereof not to trespass thereon, shall be guilty of a misdemeanor.

An entryman on land under the laws of the United States shall be deemed an owner within the meaning of this section.

Inclosed land shall for the purpose of this act mean any land fenced either with a lawful fence or with such a fence as is usually used in the neighborhood of such land. [L. '13, p. 437, § 1; L. '09, p. 1021, § 413.]

See, also, "Game."

§ 2666. Injury to Baggage.—Every person employed by any person or corporation engaged wholly or in part in the business of carrying passengers or baggage for hire, and every express agent, stage driver, drayman, expressman or hackman who shall willfully or carelessly break, injure or destroy any trunk, valise, box, package or other baggage, shall be guilty of a misdemeanor. [L. '09, p. 1022, § 414.]

§ 2667. Injury to Other Property.—Every person who shall willfully or maliciously destroy or injure any real or personal property of another, for the destruction or injury of which no special punishment is otherwise specially prescribed, shall—

(1.) If the value of the property destroyed, or the diminution in value by the injury, shall be less than twenty dollars, be guilty of a misdemeanor.

(2.) If the value of the property destroyed, or the diminution in value by the injury, shall be twenty dollars or more, be guilty of a gross misdemeanor. [L. '09, p. 1022, § 415.]

§ 2667-1. Picketing of Business Establishments and Homes.—Whoever shall, for the purpose of carrying on, calling attention to, or advertising, directly or indirectly, any controversy, disagreement or dispute between any labor union or organization, or member or members thereof, and any person engaged in any lawful business, or his employee, or for the purpose of hindering or preventing such person from conducting his business in any lawful way, or employing or retaining in his employ any person who may lawfully engage in such business.

(1) Stand or continuously move back and forth, on the sidewalk, street, public place or private property, in front of or within five hundred feet of, any place in which any lawful business is conducted

by such other person, or home or place of abode of such other person or his employee, or

(2) Openly maintain, carry or transport on any sidewalk, street, public place or private property, any banner, sign, transparency, writing or printing, or

(3) Cause any person to do any of the foregoing acts for any of the foregoing purposes:

Shall be guilty of picketing. [L. '15, p. 645, § 1.]

§ 2667–2. Penalties.—Any person who shall engage in picketing shall be guilty of a misdemeanor. [L. '15, p. 646, § 2.]

§ 2667–3. Terms Defined.—The singular number when used in this act shall include the plural, and the word "person" shall include individuals, firms, partnerships, associations and corporations. [L. '15, p. 646, § 3.]

§ 2667–4. Partial Invalidity. An adjudication of invalidity of any part of this act shall not affect the validity of the act as a whole or any part thereof. [L. '15, p. 646, § 4.]

"Act" in this and the preceding section refers to the last four sections.

CHAPTER X.

Miscellaneous Crimes.

§ 2668. Drunkenness.—Every person who shall become intoxicated by voluntarily drinking intoxicating liquors, and who, while intoxicated shall loiter about any place where intoxicating liquors are sold or kept for sale, or create any disturbance or use any profane or indecent language in any public place, street or meeting, or commit any assault or breach of the peace, shall be guilty of a misdemeanor. [L. '09, p. 1022, § 416.]

§ 2669. Common Drunkard.—Every person who shall be three times convicted of a violation of section 2668, or of any municipal ordinance defining and punishing drunkenness or any crime of which drunkenness shall be an element, or who shall squander his property in drink, or who, as a result of the use of intoxicating liquors shall abuse or fail properly to support or care for his wife or any minor child lawfully in his custody, shall be a common drunkard, and shall be adjudged so to be by any magistrate before whom he may be brought on a charge of committing any crime of which drunkenness is an element, in addition to any other punishment inflicted therefor. [L. '09, p. 1023, § 417.]

§ 2670. Opium Joints.—Every person who shall open, conduct or maintain, as owner or employee, any place where opium, morphine, alkaloid cocaine or alpha or beta eucaine or any derivative, mixture

or preparation of any of them, shall be in any manner used by persons resorting thereto for the purpose; and every person who shall visit or resort to such place for the purpose of using in any manner any of said drugs, shall be guilty of a gross misdemeanor. [L. '09, p. 1023, § 418.]

§ 2671. Solemnizing Unlawful Marriage.—Every person who shall solemnize a marriage when either party thereto is known to him to be under the age of legal consent, or to be an idiot, insane person, habitual criminal or common drunkard, or a marriage to which, within his knowledge, any legal impediment exists, shall be guilty of a gross misdemeanor. [L. '09, p. 1023, § 419.]

See infra, §§ 7153, 7167, prohibited solemnization of marriage.

§ 2672. Obstructing Public Officer.—Every person who, after due notice, shall refuse or neglect to make or furnish any statement, report or information lawfully required of him by any public officer, or who, in such statement, report or information shall make any willfully untrue, misleading or exaggerated statement, or who shall willfully hinder, delay or obstruct any public officer in the discharge of his official powers or duties, shall be guilty of a misdemeanor. [L. '09, p. 1023, § 420.]

See supra, § 2367, resisting officer.

§ 2673. Acting Without Lawful Authority.—Every person who shall in any case not otherwise specially provided for, do any act, for the doing of which a license or other authority is required by law, without having such license or other authority as required by law, shall be guilty of a misdemeanor. [L. '09, p. 1024, § 421.]

Cited in 62 Wash. 246.

§ 2674. Collecting for Benefit Without Authority.—Every person who shall sell a ticket to any ball, benefit or entertainment, or ask or receive any subscription or promise thereof, for the benefit or pretended benefit of any person, association or order, without being duly authorized thereto by the person, association or order for whose benefit or pretended benefit the same is done, shall be guilty of a misdemeanor. [L. '09, p. 1024, § 422.]

§ 2675. Desecration of Flag.—Every person who, for exhibition or display, shall cause to be placed upon or affixed to any flag, standard, color or ensign of the United States, or upon a flag, standard, color or ensign purporting to be such, any inscription, design, device, symbol, name, advertisement, words, characters, picture, mark or notice whatever; or who shall display or exhibit any such flag, standard, color or ensign to which any such inscription, design, device, symbol, name, advertisement, words, characters, photograph, mark

or notice whatever; or who shall publicly mutilate, trample upon, deface, jeer at or defy any such flag, standard, color or ensign, shall be guilty of a misdemeanor. [L. '09, p. 1024, § 423.]

§ 2676. Bribery of Labor Representative.—Every person who shall give, offer or promise, directly or indirectly, any compensation, gratuity or reward to any duly constituted representative of a labor organization, with intent to influence him in respect to any of his acts, decisions or other duties as such representative, or to induce him to prevent or cause a strike by the employees of any person or corporation, shall be guilty of a gross misdemeanor. [L. '09, p. 1024, § 424.]

§ 2677. Labor Representative Receiving Bribe.—Every person who, being the duly constituted representative of a labor organization, shall ask or receive, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, upon any agreement or understanding that any of his acts, decisions or other duties as such representative, or any act to prevent or cause a strike of the employees of any person or corporation shall be influenced thereby, shall be guilty of a gross misdemeanor. [L. '09, p. 1025, § 425.]

§ 2678. Corrupt Influencing of Agent.—Every person who shall give, offer or promise, directly or indirectly, any compensation, gratuity or reward to any agent, employee or servant of any person or corporation, with intent to influence his action in relation to his principal's, employer's or master's business, shall be guilty of a gross misdemeanor. [L. '09, p. 1025, § 426.]

Cited in 83 Wash. 103, 104.

§ 2679. Grafting by Employee.—Every agent, employee or servant of any person or corporation who shall ask or receive, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, upon any agreement or understanding that he shall act in any particular manner in connection with his principal's, employer's or master's business; or who, being authorized to purchase or contract for materials, supplies or other articles or to employ servants or labor for his principal, employer or master, shall ask or receive, directly or indirectly, for himself or another, a commission, discount, bonus or promise thereof from any person with whom he may deal in relation to such matters, shall be guilty of a gross misdemeanor. [L. '09, p. 1025, § 427.]

§ 2680. Use of the Words "Sterling Silver," etc.—Every person who shall make, sell or offer to sell or dispose of, or have in his possession with intent to sell or dispose of any metal article marked, stamped or branded with the words "sterling silver," or "solid silver,"

unless nine hundred twenty-five one-thousandths of the component parts of the metal of which such article and all parts thereof is manufactured is pure silver, shall be guilty of a gross misdemeanor. [L. '09, p. 1025, § 428.]

§ 2681. Use of Words "Coin Silver," etc.—Every person who shall make, sell or offer to sell or dispose of, or have in his possession with intent to dispose of any metal article marked, stamped or branded with the words "coin," or "coin silver," unless nine hundred one-thousandths of the component parts of the metal of which such article and all parts thereof is manufactured, is pure silver, shall be guilty of a gross misdemeanor. [L. '09, p. 1026, § 429.]

§ 2682. Use of the Word "Sterling," on Mounting.—Every person who shall make, sell, offer to sell or dispose of, or have in his possession with intent to sell or dispose of, any article comprised of leather, shell, ivory, celluloid, pearl, glass, porcelain, pottery, steel or wood, to which is applied or attached a metal mounting marked, stamped or branded with the words "sterling," or "sterling silver," unless nine hundred twenty-five one-thousandths of the component parts of the metal of which such metal mounting is manufactured is pure silver, shall be guilty of a gross misdemeanor. [L. '09, p. 1026, § 430.]

§ 2683. Use of the Words "Coin Silver," on Mounting.—Every person who shall make, sell, offer to sell or dispose of, or have in his possession with intent to sell or dispose of, any article comprised of leather, shell, ivory, celluloid, pearl, glass, porcelain, pottery, steel or wood, to which is applied or attached a metal mounting marked, stamped or branded with the words "coin" or "coin silver," unless nine hundred one-thousandths of the component parts of the metal of which such metal mounting is manufactured is pure silver, shall be guilty of a gross misdemeanor. [L. '09, p. 1027, § 431.]

§ 2684. Unlawfully Marking Article "Made of Gold."—Every person who shall make, sell, offer to sell or dispose of, or have in his possession with intent to sell or dispose of, any article constructed wholly or in part of gold, or of an alloy of gold, and marked, stamped or branded in such manner as to indicate that the gold or alloy of gold in such article is of a greater degree or carat of fineness, by more than one carat, than the actual carat, or fineness of such gold or alloy of gold, shall be guilty of a gross misdemeanor. [L. '09, p. 1027, § 432.]

§ 2685. "Marked, Stamped or Branded," Defined.—An article shall be deemed to be "marked, stamped or branded" whenever such article, or any box, package, cover or wrapper in which the same is

inclosed encased or prepared for sale or delivery, or any card, label or placard with which the same may be exhibited or displayed, is so marked, stamped or branded. [L. '09, p. 1027, § 433.]

§ 2686. Protecting Civil Public Rights.—Every person who shall deny to any other person because of race, creed or color, the full enjoyment of any of the accommodations, advantages, facilities or privileges of any place of public resort, accommodation, assemblage or amusement, shall be guilty of a misdemeanor. [L. '09, p. 1027, § 434.]

§ 2687. Master of Vessel Bringing a Foreign Convict.—Every person who, being the master or commander of any vessel or boat arriving from a foreign country, shall knowingly bring into this state a person who has been or is a foreign convict of any offense, which, if committed in this state would be punishable under the laws thereof, shall be guilty of a misdemeanor. [L. '09, p. 1027, § 435.]

§ 2688. Vagrancy.—Every—

(1.) Person who asks or receives any compensation, gratuity or reward for practicing fortune-telling, palmistry or clairvoyance; or,

(2.) Person who keeps a place where lost or stolen property is concealed; or,

(3.) Person practicing or soliciting prostitution or keeping a house of prostitution; or,

(4.) Common drunkards found in any place where intoxicating liquors are sold or kept for sale, or in an intoxicated condition; or,

(5.) Common gambler found in any place where gambling is conducted or where gambling paraphernalia or devices are kept; or,

(6.) Healthy person who solicits alms; or,

(7.) Lewd, disorderly or dissolute person; or,

(8.) Person who wanders about the streets at late or unusual hours of the night without any visible or lawful business; or,

(9.) Person who lodges in any barn, shed, shop, outhouse, vessel, car, saloon or other place not kept for lodging purposes, without the permission of the owner or person entitled to the possession thereof; or,

(10.) Person who lives or works in a house of prostitution or solicits for any prostitute or house of prostitution; or,

(11.) Person who solicits business for an attorney around any court, jail, morgue or hospital, or elsewhere; or,

(12.) Habitual use of opium, morphine, alkaloid cocaine or alpha or beta eucaine, or any derivation, mixture or preparation of any of them; or,

(13.) Person having no visible means of support, who does not seek employment, nor work when employment is offered to him; or,

(14.) Person who by his own confession thereto or prior conviction thereof is known to have been guilty of larceny, burglary, robbery or any crime of which fraud or intent to defraud is an element, who shall be found in any drinking saloon or cellar, or any public dance-hall or music-hall where intoxicating liquors are sold, or be found intoxicated, or who, except upon lawful business, shall go about any dark street or alley or any residence section of any city or town in the night-time, or loiter about any steamboat landing, passenger depot, banking institution or crowded street, shop or thoroughfare, or any public meeting or gathering, or place where people gather in crowds—

Is a vagrant, and shall be punished by imprisonment in the county jail for not more than six months, or by a fine of not more than five hundred dollars. [L. '09, p. 1027, § 436.]

Cited in 69 Wash. 568.

§ 2688–1. False Representation of Physical Defects.—It shall be unlawful for any person to falsely represent himself or herself as blind, deaf, dumb, crippled or otherwise physically defective for the purpose of obtaining money or other thing of value or making sales of any character of personal property and any person so falsely representing himself or herself as blind, deaf, dumb, crippled or otherwise physically defective and securing aid or assistance on account of such representations shall be deemed guilty of a misdemeanor. [L. '15, p. 236, § 1.]

§ 2689. Admitting Convict to Saloon, and Selling Liquor to Drunkard.—Every person, being the owner or manager of, or an employee in any drinking saloon, drinking cellar or public dance-hall or music-hall where intoxicating liquors are sold or kept for sale, who shall knowingly permit to enter such saloon, cellar or hall, or give employment to, or sell or give any intoxicating liquor to, [any female person], any person previously convicted, whether in this state or elsewhere, of a crime of which fraud or the intent to defraud is an element, or of petit larceny, or of any crime which under the laws of this state would amount to a felony, or who shall sell or give any intoxicating liquor to any person [known or] adjudged to be a common drunkard, or to any person in an intoxicated condition, shall be guilty of a misdemeanor. [L. '09, p. 1029, § 437; L. '09, Ex Sess., p. 67, § 2.]

This section was amended by Laws 1909, Ex. Sess., p. 67, § 2, but a doubt exists as to the sufficiency of the title. The amendment to this section omitted the words "any female person" and added the words "known or," in brackets.

§ 2690. Performing or Selling Undedicated Play.—Every person who, without the consent of the owner thereof, shall cause to be pub-

licly performed any dramatic composition, or dramatic musical composition commonly called an opera, or any substantial part thereof, which has been copyrighted under the laws of the United States, or shall knowingly participate in the performance or representation of any substantial part thereof, or knowingly sell a substantial copy of any substantial part thereof, shall be guilty of a misdemeanor. [L. '09, p. 1029, § 438.]

§ 2693. Prohibiting Drinking in Public Conveyances.—Every person who shall drink any intoxicating liquor in any public conveyance, except in a compartment or place where sold or served under the authority of a license lawfully issued, shall be guilty of a misdemeanor. [L. '09, p. 1029, § 441.]

§ 2694. Common Carrier not to Permit Drinking in Public Conveyance.—Every person engaged wholly or in part in the business of carrying passengers for hire, and every agent, servant, or employee of such person, who shall knowingly permit any person to drink any intoxicating liquor in any public conveyance, except in the compartment where such liquor is sold or served under the authority of a license lawfully issued, shall be guilty of a misdemeanor. [L. '09, p. 1030, § 442.]

§ 2695. Selling Liquors not Aged.—Every person who, as principal, agent or otherwise, shall sell or offer for sale any spirituous or distilled intoxicating liquor known as whisky (except Scotch or Irish whisky), any part of which has not been aged for a period of four years in wooden barrels or casks, or who shall, as principal, agent or otherwise, sell or offer for sale any malt liquor that has not been aged for a period of more than sixty (60) days, or which contains more than eight (8) % alcohol by weight shall be guilty of a gross misdemeanor. [L. '09, p. 1030, § 443.]

§ 2696. Mixing, Distilling, Selling, etc., Low Wines or Spirits.—Every person who, by mixing, compounding or distilling low wines or ardent spirits, or who, by adding thereto any flavoring or other substance, shall produce, or who shall sell or offer for sale or have in his possession with intent to sell, any liquor known as whisky, gin or brandy so produced, shall be guilty of a gross misdemeanor. [L. '09, p. 1030, § 444.]

§ 2696-1. Improper Conduct by Judges.—It shall be a misdemeanor for any judge or justice of any court not of record, during the hearing of any cause or proceeding therein, to address any person in his presence in unfit, unseemly or improper language. [L. '11, p. 521, § 1.]

§ 2696-2. Fraudulent Use of Name of Secret Societies.—Any person, firm, association, society, order or organization or any officer,

agent, representative or employee thereof, or person acting or pretending to act on behalf thereof who in a newspaper or other publication published in this state, or in any letter, writing, circular, paper, pamphlet or other writing or printed notice, matter or device without authority of the grand lodge hereinafter mentioned, fraudulently uses, or in any manner directly or indirectly aids in the use of the name or title of any secret fraternal association, society, order or organization which has had a grand lodge in this state for five (5) years, or any secret fraternal association, society, order or organization having as a necessary qualification to membership, membership in a secret fraternal society, order or organization under the jurisdiction of said grand lodge, or any imitation of such name or title or any name or title so nearly resembling it as to be calculated to deceive, or without such authority publishes, sells, lends, gives away, circulates or distributes any letter, writing, circular, paper, pamphlet or other written or printed notice, matter or device, or by word of mouth, directly or indirectly advertising for or soliciting members or applications for membership in such secret fraternal association, society, order or organization using or designated or claimed to be known by such title or imitation or resemblance thereof or who offers to sell or to confer or to communicate or to give information directly or indirectly where, how, of whom, or by what means alleged or pretended secret work or any alleged or pretended secrets of such secret fraternal association, society, order or organization or of any alleged or pretended association, society, order or organization designated or claimed to be known by such title or imitation or resemblance thereof can or may be obtained, conferred or communicated, or any person who falsely represents himself to be a member of any such secret fraternal association, society, order or organization or any person who upon false representations as to membership therein seeks or obtains admission into any such secret fraternal association, society, order or organization shall be guilty of a gross misdemeanor. [L. '11, p. 155, § 1.]

CHAPTER XI.

Crimes Under Acts not Repealed by the Penal Code of 1909.

§ 2697. Selling Cigarettes Containing Injurious Drug—Penalty.—Any person [selling or giving away cigarettes without a license, or] selling or giving away any cigarette or cigarettes containing any injurious drug, narcotic or other deleterious matter, is guilty of a misdemeanor, and shall on conviction thereof be subject to a fine of fifty dollars for each offense, or be imprisoned for sixty days in a common jail or penitentiary, and any person [having a license, or any person not licensed,] who sells or gives away any cigarette or

cigarettes, of any and every kind whatsoever, to a minor under the age of eighteen years, shall be subjected to the same penalty as herein provided. [L. '95, p. 126, § 5.]

Superseded as to words in brackets by § 2968, Rem. & Bal. Code.

§ 2698. Sale of Any Cigarettes Except in Original Package.—Any person selling cigarettes of any and every kind whatsoever, except in an original and full package, is guilty of a misdemeanor, and shall on conviction thereof be subject to the same penalty as in the section last above provided. [L. '95, p. 126, § 6.]

§ 2699. Sale to Minors—Civil Liability to Parents of Minor.—In addition to the penalty above provided for, the sale or giving away of cigarettes to a minor under the age of eighteen years, the parent or guardian of such minor or any individual or association suing in behalf or for the benefit of such minor, may prosecute, in a civil action, any person so violating this chapter, for the penalty of two hundred and fifty dollars and the costs of the action, one-half of which amount shall be paid to any person as his moiety share who furnished the information upon which the action is brought and penalty recovered. [L. '95, p. 126, § 7.]

§ 2700. Same—Wrappers or Substitutes—Persuading Minor to Smoke.—It shall hereafter be unlawful in the state of Washington for any corporation, company, firm or person to sell, barter, furnish or give away, directly or indirectly, to any minor under eighteen years of age any cigarette, cigarette wrappers or any substitute for either; or to procure for, or to persuade, advise, counsel or compel any minor under said age to smoke cigarettes or for any minor under said age to smoke any cigarette. [L. '01, p. 261, § 1.]

§ 2701. Same—Penalty—Duty of Prosecutors.—Any such corporation, company, firm or person, violating any of the provisions of the preceding section shall, for the first offense, upon conviction thereof, be fined in any sum not more than fifty dollars, nor less than ten dollars; and for a second and any subsequent offense, such corporation, company, firm or person shall, upon conviction thereof, be fined in any sum not more than five hundred dollars nor less than ten dollars, and to which may be added imprisonment in the county jail for any period not exceeding sixty days. It is hereby made the special duty of prosecuting attorneys to enforce the provisions of this act, and he may summon any minor under eighteen years of age who may have or have had in his possession any cigarettes, and compel him to testify before the mayor of a city or a justice of the peace as to where and of whom he obtained such cigarettes. [L. '01, p. 262, § 2.]

§ 2702. Counterfeiting Uncoined Gold, etc.—Any person who shall counterfeit any kind or species of gold-dust, gold bullion or bars, lumps, pieces of nuggets of gold, or any description whatsoever of uncoined gold, currently passing in this state, or shall alter or put off any kind of uncoined gold mentioned in this section, for the purpose of defrauding any person or persons, body, politic or corporate, or shall make any instrument for counterfeiting any kind [of] uncoined gold as aforesaid, knowing the purpose for which such instrument was made, or shall knowingly have in his possession and secretly keep any instrument for the purpose of counterfeiting any kind of uncoined gold as aforesaid, every such person so offending, or any person or persons aiding or abetting in or about said offense or offenses shall be deemed guilty of counterfeiting, and upon conviction thereof shall be punished by imprisonment in the penitentiary for a term not less than one year nor more than fourteen years. [L. '62, p. 15, § 7; Cd. '81, § 857; 2 H. P. C., § 66.]

§ 2703. Robbing Sluice-boxes, etc.—Any person who shall break or rob in any manner, or who shall attempt to break or rob, any flume, rocker, quartz-mill, quartz vein or lode, bedrock sluice, sluice-box, or mining claim not his own, or who shall trespass upon such mining claim with the intent to commit a felony, shall, upon conviction thereof, be punished by imprisonment in the penitentiary of this state not less than one nor more than five years, or by fine not less than one hundred dollars nor more than one thousand dollars, or by both such imprisonment and fine as the court or judge thereof may direct. [L. '90, p. 126, § 6; 2 H. P. C., § 79.]

§ 2704. Malicious Injury to Settlers on Unsurveyed Lands.—Any person or persons who shall willfully and maliciously disturb, or in anywise injure or destroy, the dwelling-house or other building, or any fence inclosing or being on the claim, of any settler upon the unsurveyed public lands in this state, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty nor more than one hundred dollars for each and every offense, to which may be added imprisonment in the county jail not exceeding ninety days. [Cf. L. '83, p. 71, § 2; L. '91, p. 124, § 17; 2 H. P. C., § 89.]

Superseded in part by the next section.

§ 2705. Injury to Buildings or Contents.—If any person shall maliciously or wantonly destroy or deface any cabin or other building or place of shelter or any of the contents of such cabin, building or shelter constructed by any person or persons or society of persons upon any public land of the state of Washington, or of the United States within the state of Washington, or upon any land not

owned by such person so destroying or defacing the same, he shall be deemed guilty of a misdemeanor: Provided, that the provisions of this act shall not apply to bona fide settlers on government lands. [L. '99, p. 186, § 1.]

"Act" in this section refers to §§ 2705–2707.

§ 2706. Destruction of Monuments, Records, etc.—If any person shall maliciously or wantonly remove, destroy or carry away any record or record book or document of any kind or any box or other receptacle for containing the same or any instrument or device for scientific purposes established or placed upon any mountain peak or summit or at any other place of resort, or upon any land belonging to this state or to the United States, or in or upon any body or stream of water within this state, such person shall be deemed guilty of a misdemeanor. [L. '99, p. 186, § 2.]

§ 2707. Penalty.—Every person convicted of a violation of any of the provisions of this act shall be punished by a fine of not less than ten dollars nor more than one hundred dollars or by imprisonment in the county jail not less than ten days nor more than six months or by both such fine and imprisonment. Any person acting as informer, in case of conviction, under this act, shall be entitled to one-half of the fine imposed. [L. '99, p. 186, § 3.]

"Act" in this section refers to §§ 2705–2707.

§ 2708. Posting Advertisements on Public Property.—Every person who willfully commits any trespass by either putting up, affixing, fastening, printing, or painting upon any property belonging to the state, or to any county, city, town, or village, or dedicated to the public, or upon any property of any person or corporation without license from the owner, any notice, advertisement, or designation of, or any name for any commodity, whether for sale or otherwise, or any picture, sign, or device intended to call attention thereto, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than fifty dollars, or by imprisonment in the county jail not more than twenty days, or by both such fine and imprisonment: Provided, that nothing contained in this section shall be construed to prohibit the posting of legal notices. [L. '86, p. 78, § 1, subd. 5; 2 H. P. C., § 90.]

§ 2709. To Prevent Removal of Mortgaged Property.—That when any real estate in this state is subject to, or is security for, any mortgage, mortgages, lien or liens, other than general liens arising under personal judgments, it shall be unlawful for any person who is the owner, mortgagor, lessee, or occupant of such real estate to destroy or remove or to cause to be destroyed or removed from said real estate any fixtures, buildings, or permanent improvements, not

including crops growing thereon, without having first obtained from the owners or holders of each and all of such mortgages or other liens his or their written consent for such removal or destruction. Any person willfully violating the provisions of this section shall be guity of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail for a period not to exceed six months, or by a fine of not more than five hundred dollars, or by both such fine and imprisonment. [L. '99, p. 122, §§ 1, 2.]

See supra, § 2603, the sale of mortgaged personal property.
See supra, § 2629, and infra, § 3669, removal of mortgaged personalty.

§ 2710. Prohibiting Advertising of Treatment of Certain Diseases. Any person who shall advertise that he will treat or cure venereal diseases or disorders, or any venereal disease or disorder, shall be guilty of a misdemeanor, and upon conviction thereof shall be imprisoned in the county jail for a period of not less than one month nor more than six months. Any owner or managing officer of any newspaper in whose paper shall be printed or published such advertisement as is described in this section shall be guilty of a misdemeanor, and upon conviction thereof shall be imprisoned in the county jail for a period of not less than one month nor more than six months. [L. '05, p. 142, § 1.]

See, also, surpa, § 2462.

§ 2711. False Pretenses, etc., in Selling Mines.—Any person who shall, with intent to cheat, wrong, or defraud, place in or upon any mine or mineral claim any ores or specimens of ores not extracted therefrom, or exhibit any ore, or certificate of assay of ore, not extracted therefrom, for the purpose of selling any mine or mining claim, or interest therein, or who shall obtain any money or property by any such false pretenses or artifices, shall be deemed guilty of a felony. [L. '90, p. 99, § 1; 2 H. P. C., § 238.]

§ 2712. Altering Sample or Certificate of Assay.—Any person who shall interfere with, or in any manner change samples of ores or bullion produced for sampling, or change or alter samples or packages of ores or bullion which have been purchased for assaying, or who shall change or alter any certificate of sampling or assaying, with intent to cheat, wrong, or defraud, shall be deemed guilty of a felony. [L. '90, p. 99, § 2; 2 H. P. C., § 239.]

§ 2713. Making False Sample or Assay of Ore.—Any person who shall, with intent to cheat, wrong, or defraud, make or publish a false sample of ore or bullion, or who shall make or publish or cause to be published a false assay of ore or bullion, shall be deemed guilty of a felony. [L. '90, p. 99, § 3; 2 H. P. C., § 240.]

§ 2714. Penalty for Violation of Last Three Sections.—Any person violating any of the provisions of the last three preceding sections shall be deemed guilty of a felony, and upon conviction thereof shall be fined in any sum not less than fifty nor more than one thousand dollars, or by imprisonment in the penitentiary for not less than one year nor more than five years, or by both such fine and imprisonment. [L. '90, p. 99, § 4; 2 H. P. C., § 241.]

§ 2715. Extortion by Ferryman, Toll-gate Keeper, etc.—If any ferryman, ferry owner, ferry-keeper, or keeper of a toll bridge or toll gate, himself, or by any person in his employment, shall demand or receive any greater fees on account of ferriage or toll than is or may be fixed by law, or by the proper board doing county business, as the rates of ferriage or toll to be received by such person, upon conviction thereof he shall be fined in any sum not exceeding one hundred dollars, or be imprisoned in the county jail not exceeding one month. [L. '54, p. 95, § 108; Cd. '81, § 923; 2 H. P. C., § 156.]

See infra, § 5008, order of carriage by ferryman, penalty.

§ 2716. Mutilation of Sign-boards, Mile-posts, etc.—Any person or persons who shall deface, mutilate, tear down, or destroy any sign-board or post, or any mile-board or post, erected or set up by the authorities of any city, town or county, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine in any sum less than twenty dollars, or by imprisonment in the county jail not exceeding twenty days, or both. [L. '01, p. 25, § 1.]

§ 2717. Protection to Mile-boards Used for Advertising.—Any person, firm, company or corporation desiring to erect or set up sign-boards or posts, or mile-boards or posts, as a means of advertising, and desiring to have the protection of the foregoing sections in so doing, shall satisfy the proper officers of the city, town or county that said boards or posts will be set up at correct distances and at proper points and in all other respects be serviceable to the public as sign-boards or posts, or as mile-boards or posts; whereupon said person, firm, company or corporation shall be permitted to place on said boards or posts the words "by authority," and the authorities granting such permission shall make a record of such action in the records of their proceedings; and any sign-board or post, or any mile-board or post, set up by such permission, and having on its face in clear, bold letters the words "by authority," shall have the same protection on [as] such boards or posts set up by the authorities of any city, town or county, and any person or persons who shall deface, mutilate, tear down or destroy any such board or post so set up, shall be guilty of a misdemeanor, and upon

conviction shall be punished by a fine in any sum less than twenty dollars, or by imprisonment in the county jail not exceeding twenty days, or both. [L. '01, p. 25, § 2.]

§ 2718. Fast Driving Over Bridge.—Any person or persons riding or driving faster than a walk over any bridge located on any county or state road, composed of one or more spans, upon conviction thereof shall be fined in any sum not to exceed ten dollars nor less than five dollars, to be collected by any court having competent jurisdiction thereof, and all moneys so collected shall be paid into the county treasury and become a part of the school fund: Provided, that this section shall apply only to bridges over thirty feet in length. [L. '79, p. 148, § 1; Cd. '81, § 931, 2 H. P. C., § 165.]

§ 2719. Unlawful Use of Traction Engine on Highways.—Whenever any person in charge of and running any traction engine propelled by steam upon any county road or public highway, except in towns, cities, or villages, shall meet or come in close proximity to any person driving a team of horses, it shall be the duty of the person in charge of such engine to come to a full stop, and remain standing until the team has passed. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and on conviction shall be fined not less than ten nor more than fifty dollars. [L. '90, p. 523, §§ 1, 2; 2 H. P. C., § 233.]

§ 2720. Throwing Glass or Tacks in Highway—Penalty.—Any person or persons, corporation or corporations who shall throw, place, or deposit, in any road, street, alley, or highway, in the state of Washington, any bottle, bottles, glass, glassware, tacks, or nails, shall be guilty of a misdemeanor, and on conviction thereof, shall be fined not less than twenty-five dollars nor more than fifty dollars, together with the costs and disbursements of the prosecution, and shall be committed to the county jail until such fine and costs are paid. [L. '09, p. 56, § 1.]

§ 2721. Race-track Gambling a Felony—Penalty.—Any person who receives, records or registers bets, stakes or wagers, or who sells pools, or makes a book or books, upon any horserace, or upon the result of any trial or contest of speed or power of endurance of any animal, whether such race, trial or contest takes place within or without this state; or any person who receives, registers, records, forwards or transmits, or purports or pretends to receive, register, record, forward or transmit, in any manner whatsoever, any money, checks, credits, or any other representative of value, or any property, thing or consideration of value whatsoever, bet, staked, or wagered, by or for any other person, upon any such race or result, whether to be bet, staked, or wagered within or outside this state;

or any person who uses, or has in his possession for use, any book, paper, board, device, apparatus or paraphernalia, for the purpose, actual or pretended, of receiving, recording, registering, forwarding or transmitting any bets, stakes or wagers, or of book-making or poolselling, upon any such race or result; or any person who keeps, manages, conducts, maintains or occupies any house, room, shop, shed, tenement, tent, booth, building, float or vessel, or any part thereof, or who keeps, manages, conducts, maintains or occupies any place or stand, of any kind, upon any public or private ground, street, park, garden, inclosure or place, for the purpose of receiving, recording, registering, forwarding or transmitting any bets, stakes or wagers, or of selling pools, or of book-making, upon any such race or result; or any person who being the owner, lessee or occupant of any house, room, shop, shed, tenement, tent, booth or building, float or vessel, or part thereof, or of any ground, park, garden, inclosure or place, knowingly permits the same to be used or occupied for any of the purposes herein prohibited, or who knowingly permits to be kept, exhibited or used therein any book, paper, board, device, apparatus or paraphernalia, for the purpose of recording or registering such bets, stakes or wagers, or for the purpose of such poolselling or book-making; or any person, whether as principal, employer, owner, proprietor, agent, employee or assistant, or as officer, agent or employee of a corporation, who aids, assists or abets, in any manner, any of the said acts or things which are hereby forbidden, is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for a period of not less than one, nor more than three years. [L. '09, p. 7, § 1.]

See supra, § 2473, poolselling and book-making.

§ 2721½. Indecent Language Practices and Drunkenness.—Any person who shall use in the presence of any person any indecent or vulgar language, or who shall appear upon any public road or street or in any or upon any public place or conveyance in any indecent, drunken or maudlin condition or boisterous manner shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished accordingly. [L. '09, Ex. Sess., p. 61, § 1.]

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VOLUME I.

"AGRICULTURE" to "HUSBAND AND WIFE," §§ 3000-1 to 5935.

(UNDER TITLES ALPHABETICALLY ARRANGED.)

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CHAPTER A.

Department of Agriculture.

§ 3000–1. Creation of Department.—There shall be a department of the state government known as the Department of Agriculture, which shall be charged with the administration of the laws relating to agriculture, agricultural resources and products, horticulture, livestock, foods, drugs and oils, and such other subjects as the legislature may provide. [L. '13, p. 196, § 1.]

Cited in 81 Wash. 604; 82 Wash. 646.

§ 3000–2. Commissioner of Agriculture.—The office of commissioner of agriculture is hereby created. The governor shall appoint

the commissioner of agriculture, and such commissioner shall hold office at the pleasure of the governor and until his successor is appointed and qualified. The commissioner shall be ex officio a member of the state board of health. [L. '13, p. 196, § 2.]

§ 3000-3. Bond—Salary.—Before entering upon the duties of his office the commissioner of agriculture shall take and subscribe the oath of office required of state officers, and shall give a surety company bond in the sum of five thousand dollars, conditioned for the faithful performance of his duties, the cost of said bond to be paid by the state. The commissioner shall receive an annual salary of four thousand dollars, payable in the same manner as the salaries of other state officers, and shall be allowed such expenses as may be actually and necessarily incurred in the performance of his duties. He shall maintain his office at the state capitol. [L. '13, p. 196, § 3.]

§ 3000-4. Advisory Board.—An agricultural advisory board is hereby created, which shall consist of the governor, the commissioner of agriculture, the director of the Washington agricultural experiment station of the State College of Washington, and two other members who shall be appointed by the governor and serve at his pleasure. The governor shall be ex-officio chairman of the board, and the commissioner of agriculture shall be ex-officio secretary. The members of the board shall serve without compensation, but shall be allowed their actual and necessary expenses incurred in the performance of their duties. It shall be the duty of the agricultural advisory board to meet at the call of the governor, and it shall advise the commissioner of agriculture in such matters as pertain to the administration of the department. [L. '13, p. 197, § 4.]

§ 3000-5. Four Divisions.—For the purpose of administering the affairs of the department of agriculture it shall be organized into four divisions, to be known respectively as the division of dairy and livestock, the division of horticulture, the division of agriculture and the division of foods, feeds, fertilizers, drugs and oils. [L. '13, p. 197, § 5.]

§ 3000-6. Powers of Commissioner.—The commissioner shall have power and it shall be his duty:

(1) To exercise all the powers and perform all the duties now vested in and required to be performed by the state veterinarian.

(2) To exercise all the powers and perform all the duties now vested in and required to be performed by the state dairy and food commissioner.

(3) To exercise all the powers and perform all the duties now vested in and required to be performed by the state commissioner

of horticulture and the district horticultural inspectors appointed by such commissioner.

(4) To exercise all the powers and perform all the duties now vested in and required to be performed by the state oil inspector.

(5) To exercise all the powers and perform all the duties now vested in and required to be performed by the state fair commission.

(6) To exercise all the powers and perform all the duties now vested in and required to be performed by the Southwest Washington Fair Commission.

(7) To exercise all the powers and perform all the duties now vested in and required to be performed by the state commissioner of labor so far as they concern the inspection and supervision of bakeries and bakeshops.

(8) To exercise all the powers and perform all the duties now vested in and required to be performed by the department of animal husbandry in the State College of Washington in respect to the registry and licensing of stallions and jacks.

(9) To exercise all the powers and perform all the duties now vested in and required to be performed by the director of the Washington agricultural experiment station in respect to concentrated commercial feeding stuffs.

(10) To exercise all the powers and perform all the duties now vested in and required to be performed by the director and chemist at the Washington agricultural experiment station, or either of them, in respect to commercial fertilizers used for manurial purposes.

(11) To publish and distribute bulletins and reports embodying information upon the subjects of agriculture, horticulture, livestock, dairying, foods and drugs and other matters pertaining to his department.

(12) To cause surveys and classifications to be made of such lands as shall come within any project of the state for reclamation, drainage or utilization of logged-off lands, or other similar enterprises.

(13) To make a report to the governor, at least thirty days before the commencement of each biennial session of the legislature, containing an account of all matters pertaining to his department and its administration, which shall be printed and published in the manner provided by law. [L. '13, p. 197, § 6.]

§ 3000–7. Assistants.—The commissioner of agriculture may appoint such assistants, inspectors, experts and other employees as may be necessary for the administration of the affairs of the department, at such rates of compensation as the advisory board may determine upon. The commissioner may require any assistant, inspector or other employee to give a surety bond to the state of Washington in such sum and with such conditions as he shall determine,

the premium on such bond to be paid by the state. He shall before appointing any assistant or inspector require him to take an examination on such subject or subjects as shall pertain to the performance of his duties; but he may appoint without examination any person who is a graduate of the State College of Washington in such subject, or who is a graduate of any recognized school maintaining a course of instruction in such subject equivalent to the course prescribed at the State College of Washington therein. [L. '13, p. 199, § 7.]

§ 3000–8. Assignment of Assistants.—The commissioner of agriculture shall designate the division of the department to which any assistant or inspector appointed by him shall be assigned. An assistant or inspector may be assigned to more than one division. Any assistant or inspector assigned to any division shall, subject to the supervisory control of the commissioner, possess and exercise the same powers and perform the same duties as the commissioner of agriculture, with respect to all matters within such division. [L. '13, p. 199, § 8.]

Cited in 82 Wash. 652.

§ 3000–9. Appeals to Commission.—Any person aggrieved by any finding, order or act of any assistant or inspector in the department of agriculture may appeal from such finding, order or act to the commissioner, who shall forthwith proceed to hear and determine such appeal, render his decision therein, and report the same to the appellant and to such assistant or inspector. Such decision shall specify the further proceedings to be had in the premises. Such decision shall not, however, preclude an appeal or proper action in the courts in cases where such rights would otherwise exist. [L. '13, p. 199, § 9.]

Cited in 82 Wash. 648.

§ 3000–10. Officer not Interested in Contracts.—It shall be unlawful for the commissioner, or any assistant, inspector, or other employee, to be interested, directly or indirectly, either as owner, agent or solicitor, in the sale or purchase of any article, commodity or product used or produced by any person with whom he may come in contact in his official capacity. Any person violating the provisions of this section shall be guilty of a gross misdemeanor. [L. '13, p. 200, § 10.]

§ 3000–11. Chemists of Department.—The chemists of the Washington agricultural experiment station and the dean of the department of chemistry of the University of Washington shall be the chemists of the department of agriculture, and it shall be the duty of such chemists or either of them, without compensation other than their

expenses necessarily incurred in the performance of such work, to analyze any and all substances that the commissioner of agriculture, his deputies or inspectors may send to them, and report to the commissioner, without unnecessary delay, the result of any analysis so made, and when called upon by said commissioner any such chemist shall assist, as an expert or otherwise, in any prosecution for the violation of any law pertaining to the department. [L. '13, p. 200, § 11.]

§ 3000–12. Fees and Expenses.—All moneys collected as fees or otherwise by the department of agriculture shall be paid into the state general fund. All expenses incurred under the provisions of this act shall be paid out of the general fund, and shall be audited by the state auditor upon proper vouchers approved by the commissioner of agriculture; and the state auditor shall draw warrants upon the state treasurer for the amounts thus audited, in the manner provided by law. [L. '13, p. 200, § 12.]

§ 3000–13. Horticultural Fund Reverts to General Fund.—Upon the taking effect of this act all moneys in the state horticultural fund shall be transferred to the state general fund, and all moneys thereafter collected which shall be payable into the state horticultural fund shall be paid into the state general fund. [L. '13, p, 200, § 13.]

CHAPTER B.

Bureau of Farm Development.

§ 3000–15. Bureau of Farm Development—Expenses.—There is hereby created the bureau of farm development of the state of Washington, which shall consist of the director of the experiment station of the State College of Washington, who shall be director thereof, and of the boards of county commissioners of all counties of the state of Washington desiring to participate therein. The officers and members of such bureau of farm development shall serve without salary, and the expenses incident to the operation of said bureau of farm development shall be borne by the county for which the same shall be incurred. [L. '13, p. 48, § 1.]

§ 3000–16. Agricultural Expert—Salary.—The board of county commissioners of any county may by request in writing apply to the director of the bureau of farm development who shall appoint and assign to such county a competent agricultural expert: Provided, that the board of county commissioners applying therefor shall always have the right to reject any appointment, to determine the period during which such expert shall be employed, and to fix the compensation of such expert, not exceeding two hundred dollars ($200.00)

per month, and in their discretion necessary traveling expenses. [L. '13, p. 48, § 2.]

§ 3000–17. Term of Office—Expenses.—Such expert shall during the period of his employment reside and maintain an office within the county for which he is appointed, and, with the consent of the board of county commissioners of such county he may employ such assistance as may be required and purchase such books, equipment, apparatus, and material as may be required, which such books, equipment, apparatus, and material shall become and remain the property of the county: Provided, that the expenses which may be incurred by the authority of this section shall never exceed the sum of twelve hundred dollars during any calendar year. [L. '13, p. 48, § 3.]

§ 3000–18. Duties of Expert.—Such experts shall give individual instruction and conduct experimental work with the object of improving the agricultural methods and conditions of their counties, and shall perform such other duties as may be required, subject to the general supervision and control of the director of the bureau of farm development: Provided, that the boards of county commissioners shall always have the right to co-operate with the department of agriculture of the United States in the appointment, maintenance, and work of such experts; and in such event, the director of the bureau of farm development shall appoint for the county exercising the privilege herein granted such person as said department of agriculture may recommend, and said expert shall then be subject to the general supervision and control of said department of agriculture, and said department of agriculture shall defray such portion as may be agreed upon of the salary, office expenses, and other expenses incurred by such expert. [L. '13, p. 49, § 4.]

§ 3000–19. Tax Levy for Bureau Work.—For the purpose of fully and effectively carrying out the object and provisions of this act, the board of county commissioners participating herein of the several counties of the state of Washington are hereby empowered to levy, appropriate, and set aside such sum of money as may be necessary, not exceeding three thousand and six hundred dollars for any calendar year; and in the event of a failure from any cause to levy and appropriate such fund, and until the next annual tax levy, said boards of county commissioners are empowered to set aside such fund from the county current expense fund. [L. '13, p. 49, § 5.]

CHAPTER I.

State Fair.

§ 3001. Establishment of.—The public good requires [that] there be and hereby is established a state institution by the name of "The State Fair of Washington." [L. '93, p. 445, § 1.]

§ 3002. Objects.—It is the object and purpose of this institution to promote and further the advancement of all agricultural, stock-raising, horticultural, mining, mechanical and industrial pursuits in this state, and for the carrying out of this object, the management shall provide for an annual fair or exhibition by the institution upon the fair grounds owned by this state near the city of North Yakima, of all the industrial products of this state; said annual fair to be held upon such dates as may be fixed by the state fair commission, not earlier than the third Monday of September nor later than the second Monday of October of each year, and which fair shall continue for at least six days. [L. '93, p. 445, § 2; L. '03, p. 66, § 1.]

§ 3005. Powers and Duties of State Fair Commission.—Immediately after their organization the state fair commission shall take and have full control and management of the state fair as a state institution, and shall have care of its property and be intrusted with the entire direction of its business and financial affairs; shall, in conformity with the provisions of this chapter, prepare, adopt, publish and enforce all necessary rules for the management of the state fair, its meetings and exhibitions or the guidance of its officers or employees; shall determine the duties, responsibilities, compensation and tenure of office of all officers or other employees, as may be deemed necessary, and may remove from office any person appointed by it to any office for any inefficiency, neglect of duty or malfeasance in office; shall have power to appoint all necessary marshals to keep order on the grounds and in the buildings of the state fair during all annual exhibitions, and the marshals so appointed shall be vested with the same authority, for such purposes, as executive peace officers are vested by law; shall have power to charge entrance fees, gate money, lease stalls, stands, restaurant sites, give prizes and premiums and do all things which by said commission may be considered proper to conduct in connection with a state fair not otherwise prohibited by law. [L. '93, p. 447, § 5.]

Powers and duties of state fair commission devolve upon the commissioner of agriculture: See § 3000–6 (5).

See infra, §§ 3030, 3031, power to appoint marshals, oath, bond, and fees.

§ 3006. Location of Buildings, Track, etc.—The state fair association shall locate the buildings, track, etc., for state fair purposes upon

a tract of land containing not less than one hundred and twenty acres, to be in one solid block, of good soil, with ample water, as level and conveniently located near the railroad shipping point at North Yakima: Provided, that said tract of land is donated to the state of Washington by good and sufficient warranty deed, to be approved by the attorney general. The attorney general of the state shall, on demand, examine and approve the title to said lands and pass upon the sufficiency of all conveyances before acceptance of the same by the state fair commission. [L. '93, p. 447, § 6.]

§ 3007. Construction of Buildings, etc.—The land thus acquired by the state shall be forever set apart for the use and benefit of the state fair of the state of Washington; and immediately thereon the state fair commission shall cause to be constructed all necessary buildings, pavilions, exhibition halls, stalls, stands, a mile speeding track of most approved pattern, driveways, sidewalks and fences, and cause the same to be kept in complete and continual repair: Provided always, that no lien or encumbrance of any kind shall ever be created on said premises without the consent of the state: It being also provided, that no member of the state fair commission shall ever be personally interested in any purchase made or contract entered into by said commission for the use and benefit of the state fair. [L. '93, p. 447, § 7.]

§ 3008. Time and Place of Meetings—Salary of Secretary.—The regular and called meetings of the state fair commission shall be held at the office of the secretary in the city of North Yakima, and the regular annual meeting shall be held thereat on the first Monday in April of each year, at which meeting the president shall be elected by the commissioners from their own number and a secretary and treasurer shall also be elected either from the membership of the board or otherwise as the board may deem proper; and such other business shall be transacted as the interests of the state fair shall require. On the last Monday of October of each year the state fair commission shall prepare and transmit to the governor of the state a full financial statement, signed by the president and treasurer and attested by the secretary, of all funds received and disbursed and also a report signed by the president and secretary of all the assets and liabilities of the state fair, a full and detailed account of all its transactions, statistics and information gained, and for this purpose the commission shall cause the secretary to constantly collect all kinds of information calculated to instruct the agricultural and industrial classes, and have the same embodied in such report. The secretary shall receive a salary of twelve hundred dollars per annum, to be paid monthly out

of any funds appropriated for the maintenance of the state fair. [L. '93, p. 448, § 8; L. '03, p. 66, § 2.]

§ 3009. Vouchers for Expenditures.—All vouchers for the expenditures of money under the provisions of this chapter must be signed by the president and at least two other members of the state fair commission and attested by the secretary; and the state auditor shall, upon presentation of such voucher[s], draw his warrant upon the state treasurer for the payment of the same, and the state treasurer shall pay such warrant out of any money on hand appropriated for the purposes herein set forth: Provided, that every voucher must set forth the purpose for which the money, material or labor represented was used: It being also provided, that all moneys remaining in the hands of the treasurer of the commission on the last Monday of October of each year shall be paid in to the state treasurer to the credit of the state fair fund, to be subsequently drawn out, if required, as hereinbefore provided: Provided further, that no part of the money donated by this state shall be used as payment of purses in trial of speed between man or beast. [L. '93, p. 448, § 9.]

§ 3010. Report of Organization—Compensation and Mileage of Members.—When said state fair commission shall be organized as herein provided, the secretary of the commission shall report such organization to the governor and the auditor of the state. He shall also report to the governor any vacancy that may at any time occur in said commission. The members of the state fair commission shall be repaid their mileage actually paid out whilst actually engaged in the business of the state fair, and no other compensation: Provided, however, that the members of said commission shall each, in addition to their expenses, receive four dollars per day whilst actually engaged in locating and selecting the grounds for the state fair, and in superintending the construction of the buildings and other structures but not after September 3d in the year 1893; said compensation in every case to be paid in vouchers as hereinbefore provided. [L. '93, p. 448, § 10.]

§ 3011. Limit of Expenditure.—No expenditure shall be made or indebtedness contracted by the commissioners in excess of the amount herein appropriated and any indebtedness so contracted shall be void. [L. '93, p. 449, § 11.]

CHAPTER II.

Southwest Washington Fair.

§ 3012-1. Transfer to Lewis County.—The Southwest Washington Fair Association, as organized and existing at the time of the taking effect of this act, shall turn over and deliver to the county of Lewis all the lands, buildings, books, records, and other property belonging

to the state as a member of the Southwest Washington Fair Association. [L. '13, p. 126, § 1.]

§ 3012-2. Property—Control.—The property herein granted, including the buildings and structures, thereon as now constructed or as may be built or constructed from time to time, or any alterations or additions thereto, shall be under the jurisdiction and control of the board of county commissioners, of Lewis county at all times except during the month or months in which the Southwest Washington Fair Commission shall desire to use such property for the purpose of holding a fair or exposition in conformity with the objects of such association as defined in section 2 of chapter 237, Laws of 1909*, and for the two months immediately preceding the month or months fixed for the holding of such fair or exhibition, and such other or further time or times as the boards of county commissioners of Lewis county may authorize the Southwest Washington Fair Commission to use the same. [L. '13, p. 126, § 2.]

*N. B.—See 2 Rem. & Bal. Code, § 3013.

§ 3012-3. Management—Fairs—Commissioners—Powers.—For the purpose of holding fairs or expositions in conformity with the provisions named in section 3013, a new commission is hereby created, which, however, shall be known as the Southwest Washington Fair Commission, to have all the power and authority granted to the Southwest Washington Fair Association in the above-named act subject to the modifications of its powers and duties as provided herein. Such commission shall be composed of, as ex-officio members thereof, by virtue of their office, the members of the board of county commissioners of Lewis county and the chairman of the board of county commissioners of each of the other counties composing the Southwest Washington Fair Association, or so many of said counties as evidenced by formal resolution of the respective boards of county commissioners thereof, as shall desire to participate in such fair or exhibition or other event held on such grounds. [L. '13, p. 126, § 3.]

"Section 3013" refers to 2 Rem. & Bal. Code.

§ 3012-4. Officers of Commission—Funds.—Within thirty days after the taking effect of this act, the board of county commissioners in the county of Lewis shall notify the board of county commissioners of each of the other counties comprising the Southwest Washington Fair Association of the time and place of the first meeting of the Southwest Washington Fair Commission, as herein defined, which meeting shall be called for a time not less than thirty days from the giving of such notice. The first meeting of such commission shall be held at the courthouse of Lewis county, at which time and place the commission shall proceed to organize. The chairman of the board of county commissioners of Lewis county shall be chairman of the

commission. The commission shall proceed to elect a president and secretary and define their duties and fix their compensation, and provide for the keeping of the records of the commission. The commission shall also select some person to act as treasurer, and for this purpose may designate the treasurer of Lewis county as treasurer of the commission. The funds of the commission, however, shall be kept separate and apart from the funds of Lewis county, but shall be deposited in the regular depositories of Lewis county and all interest earned thereby be added and become a part of such fund. The treasurer shall give such bond as the commission may determine for the safekeeping of such funds. The commission shall also provide for an auditing committee of three members to audit all accounts against the commission, and no funds shall be paid out of the treasury of the commission except upon warrants signed by the chairman of the commission, attested by the secretary, after the approval of the claim therefor by such auditing committee. [L. '13, p. 127, § 4.]

§ 3012-5. Support of Fair.—Each county belonging to the Southwest Washington Fair Association may make donations or appropriations to the funds of the commission, and may take any other part in the commission as may be deemed advisable by the board of county commissioners of such county, and may exhibit the products or resources of such county in the manner deemed to the best interests of such county. [L. '13, p. 128, § 5.]

CHAPTER III.

County Fairs and Exhibits.

§ 3024. County Aid for Fairs—Application for.—Any agricultural fair association which has a corporate existence for the purpose and object of holding a fair and agricultural exhibition of stock, cereals and agricultural produce of all kinds, including dairy produce as well as arts and manufactures in any county, may apply to the board of county commissioners of such county for a grant to pay expenses and premiums awarded. [L. '03, p. 363, § 1.]

Cited in 58 Wash. 405; 80 Wash. 352, 353.

§ 3025. Appropriations to Aid Fairs—Limit of Aid.—To enable the said board of county commissioners to give said grant, they may and they are hereby authorized to appropriate from the current expense funds of said county, any sums for said purpose not to exceed one-half of one mill on the dollar of all taxable property in the county according to the assessment as made by the county assessor and equalized by the board of equalization for the year next preceding the year in which the appropriation is made: Provided,

that in counties of the third and fourth classes such appropriation shall not exceed one-fourth of one mill on the dollar, and in counties of the first and second class, such appropriation shall not exceed one-eighth of one mill on the dollar of all the taxable property in such counties: And provided further, that the members of the board of county commissioners shall be ex-officio members of the county agricultural fair association in all counties where appropriations are made under the provisions of this act. [L. '03, p. 363, § 2; L. '09, p. 113, § 1.]

Cited in 58 Wash. 405; 80 Wash. 353.

"Act" in this section refers to §§ 3024–3026.

§ 3026. Payment of Tax Collections to Fair Treasurer.—The said board of county commissioners shall make said appropriations for said fair not later than July 31st annually, where they shall deem it to the best interests of the county to make such appropriations, and shall cause such sums so appropriated to be paid to the trustees of said associations or their duly authorized treasurer: Provided, however, that no more than one county agricultural fair shall be held in any county in any one year; and said county fair association so applying for the benefit of the aforesaid appropriation must have a corporate existence: And provided further, that any and all buildings and structures erected with the funds so appropriated shall become the property of the county making such appropriation: And further provided, that full and complete vouchers covering all expenditures of public money appropriated under this act, shall be made to the board of county commissioners before the close of each calendar year. [L. '03, p. 364, § 3; L. '09, p. 113, § 2.]

Cited in 80 Wash. 353.

"Act" in this section refers to §§ 3024–3026.

§ 3027. County Aid to Exhibits — Poultry, Livestock and Farm Products.—Any corporation organized for the purpose of holding poultry, livestock, or agricultural produce exhibits, may apply to the board of county commissioners of such county for a grant to pay expenses and premiums awarded. [L. '09, p. 635, § 1.]

§ 3028. Limit of Aid.—To enable the said board of county commissioners to give said grant, they are hereby authorized to appropriate any sum not exceeding two hundred and fifty dollars ($250) annually out of the general fund: Provided, that the board of county commissioners shall be ex-officio members of such corporation in all counties where appropriations are made under the provisions of this act. [L. '09, p. 635, § 2.]

"Act" in this section refers to §§ 3027–3029.

§ 3029. Payment of County Appropriation—Exhibits to be Annual.—The said board of county commissioners may not later than July 31st annually cause to be paid to the directors of such corporation or their duly authorized secretary or treasurer the amount appropriated: Provided, that said corporation so applying must have held at least one annual exhibition of poultry, livestock or agricultural produce immediately preceding the application for the grant and must provide buildings and other necessary improvements for said annual exhibition. [L. '09, p. 635, § 3.]

CHAPTER IV.

Marshals of Fairs.

§ 3030. Fair Marshal, Appointment and Powers of.—The president and managers of agricultural and mechanical fairs in this state shall have the authority to appoint one or more marshals for the purpose of preserving order on the fair grounds during the continuance of the fairs; and such marshals so appointed shall have all the powers now conferred by law on sheriffs and constables. [L. '69, p. 328, § 1; 1 H. C., § 2370.]

See supra, § 3005, marshals of state fair.

§ 3031. Oath and Bond of Marshal—Fees.—Before the marshals thus appointed shall proceed to act, they shall execute a bond, not to exceed three hundred dollars, and file the same in the county auditor's office in the county in which said fair is to be held, the said bond to be approved by the said county auditor. They shall likewise take the oath sheriffs or constables are required by law to take, and be subject to the laws now in force relating to sheriffs and constables, and shall be entitled to the same fees sheriffs and constables now are for similar services. [L. '69, p. 328, § 2; 1 H. C., § 2371.]

CHAPTER V.

Noxious Weeds.

§ 3032. State Botanists.—For the purpose of this act the botanist of the state university of Washington, and the botanist at the state college of Washington, at Pullman, are hereby made ex-officio state botanists, to act without additional compensation. [L. '07, p. 159, § 1.]

Cited in 78 Wash. 54.

"Act" in this section refers to §§ 3032–3035.

§ 3033. Noxious Weeds Defined.—Canada thistle (cnicus arvensis), Russian thistle (Salsola Kali tragus), tumbling mustard, the so-called "Jim Hill" mustard (Sisymbrium altissimum), cockleburr,

and all other weeds liable to become a pest and detrimental to the agricultural interests of any county in this state, are hereby declared to be noxious weeds. [L. '07, p. 159, § 2.]

Cited in 68 Wash. 16.

§ 3034. Other Weeds Which may Become Noxious.—When the state botanists are or either of them is of the opinion that any weed is, or may become noxious as herein defined other than those specifically mentioned, he or they shall notify the auditor of the county in which such weeds are, and the clerk of each incorporated city or town in such county, giving a description of such weed, and he or they shall also accompany such description with a specimen of the same, and shall at the same time, send to each road supervisor of such county a description and specimen of such weed. [L. '07, p. 159, § 3.]

§ 3035. Publication of Description.—The county auditor and the city or town clerk, upon receipt of said description and specimen shall have said description published weekly in the newspaper doing the county or city printing for four successive weeks, and he shall retain said specimen in his office for the inspection of the public. [L. '07, p. 159, § 4.]

§ 3036. Suffering Growth of Thistles is Unlawful.—If any person or persons owning, possessing, or having care or charge of any land or lands, improved or unimproved, inclosed or uninclosed, in this state, shall knowingly, willfully, or willingly permit or suffer any Chinese or Canada thistles to grow up thereon, and suffer the same to stand until its seeds get ripe, such person or persons shall be guilty of a misdemeanor, and upon conviction thereof shall, for the first offense, be fined in the sum of ten dollars, and for the second offense not less than twenty-five nor more than fifty dollars, to be recovered, with costs, in any action to be brought in the name of the state of Washington, for the use and benefit of the public school fund in the county where the offense is committed; or action therefor may be brought before any court of competent jurisdiction in the county. [Cd. '81, § 2238; 1 H. C., § 2424.]

Subsequent laws superseding parts of this section have no repealing clause, and do not cover persons "having care or charge of any land." This section is accordingly retained.

§ 3037. Owner of Canals and Ditches must Suppress Weeds.—If any person or persons, company or corporation, owning, maintaining or operating, any canal or ditch for irrigation, drainage or power purposes shall permit or suffer any weed, weeds or other noxious growths to grow upon the banks of such ditch or canal and suffer the same to stand until the seeds thereof get ripe, such person or

persons, company or corporation shall be guilty of a misdemeanor and upon conviction thereof shall for the first offense be fined in the sum of ten dollars; and for the second and each subsequent offense not less than twenty-five nor more than one hundred dollars; to be recovered with costs in an action to be brought in the name of the state of Washington for the use and benefit of the public school fund of the state. [L. '07, p. 45, § 1.]

§ 3038. Thistles must be Cut Down.—It shall be the duty of every owner, lessee, occupant or agent thereof, or of any person having the care and charge of any land or lands, improved or unimproved, inclosed or uninclosed, in this state, to cut down or otherwise destroy all noxious weeds growing thereon or on any road, street or highway to the center thereof bordering on any such land or lands, so often in each and every year as shall be certain to prevent them from going to seed: Provided, that this shall not apply to timber lands, brush lands or logged-off lands. [L. '11, p. 327, § 1; L. '13, p. 305, § 1.]

Cited in 68 Wash. 16; 78 Wash. 55.

§ 3039. Penalty for Permitting Growth of Thistles.—If any owner, lessee, occupant, agent or person having the care or charge of any such land or lands shall knowingly suffer any noxious weeds to grow thereon, and shall permit the seeds of any such noxious weeds to ripen, he shall be guilty of a misdemeanor: Provided, that this section shall not apply to what is commonly known as "bull thistle," on lands known as "logged-off, or cut over lands" outside of cities and towns. [L. '11, p. 327, § 1; L. '13, p. 306, § 2.]

Cited in 78 Wash. 54, 55.

§ 3040. Notice to Remove.—It shall be the duty of each road supervisor in each road district in this state to see that the provisions of this act are carried out within his district, and he shall file with the prosecuting attorney of the county lists of lands within his district upon which any noxious weeds may be growing, giving a description of the kinds and character of weeds growing thereon, together with a statement of the approximate time within which said weeds must be destroyed in order to prevent their going to seed.

Upon receipt of such lists it shall be the duty of the prosecuting attorney to demand from the county auditor and county treasurer lists giving the names of any and all owners, lessees, mortgagees and occupants of the lands to be affected, together with their places of residence or address so far as may be shown by the public records of said county or of said offices or be known to said officers, and it shall be the duty of said auditor and said treasurer to furnish such information.

It shall be the duty of such prosecuting attorney to issue and subscribe notices directed to each and all of said owners, lessees, mortgagees and occupants which said notices shall require the persons therein named to cause said noxious weeds to be cut down and destroyed within ten days from the time of serving, mailing or posting said notices as in this act provided and said notices shall be served or given in the following manner: On all residents of the county within which the lands affected are situated, by serving the same personally in the same manner as provided by law for the service of a summons in the superior court; on all nonresidents of the county whose address or place of residence is shown by the records or is known, by mailing a copy of said notice by registered mail; and in all cases where the address or place of residence is unknown, by posting a copy of said notice in a conspicuous place on the land in full view of the traveling public. In case of a return of not found as to any of such persons whose address or place of residence is unknown, posting of the notices as herein provided shall be a sufficient service thereof.

It shall be the duty of the county auditor to keep a record book in which he shall cause to be entered the names, addresses or places of residence of any person, firm or corporation who may notify such officer of their desire to be registered therein and of their desire to be notified by registered mail at the place of residence or address given of any proceedings had under this act affecting any lands of which they may be the owners, lessees, mortgagees or occupants; and the sending by registered mail of any notice or statement provided for under this act to said person or persons, firm or corporation at the place of residence or address given shall constitute a sufficient service under this act.

All returns of not found shall be made by the sheriff of the county or his deputies, and all returns not found, proofs of service, mailing or posting shall be filed forthwith in the office of the auditor of the county where the land is situated.

Where noxious weeds are growing on the right of way of any railroad within any road district, said notice may be served on the foreman in charge of that portion of the right of way passing through such district, or such notice may be served on such railway corporation by delivering a copy thereof to any agent of said corporation within the state personally.

In case the persons named in said notice fail, refuse or neglect to cut down and destroy said noxious weeds within ten days after the date of serving, mailing or posting said notices as in this act provided, then such road supervisor shall take the necessary assistance

and enter upon said lands and cause said noxious weeds to be destroyed with as little damage to growing crops as may be.

If any such road supervisor shall fail or refuse to perform or cause to be performed any of the duties or services enumerated in this act, he shall be deemed guilty of a misdemeanor. [L. '11, p. 327, § 1; L. '13, p. 306, § 3.]

Cited in 68 Wash. 16; 78 Wash. 54, 55; 81 Wash. 311, 312.

§ 3041. Expense of Removal — Payment.—Each road supervisor shall keep an accurate account of the expenses incurred by him in carrying out the provisions of this act with respect to each parcel of land entered upon therefor and the prosecuting attorney of the county shall cause to be served, mailed or posted in the same manner as is provided in this act for giving notice to destroy noxious weeds a statement of such expense, including description of the land verified by oath of the road supervisor, to the owner, lessee, mortgagee, occupant or agent or person having charge of said land, and coupled with such statement shall be a notice subscribed by said prosecuting attorney and naming a time and place when and where said matter will be brought before the board of county commissioners for hearing and determination, said statement and notice to be served, mailed or posted, as the case may be, at least ten days before the time for such hearing. At the time of such hearing or at such other time to which the same may be continued or adjourned by said county commissioners, the board shall proceed to examine said claim, hear testimony if offered and shall make and enter an order upon the minutes of said meeting that said claim, or so much thereof as shall be deemed just and proper, shall be paid out of the road and bridge fund of said county. Costs of serving, mailing and posting shall be added to any amount so found to be due and shall be collected at the same time and in the same manner as other charges under this act. [L. '11, p. 327, § 1; L. '13, p. 308, § 4.]

Cited in 68 Wash. 17; 78 Wash. 55.

§ 3042. Collection.—At the time when the board of county commissioners pays the claim for cutting said weeds as in section 3041 provided it shall make an order that the amount paid be a tax on the land on which said work was done after the expiration of ten days from the date of the entry of said order, unless an appeal be taken as in this act provided, in which event the same shall become a tax at the time the amount to be paid shall be determined by the court, and the county treasurer shall enter the same on the tax-rolls against the land for the current year and collect it together with penalty and interest as other taxes are collected, and when so collected, the same shall be credited to the county road and bridge fund:

Provided, that a failure to serve, mail or post any of the notices or statements provided for in this act shall not invalidate said tax but in case of such failure, the lien of such tax shall be subordinate and inferior to the interests of any mortgagee to whom notice has not been given in accordance with the provisions of this act. [L. '13, p. 309, § 5.]

Cited in 78 Wash. 55.

§ 3042–1. Appeals to Superior Court.—Any interested party may appeal from the decision and order of said county commissioners to the superior court of said county by serving written notice of appeal on the county auditor and by filing in the office of the clerk of the superior court a copy of said notice of appeal with proof of service attached, together with a good and sufficient cost bond in the sum of two hundred dollars, said cost bond to run to the county and in all other respects to comply with the laws relating to cost bonds required of nonresident plaintiffs in the superior court. Said notice of appeal must be served and filed within ten days from the date of the decision and order of the county commissioners and said cost bond must be filed within five days from the filing of said notice of appeal.

Whenever notice of appeal and cost bond shall have been filed with the clerk of the superior court, that officer shall notify the county auditor thereof forthwith and the auditor shall certify immediately to said court all notices and records in said matter, together with proofs of service, and a true copy of the order and decision pertaining thereto made by the county commissioners. If no appeal be perfected within ten days from the decision and order of the county commissioners the same shall be deemed confirmed and the auditor shall certify the amount of such charges to the county treasurer who shall enter the same on the tax-rolls against the land; when an appeal is perfected the matter shall be heard in the superior court de novo and the court's decision shall be conclusive on all persons properly served under this act: Provided, that an appeal may be taken to the supreme court from the order or decision of the superior court in the manner provided by existing laws, and upon the conclusion of such appeals the amount of charges and costs adjudged to be paid shall be certified by the clerk of the superior court to the county treasurer and said treasurer shall proceed to enter the same on his rolls against the land affected. [L. '13, p. 309, § 6.]

§ 3042–2. Exemptions — Petition — Notice—Hearing.—The board of county commissioners of any county in this state shall have the power to designate by an order, to be made and entered in the manner hereinafter, certain territory which may be excepted from the

provisions of this act. Whenever a petition signed by ten or more residents of any road district shall be filed with the county auditor praying that certain contiguous territory therein bounded and described and lying wholly within said road district be excepted from the provisions of this act for the reasons set forth in said petition, said auditor shall cause a notice to be published for two successive weeks in the newspaper doing the county printing, which said notice shall set forth the boundaries of the tracts to be excepted and shall name the time and place for a hearing by the board of county commissioners on said petition, the first publication of said notice to be at least fifteen days prior to the time of said hearing: Provided, that the person or persons filing said petition shall pay in advance to the county auditor the costs of the publication of such notice.

At the time of said hearing the board of county commissioners shall hear all persons interested in the matter presented by said petition and, by an order made and entered in the record of their proceedings, shall determine whether said territory shall be excepted from the provisions of this act, giving the reasons for their decision, and in case the prayer of such petition is granted such order shall describe the boundaries of the territory within said road district to which such exception shall be applied: Provided, that any order thus made excepting any territory from the provisions of this act shall not be in force for a longer period than twelve months from the date of the entry of such order, unless a new petition be filed, new notice given and another hearing be had as in this act provided. [L. '13, p. 310, § 7.]

§ 3043. Act Applicable to Cities.—The provisions of this act shall be applicable to all cities and towns in this state; the duty herein prescribed for the road supervisors shall be performed by the marshal or supervisor of streets in such city or town, and the duty of the board of county commissioners shall be performed by the council, and the county treasurer shall enter on the tax-roll the amount paid by the council of said town or city, when certified to him under the hand of the mayor and city clerk and the seal of such city or town. [L. '07, p. 161, § 10. Cf. L. '99, p. 75, § 6.]

"Act" in this section refers to §§ 3032–3035, 3039–3043 and 5582.

§ 3044. Nonenforcement by Supervisor — Penalty. — Any citizen may notify the road supervisor or county commissioners of the presence of Canadian thistles or Russian thistles who, upon receiving such notice, shall enforce the provisions of this act; and failure upon the part of the road supervisor to act after notice from the county commissioners within ten days of such notice shall subject him to a fine of not more than ten dollars for the first offense and not less

than ten dollars or more than twenty dollars for each succeeding offense; and continued refusal or neglect shall subject him to removal from office. [L. '99, p. 76, § 8.]

This section may be superseded by the Act of 1907, which, however, had no repealing clause.

CHAPTER VI.

Fertilizers.

§ 3045. Ingredients on Label — Bulk Sales, Report of to State Chemist.—Every lot or parcel of commercial fertilizers or material used for manurial purposes sold, offered or exposed for sale within this state, the retail price of which is ten dollars or more per ton, shall be accompanied by a plainly printed label, stating clearly and truly the number of ten pounds of fertilizer in the package, the name, brand or trademark under which the fertilizer is sold, the name and address of the manufacturer or importer, the place of manufacture and a chemical analysis stating the percentage of nitrogen, of potash soluble in water and of soluble reverted and insoluble phosphoric acid. Whenever any fertilizer or fertilizing ingredients are shipped or sold in bulk for use by farmers in this state a statement must be sent to the chemist of the Washington state agricultural experiment station at Pullman, who is hereby created state chemist, ex officio, giving the name of the goods so shipped and accompanied by an affidavit from the seller, giving the percentage of the several fertilizing ingredients guaranteed. All fertilizers sold, offered or exposed for sale shall be accompanied by a label giving a correct general statement of the composition and ingredients of the same. [L. '99, p. 80, § 1.]

§ 3046. Report and Sample to State Chemist Before Offering for Sale.—Before any commercial fertilizer, the retail price of which is ten dollars or more per ton, is sold, offered or exposed for sale, the importer, manufacturer or party who causes it to be sold or offered for sale within this state shall file with the chemist of the Washington state agricultural experiment station a certified copy of the statement named in section 3045 and a list of the names and addresses of his agents in this state; and shall also deposit with said chemist, at his request, a sealed glass jar or bottle containing not less than one pound of the fertilizer, accompanied by an affidavit that it is a fair, average sample thereof. [L. '99, p. 80, § 2.]

§ 3047. Analysis Fee. — The manufacturer, importer, agent or seller of any brand of commercial fertilizer or material used for manurial purposes, the retail price of which is ten dollars or more per ton, shall pay on or before the first day of April annually to the treasurer of the Washington state agricultural experiment station

an analysis fee of six dollars for each of the fertilizing ingredients contained, or claimed to exist in, said fertilizer to be sold, offered or exposed for sale within this state as aforesaid: Provided, however, that whenever the manufacturer or importer shall have paid the fee herein required for any person acting as agent or seller for such manufacturer or importer, such agent or seller, shall not be required to pay the fee named in this section; and on receipt of said analysis fees the treasurer of the Washington state agricultural experiment station shall issue certificates of compliance with this chapter. [L. '99, p. 81, § 3.]

§ 3048. Certificate in Case Leather is Used.—No person shall sell, offer or expose for sale in this state any pulverized leather, raw, steamed, roasted, or in any form, as fertilizer or manure without an explicit printed certificate of the fact, to be conspicuously affixed to every package of such fertilizer or manure, and to accompany or go with every lot or parcel of the same. [L. '99, p. 81, § 4.]

§ 3049. Penalty.—Any person selling, offering or exposing for sale any commercial fertilizer without the statement as required by section 3045, or with a label stating that said fertilizer contains a larger percentage of any one or more of the constituents mentioned in said section than is contained therein, or respecting the sale of which all the provisions of the foregoing sections have not been fully complied with, shall pay a fine of fifty dollars for the first offense and one hundred dollars for each subsequent offense. [L. '99, p. 81, § 5.]

§ 3050. Exceptions.—This chapter shall not affect parties manufacturing, importing or purchasing fertilizers for their own use and not selling in this state. [L. '99, p. 82, § 6.]

§ 3051. Publication of Analysis of Fertilizers.—The director of the Washington state agricultural experiment station shall cause to be collected and analyzed by the chemist of the Washington state agricultural experiment station, or deputy, samples of such fertilizing materials as are subject to the conditions of this chapter, which may from time to time be sold, offered or exposed for sale in this state; and the director of the Washington state agricultural experiment station shall cause the results of the analysis of fertilizers collected under this chapter to be published, and issue the results to the farmers of the state as rapidly as the progress of the work will allow, together with the comparative commercial value per ton, and such other information as circumstances may advise. The chemist shall compile the results of the analysis of the fertilizers collected under this chapter and furnish a copy of the same to the director of the

Washington state agricultural experiment station for publication. [L. '99, p. 82, § 7.]

§ 3052. Duty of State Chemist.—The chemist of the Washington state agricultural experiment station is hereby authorized, in person or by deputy, to take a sample not exceeding two pounds in weight for analysis from any lot or package of fertilizer, or any material used for manurial purposes which may be in the possession of any manufacturer, importer, agent or dealer, but the said samples shall be taken in the presence of said party or parties in interest or their representatives, and taken from a parcel or number of packages which shall be not less than ten per cent of the whole lot inspected, and shall be thoroughly mixed, divided into two samples, placed in glass vessels, carefully sealed, and a label placed on each stating the name or brand of the fertilizer or material sampled, the name of the party from whose stock the sample was taken, and the time and place of taking the same, and said label shall also be signed by the chemist or his deputy and by the party or parties in interest or their representatives present at the taking and sealing of said sample. One of said samples shall be retained by the chemist or deputy and the other by the party whose stock was sampled. Every person violating this chapter shall be prosecuted by the prosecuting attorney of the county in which the violation occurs, upon complaint of the director and chemist of the Washington state agricultural experiment station. [L. '99, p. 82, § 8.]

§ 3053. Distinct Brands, When.—For all the purposes of this chapter fertilizers shall be considered as distinct brands when differing either in guaranteed composition, trademark, name or in any other characteristic method of marking of whatever nature. [L. '99, p. 83, § 9.]

§ 3054. Expenses.—The expenses of collection, analysis, printing and distribution authorized by this chapter shall be paid from and out of the moneys received by the treasurer of the Washington state agricultural experiment station under the provisions of section 3047. [L. '99, p. 83, § 10.]

CHAPTER VII.

Sale of Agricultural Seeds.

§ 3055. Packages, Contents must be Plainly Marked on.—Any person, firm or corporation who shall sell or offer for sale within this state any vegetable seed the germinable viability of which shall be less than two-thirds of the percentage standard of germination for such seed as herein provided, shall be guilty of a misdemeanor. [L. '15, p. 298, § 1; L. '01, p. 325, § 1.]

§ 3056. Penalty for Mislabeling.—Any person or persons who shall, with intention to deceive, wrongly mark or label any package or bag containing garden or vegetable seed shall be guilty of a misdemeanor. [L. '15, p. 298, § 2; L. '01, p. 325, § 2.]

§ 3056–1. Standard of Germination.—The percentage standard of germination of vegetable seed for this state shall be as follows: beans, peas, beets, turnips, rutabaga, cabbage, cauliflower, onion, leek, tomato, lettuce, radish and cucumber, melon, squash and other cucurbits, ninety per cent; celery, carrot, parsley, parsnip and all other vegetable seed seventy-five per cent. [L. '15, p. 298, § 3.]

§ 3057. Agricultural Seeds — Definition—Packages Marked.—The term "agricultural seeds" as used in this act shall include the seeds of red clover, white clover, alsike clover, alfalfa, Kentucky blue grass, timothy, brome grass, orchard grass, red top, meadow fescue, oat grass, rye grass, and other grasses and forage plants, flax, rape and cereals, and every parcel, package or lot of seeds as herein defined, containing one pound or more, offered or exposed for sale in this state for use in this state, shall have affixed thereto in a conspicuous place on the outside thereof, distinctly printed in the English language, in legible type, not smaller than eight-point heavy gothic caps, or plainly written, a statement certifying:

(1) Name of seed.

(2) Full name and address of the seedsman, importer, dealer or agent.

(3) A statement of the purity of the seed contained, specifying the kind and percentage of the impurities as hereinbefore [after] defined: Provided, said seeds are below the standards fixed in this act.

(4) Locality where said seed was grown, if known. [L. '09, p. 589, § 1.]

"Act" in this and the following sections of this chapter refers to §§ 3057–3068.

§ 3058. Must be Free from Certain Seeds.—No person shall sell, offer or expose for sale or distribution for the purpose of seeding, any agricultural seeds as herein defined, unless such agricultural seeds are free from the seeds of the following weeds: Wild mustard or charlock (brassica sinapistrum), quack grass (agropyron repens), Canada thistle (cnicus arvensis), wild oats (avena fatua), clover and alfalfa dodder (cuscuta epithymum), field dodder (cuscuta arvenus), and corn cockle (lychnis githago). [L. '09, p. 590, § 2.]

§ 3059. Impurities—Weed Seeds.—Seeds of the following weeds shall be considered as impurities in agricultural seeds as defined in section 3057, so offered or exposed for sale for the purpose of seed-

ing: White cockle (lychnis vespertina), nightflowering catchfly (silene noctiflora), curled dock (rumex crispus), smooth dock (rumex altissimus), sheep sorrel (rumex acetosella), yellow trefoil (medotus alba and officinalis), black mustard (brassica nigra), plantain buckhorn (plantago lanceolata), bracted plantain (plantago aris tata), bindweed (convolvulus sepium), smooth crab grass (panicum glabrum), common chickweed (stellaria media), August flower and Russian thistle. When such impurities or any of them are present in quantity exceeding a total of two per cent of the weight of said agricultural seeds, the approximate percentage of each shall be plainly indicated in statement specified in subdivision three (3) of section 3057. [L. '09, p. 590, § 3.]

§ 3060. Adulterated or Mixed Seeds.—For the purposes of this act seeds shall be deemed to be mixed or adulterated:

First. When orchard grass (dactylus glomerata) seed contains ten per cent or more by weight of meadow fescue (festuca elatior pratensis) seed, or Italian rye grass (lolium italicum) seed, or English rye grass (lolium perenne) seed.

Second. When blue grass or Kentucky blue grass (poa pratensis) seed contains five per cent or more by weight of Canadian blue grass (poa compressa) seed, red top chaff, red top (agrostis alba) seed, or any other seed or foreign substance.

Third. When red clover (trifolium pratense), mammoth red clover (trifolium pratense var), or alfalfa (medicago sativa), contains five per cent or more by weight of yellow trefoil (medicago lupulina), or sweet clover (melilotus alba and M. officinalsis) seed or burr clover (medicago denticulata) seed.

Fourth. When rape (brassica rapa) contains five per cent or more of common mustard (brassica sinapistrum) or black mustard (B. nigra). [L. '09, p. 591, § 4.]

§ 3061. Misbranded Packages.—For the purpose of this act, seed shall be deemed to be misbranded:

First. When meadow fescue (festuca elatior pratensis), English rye grass (lolium perenne) or Italian rye grass (lolium italicum) is labeled or sold under the name of orchard grass (dactylis glomerata) seed.

Second. When Canadian blue grass (poa compressa) seed, red top (agrostis alba) seed, or any other seed not blue grass seed, is sold under the name of Kentucky blue grass or blue grass (poa pratensis) seed.

Third. When yellow trefoil (medicago lupulina), burr clover (medicago denticulata), or sweet clover (melilotus alba) is sold under the name of clover, June clover, red clover (trifolium pratense),

medium red clover, small red clover, mammoth red clover, sappling clover, peavine clover (T. pratense var) or alfalfa (medicago sativa) seed.

Fourth. When the seeds are not true to the name under which they are sold. [L. '09, p. 591, § 5.]

§ 3062. Application of Act—Persons Liable.—The provisions concerning agricultural seeds contained in this act shall not apply to:

First. Any person or persons growing or selling seeds for food purposes only, or having such seeds in possession for sale for such purposes.

Second. Any person selling goods direct to merchants, to be cleaned or graded before being offered for sale for the purpose of seeding. This shall not, however, exempt the seller from the restrictions of section —— of this act.

Third. Seed that is held in storage for the purpose of being recleaned, and which has not been offered, exposed or held in possession of or for sale for the purpose of seeding.

Fourth. Seed marked "not absolutely clean," and held or sold for export outside the state only.

Fifth. The sale of seed that is grown, sold and delivered by any farmer on his own premises for seeding by the purchaser himself, unless the purchaser of said seeds obtains from the seller at the time of the sale thereof a certificate that the said seed is supplied to the purchaser subject to the provisions of this act.

Sixth. Mixtures of seeds for lawn or pasture purposes. This shall not, however, exempt the seller of such mixtures of seeds from the restrictions of sections —— and —— of this act. [L. '09, p. 592, § 6.]

"Act," see note to § 3057.

§ 3063. Impurities—Foreign Substances.—Sand, dirt, chaff and foreign substances and seeds other than those specified in sections 3060 and 3061, or broken seed and seed not capable of germinating, shall be considered impurities when present in agricultural seeds sold, offered or exposed for sale for the purpose of seeding, and when such impurities or any of them are present in quantity exceeding the standards of purity and viability authorized by this act, the name and approximate percentage of each shall be plainly indicated in the statement specified in subdivision 3, section 3057. [L. '09, p. 592, § 7.]

§ 3064. Standard of Purity and Viability.—The following standards of purity (meaning freedom from weed seeds or other seeds) and viability are hereby fixed:

STANDARD OF PURITY AND VIABILITY OF AGRICULTURAL SEEDS.

Name of Seed.	Per Cent of Purity.	Per Cent of Germinable Seeds.
Alfalfa (medicago sativa)	96	80
Barley	98	90
Blue grass, Canadian (poa compressa)	90	45
Blue grass, Kentucky (poa pratensis)	80	45
Brome, awnless (bromus inermis)	90	75
Buckwheat	96	90
Clover, alsike (trifolium hybridum)	90	75
Clover, crimson (trifolium incarnatum)	98	85
Clover, red (trifolium pratense)	92	80
Clover, white (trifolium repens)	90	75
Corn, field (zea mays)	99	94
Corn, sweet	99	75
Fescue, meadow (festuca pratensis)	95	85
Flax (linum usitatissimum)	96	89
Millet, common (setaria italica)	90	85
Millet, hog (panicum miliaceum)	90	85
Millet, pearl (penisetum typhoideum)	99	65
Oats (avena sativa)	98	90
Oat grass, tall (arrhena.therum avenaceum)	72	70
Orchard grass (dactylis glomerata)	70	70
Rape (brassica rapa)	99	90
Redtop (agrostis alba)	90	70
Rye (secala cereale)	98	90
Rye grass, perennial (lolium perenne)	96	90
Rye grass, Italian (lolium italicum)	95	80
Sorghum (andropogon sorghum)	96	80
Sorghum, for fodder	90	60
Timothy (phleum pratense)	96	85
Wheat (triticum)	98	90

[L. '09, p. 593, § 8.]

§ 3065. Duties of Inspector.—The state dairy and food commissioner shall cause to be made an analysis of all agricultural seeds sold or offered for sale in this state, and such commissioner or his deputy is hereby authorized to take for analysis a sample from any lot or package of agricultural seeds, not to exceed four ounces in weight. Such sample shall be taken in the presence of the party or parties in interest, or their representative, from any parcel, lot or number of parcels, not less than five per cent of the whole lot inspected, and such sample shall be thoroughly mixed, and divided into two samples, and placed in glass or metal vessels, carefully sealed,

and a label placed on each, stating the names of the seed therein, name of the party from whose stock the sample was taken, and the place and date of taking such sample, and such label shall be signed by the said commissioner or his deputy, or said sample may be taken in the presence of two disinterested witnesses. All of said samples shall be taken in duplicate, and one of such duplicate samples shall be left on the premises of the party whose stock was sampled; and the other shall be retained by such commissioner for analysis and comparison. The result of the analysis of such sample, together with such additional information as the said dairy and food commissioner may deem advisable, shall be published from time to time in bulletins to be issued by said dairy and food commissioner. [L. '09, p. 594, § 9.]

§ 3066. Samples—Analysis by Dairy and Food Commissioner—Fee.—Any person purchasing any agricultural seed for his own use, may submit fair samples of said seeds to the said dairy and food commissioner, who shall, upon the receipt of a fee of fifty cents for each such sample so submitted, cause an analysis of the same to be made and furnished to the person submitting the same. [L. '09, p. 594, § 10.]

§ 3067. Rules — Power of Deputies. — It is especially made the duty of the said dairy and food commissioner to enforce the provisions of this act, and for that purpose he may make all necessary rules and regulations not inconsistent herewith. Any deputy of said commissioner shall have the same authority and power in the performance of his duties under this act as said commissioner. [L. '09, p. 594, § 11.]

See note to § 3057.

§ 3068. Penalty for Sale of Impure Seeds.—Any person who sells, offers or exposes for sale any agricultural seeds herein enumerated, that do not conform to the standard of purity as provided in this act, and shall not have the statement provided in section 3057 attached to the receptacle containing such seed, or who shall put any such statement on any such receptacle knowing said statement to be false, or who shall prevent or hinder the said dairy and food commissioner or any deputy in the performance of his duties under this act, or who shall otherwise violate any of the provisions of this act, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined in any sum not exceeding one hundred dollars, or imprisoned in the county jail not exceeding thirty days, or both such fine and imprisonment. [L. '09, p. 595, § 12.]

"Act": See note to § 3057.

CHAPTER VIII.

Horticulture.

§ 3082–1. Definition of Terms in Act.—That the term "commissioner" whenever used in this act shall be held and construed to mean the commissioner of agriculture of the state of Washington, and the term "assistant commissioner" and "assistant" shall be held and construed to mean the assistant commissioner of agriculture for the division of horticulture; the term "horticultural inspector" and the term "inspector" wherever used in this act shall be held and construed to mean an inspector of the department of agriculture, assigned to the division of horticulture; the term "nursery stock" wherever used in this act shall be held and construed to mean and include fruit trees, fruit-tree stock, nut trees, grape-vines, fruit bushes, rose bushes, rose stock, forest and ornamental trees and shrubs (both deciduous and evergreen), florists' stock, and cuttings, scions and seedlings of fruit or ornamental trees or shrubs, and all other fruit-bearing plants and parts thereof and plant products for propagation or planting; the term "infect" and its derivatives "infecting," "infected" and "infection," wherever used in this act shall be held and construed to mean and include being affected by or infested with the disease or insect pests to which horticultural plants and products are subject and which are required to be guarded against, controlled, cured, removed, and eradicated as in this act provided; the terms "disinfect" and its derivatives shall be held and construed to mean and include the cure, removal or eradication of such diseases or pests by cutting and destroying the infected parts, or the application of fungicides or insecticides specified in this act or such other effective solutions or emulsions as may be discovered by science and specified and described in the bulletins issued by the commissioner of agriculture, and the term "person" wherever used in this act, shall be held and construed to mean and include individuals, partnerships, associations, joint stock companies and corporations. [L. '15, p. 494, § 1.]

§ 3082–2. Commissioner of Agriculture and Inspectors—Powers and Duties.—The commissioner of agriculture shall have the power and it shall be his duty:

(a) To exercise a general supervisory and directory control over the horticultural interests of the state:

(b) To arrange for and hold meetings for the discussion and dissemination of information as to horticultural subjects and for the demonstration of methods of preventing diseases of and pests injurious to horticultural plants, fruits and vegetables, and of curing and removing the same:

(c) To publish and distribute circulars and reports upon horticultural subjects, the pests affecting and the diseases of fruit trees, vines or bushes, ornamental trees or shrubbery, horticultural plants, fruits, vegetables and nursery stock, and the means and methods of controlling, curing, removing, eradicating and disinfecting for such diseases and pests:

(d) To issue licenses to nurserymen and dealers in nursery stock and their agents, salesmen and solicitors and revoke the same for violations of or failure to comply with this act, and to keep in his office a record of all licenses issued, showing the character of the license, name and address of the holder, the date of issue and the date of expiration or revocation:

(e) To furnish to the board of county commissioners of each county, annually, on or before September 1st, an estimate of the expenses for the ensuing year of inspecting and disinfecting orchards, vineyard[s], berry farms, vegetable farms and nurseries, and packing houses, warehouses, storerooms, depots, docks and other places where fruits, vegetables or nursery stock are grown, packed, stored, shipped or held for shipment or delivery or offered for sale within said county;

(f) To appoint inspectors to enforce and carry out the provisions of this act, which inspectors may be of two classes, inspectors at large and local inspectors: Provided, that not more than twenty inspectors at large shall be appointed.

(g) The commissioner may also in his discretion appoint any officer or member of any local fruit protective association to act as inspector, vested with power only to enter premises and inspect orchards and report to the inspector-at-large. Such inspectors shall receive no compensation for services and shall not be required to take the regular examination required of inspectors-at-large and local inspectors.

(h) To make, adopt, issue and publish from time to time and enforce general rules and regulations governing the grading and packing of apples, and other fruits.

The commissioner of agriculture, and under his direction and control the assistant commissioner and the horticultural inspectors, shall have the power and it shall be their duty:

(a) To enforce the provisions of this act and all laws relating to horticultural interests:

(b) To inspect orchards, vineyards, berry farms, vegetable farms, nurseries, fruit trees, vines or bushes, ornamental trees or shrubbery, horticultural plants, fruits, vegetables, nursery stock and horticultural supplies, and packing-houses, dry-houses, warehouses, storerooms, depots, docks, cars, vessels and other places where fruits,

vegetables or nursery stock are packed, stored, shipped or held for shipment or delivery or offered for sale, and other property liable to be infected with any disease or pest injurious to horticulture, and to require the disinfection of all such property and premises found to be infected and for that purpose shall have free access to such property and premises at all times.

(c) To inspect and examine orchards, vineyards, nurseries, berry farms, vegetable farms, fruits, vegetables, nursery stock and all other horticultural plants and products, at the request of the owner thereof for the purpose of discovering the existence of any disease or pest, and to report to the applicant the result of such investigation and prescribe proper remedies;

(d) To disinfect orchards, vineyards, berry farms, nurseries, fruit trees, vines and bushes, ornamental trees and shrubbery, horticultural plants, fruits, vegetables and nursery stock, and packing-houses, dry-houses, warehouses, storerooms, depots, docks, cars, vessels and other places where nursery stock, fruits, or vegetables are packed, stored or shipped or held for shipment or delivery or offered for sale, in case the owner or person having the same in charge shall neglect or refuse so to do, after notice; and in case any infected fruit trees, vines or bushes, ornamental trees or shrubbery, horticultural plants, fruits, vegetables or nursery stock cannot be successfully disinfected to condemn and destroy the same or cause the same to be destroyed;

(e) To require all partially infected fruit, vegetable and nursery stock shipments to be sorted and repacked and, in case the owner or person having charge of the same shall neglect or refuse so to do after notice, to condemn and destroy the same;

(f) To issue certificates of inspection to licensed nurserymen and dealers in nursery stock, on stock inspected and approved. [L. '15, p. 495, § 2.]

§ 3082–3. Inspectors — Assignment — Appointment — Salary and Expenses.—Inspectors-at-large may be assigned to duty in one or more counties and transferred from one county to another in the discretion of the commissioner, and their salaries, compensation and actual and necessary traveling expenses shall be paid by warrants drawn upon the state treasurer by the state auditor upon vouchers signed and verified under oath by such inspectors and countersigned by the commissioner or the assistant commissioner. In addition to inspectors-at-large the commissioner shall, whenever the board of county commissioners of any county by resolution request it, appoint such number of local inspectors and for such length of time as such resolution shall specify and assign them to duty in such county. The salaries, not to exceed four dollars per day, and actual and

necessary traveling expenses, within the county, of all local inspectors shall be paid out of the current expense fund of their respective counties upon vouchers signed and verified under oath by such inspectors and approved by the commissioner or the assistant commissioner, and the county auditor shall issue warrants therefor upon the said county fund. All local inspectors shall be under the direction and control of the commissioner of agriculture and the assistant commissioner. In case any inspector is dismissed from the service or transferred to another place, or to other duties, any qualified inspector or officer of the agricultural department may continue or complete any work or perform any duty initiated by such dismissed or transferred officer. [L. '15, p. 498, § 3.]

§ 3082–4. Pests and Diseases—Disinfection.—It shall be the duty of every person owning, leasing or occupying any land or premises on which there is or shall be growing, grown or situate any nursery stock, fruit trees, vines or bushes, shade trees, ornamental trees or shrubbery, or any horticultural plants, and of the owner or lessee of any such nursery stock, trees, fruit trees, vines, bushes, shrubbery or plants growing or situate on premises leased or occupied by him, and of the owner of any such nursery stock, trees, fruit trees, vines, bushes, shrubbery or plants growing, situate or being at any place within the state of Washington, for sale or delivery, and of every grower, shipper, commission merchant, consignee, dealer in and person in charge of any nursery stock, fruit or vegetables about to be shipped, or shipped, or held for delivery or offered for sale, to take and use sufficient methods and means for the prevention of infection by all pests and diseases to which such nursery stock, trees, fruit trees, vines, bushes, shrubbery, plants, fruits or vegetables may be subject, and to keep the same free from disease and pests, and, in event it is found that any such nursery stock, trees, fruit trees, vines, bushes, shrubbery, plants, fruits or vegetables are infected with any disease or pest, to promptly take and use effective means to control, cure, remove, eradicate and disinfect for the same, and in case such nursery stock, trees, fruit trees, vines, bushes, shrubbery, plants, fruits or vegetables cannot be successfully disinfected, to promptly destroy the same, and it shall be the duty of every owner and of the lessee of any premises upon which there are growing any infected fruit, fruit trees, shade or ornamental trees, vines or bushes, to thoroughly spray the same with a proper solution or emulsion or otherwise disinfect the same for the control, cure or removal of such infection. [L. '15, p. 499, § 4.]

§ 3082–5. Pests Specified—Method of Eradication.—The pests injurious to and diseases of nursery stock, fruit trees, shade trees,

ornamental trees and shrubbery, horticultural plants, fruit and vegetables to be guarded against, controlled, treated, removed, eradicated and disinfected for, as in the next preceding section provided, shall be all bacterial diseases, including fire blight of apple, pear and quince, crown gall or root gall, and hairy root; all fungus diseases, including black spot canker, pear scab, apple scab, apple powdery mildew, peach leaf curl, peach mildew, brown rot of peach, cherry and prune, chestnut blight, potato wart, powdery scab of potato and peach twig blight; all insect pests, including chewing insects, such as bud moth, peach-twig borer, caterpillars, pear slug, flat headed borer, round headed borer, imported cabbage worm, potato tuber moth, potato nematode or eel worm, Mediterranean fruit fly, lesser apple worm, tussock moth, gypsy moth, brown-tail moth, codling moth, and the larva of any thereof, and sucking insects, such as San Jose scale, scurfy scale, oyster-shell bark louse, aphids, pear leaf blistermites and red spider; and such other bacterial and fungus diseases and insect pests as may be identified by science and specified and described as injurious to horticulture in the circulars to be issued from time to time by the commissioner of agriculture.

The methods and means required to be used for the prevention, control, removal, eradication and cure of the diseases and pests above specified, shall be as follows: For bacterial diseases, eradication by the removal and destruction of the infected plant or part thereof, care being taken to disinfect all tools used in such removal to prevent the spread of the infection or by any other methods that shall have been approved by the insecticide and fungicide board; for fungus diseases, control or cure by spraying with effective fungicides, such as bordeaux solution, lime-sulphur solution, sulphide of iron or other effective fungicides; for chewing insect pests, control or removal by spraying with effective insecticides, such as arsenate of lead solution and arsenite or zinc solution; for sucking insect pests, control or removal by spraying with effective insecticides such as lime-sulphur solution, crude oil emulsion, tobacco solution, distillate oil emulsion, kerosene emulsion, soap solution, and sulphur solution, or combinations thereof; and for fungus and insect pests, control, cure or removal by spraying with such other effective solutions and emulsions as may be discovered by science and specified and described in the circulars issued by the commissioner of agriculture. [L. '15, p. 499, § 5.]

§ 3082–6. Insecticide and Fungicide Board — Duties. — There is hereby created a board to be known as the state insecticide and fungicide board, which board shall consist of the commissioner of agriculture or the assistant commissioner, the director of the agricultural experiment station at Pullman and three members of the

agricultural experiment station to be appointed by the director, one of whom shall be an entomologist, one a plant pathologist and one a chemist. It shall be the duty of the said board to analyze and report upon any insecticides and fungicides offered for sale to be used in the control and removal of insect pests and fungus and bacterial diseases to which horticultural plants are subject. It shall be the duty of all horticultural inspectors to from time to time procure and submit to such board samples of such insecticides and fungicides offered for sale. [L. '15, p. 501, § 6.]

§ 3082–7. Definitions — Insecticide—Fungicides.—It shall be unlawful for any person to offer for sale in the state of Washington any horticultural insecticide or fungicide which is adulterated or misbranded within the meaning of this act. The term "insecticide" as used in this act shall include any substance or mixture of substances intended to be used for preventing, destroying, repelling, or mitigating any insects which may infest vegetation. The term "paris green" as used in this act shall include the product sold in commerce as paris green and chemically known as the aceto-arsenite of copper. The term "lead arsenate" as used in this act shall include the product or products sold in commerce as lead arsenate and consisting chemically of products derived from arsenic acid (H3AsO4) by replacing one or more hydrogen atoms by lead. That the term "fungicide" as used in this act shall include any substance or mixture of substances intended to be used for preventing, destroying, repelling, or mitigating any and all fungi that may infest vegetation or be present in any environment whatsoever. [L. '15, p. 501, § 7.]

§ 3082–8. Adulterations—Misbranding.—That for the purpose of this act an article shall be deemed to be adulterated—

In the case of paris green: First, if it does not contain at least fifty per centum of arsenious oxide; second, if it contains arsenic in water-soluble form equivalent to more than three and one-half per centum of arsenious oxide; third, if any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength.

In the case of lead arsenate: First, if it contains more than fifty per centum of water; second, if it contains total arsenic equivalent to less than twelve and one-half per centum of arsenic oxid (As2O5); third, if it contains arsenic in water-soluble form equivalent to more than seventy-five one-hundredths per centum or arsenic oxid (As2O5); fourth, if any substances have been mixed and packed with it so as to reduce, lower, or injuriously affect its quality or strength; Provided, however, that extra water may be added to lead arsenate (as described in this paragraph) if the resulting mixture is labeled lead

arsenate and water, the percentage of extra water being plainly and correctly stated on the label.

In the case of insecticides or fungicides, other than paris green and lead arsenate: First, if its strength or purity fall below the professed standard or quality under which it is sold; second, if any substance has been substituted wholly or in part for the article; third, if any valuable constituent of the article has been wholly or in part abstracted; fourth, if it is intended for use on vegetation and shall contain any substance or substances which, although preventing, destroying, repelling, or mitigating insects, shall be injurious to such vegetation when used.

That the term "misbranded" as used herein shall apply to all insecticides, paris green, lead arsenates, or fungicides, or articles which enter into the composition of insecticides or fungicides, the package or label of which shall bear any statement, design, or device regarding such article or the ingredients or substances contained therein which shall be false or misleading in any particular, and to all insecticides, paris greens, lead arsenates, or fungicides which are falsely branded as to the state, territory, or country in which they are manufactured or produced.

That for the purpose of this act an article shall be deemed to be misbranded—

In the case of insecticides, paris greens, lead arsenates, and fungicides: First, if it be an imitation or offered for sale under the name of another article; second, if it be labeled or branded so as to deceive or mislead the purchaser, or if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package; third, if in package form, and the contents are stated in terms of weight or measure, they are not plainly and correctly stated on the outside of the package.

In the case of insecticides (other than paris greens and lead arsenates) and fungicides: First, if it contains arsenic in any of its combinations or in the elemental form and the total amount or arsenic present (expressed as per centum of metallic arsenic) is not stated on the label; second, if it contains arsenic in any of its combinations or in the elemental form and the amount of arsenic in water-soluble forms (expressed as per centum of metallic arsenic) is not stated on the label; third, if it consists partially or completely of an inert substance or substances which do not prevent, destroy, repel, or mitigate insects or fungi and does not have the names and percentage amounts of each and every one of such inert ingredients plainly and correctly stated on the label: Provided, however, that in lieu of naming and stating the percentage amount of each and every inert

ingredient the producer may at his discretion state plainly upon the label the correct names and percentage amounts of each and every ingredient of the insecticide or fungicide having insecticidal or fungicidal properties, and make no mention of the inert ingredients, except in so far as to state the total percentage of inert ingredients present. [L. '15, p. 502, § 8.]

§ 3082–9. Right of Inspection.—The commissioner of agriculture, the assistant commissioner and all horticultural inspectors are authorized and empowered to at any time enter upon any premises where any nursery, orchard, vineyard, berry farm or vegetable farm is situate or whereon any nursery stock, fruit trees, shade trees, ornamental trees or shrubbery or horticultural plants are growing, or upon any premises or into any building, packing-house, dry-house, warehouses, storeroom, depot, dock, car, vessel, or other place wherein any nursery stock, fruits, vegetables, or horticultural products are situate, being prepared or packed for shipment, stored, shipped, held for shipment or for delivery upon any shipment or sale, or offered for sale for the purpose of examining and inspecting such premises or property to ascertain whether the same or any thereof are infected, and it shall be unlawful for any person to hinder or prevent or to attempt to hinder or prevent any such officer from entering such premises or inspecting such premises or property or performing any duty required by this act. [L. '15, p. 504, § 9.]

§ 3082–10. Notice of Condemnation—Shipments—Manufacture.—In case the officer making the inspection provided for in the preceding section shall find that the premises or property inspected is infected, he shall condemn the same and serve upon the owner or upon the person having possession or charge of said premises or of said property a notice in writing that the same is condemned and ordering the disinfection of any and all thereof which is capable of disinfection and the destruction of such property as is incapable of disinfection, which notice shall describe the premises or property ordered to be disinfected or destroyed with reasonable certainty and shall specify the time within which the same shall be so disinfected or destroyed; and shall give notice that unless the premises or property ordered disinfected or destroyed is disinfected or destroyed as directed, in the manner and within the time specified in said notice, the same will be done by the officer giving the notice and the expense thereof charged against the premises and the owner of said premises or property. In case said premises or property is in the possession or charge of any person upon whom service can be made, the officer making the inspection shall serve a copy of such notice upon such person and, in case the premises or property is in possession or charge

of any other person than the owner thereof, or service cannot be had upon any person in possession or charge thereof, the officer shall serve said notice upon the owner of said premises or property by mailing or telegraphing him a copy thereof, if his name or postoffice address are known to the officer or can with reasonable diligence be ascertained. In case personal service of said notice cannot be had upon any person in possession or charge of said premises or property and the name and address of the owner of such premises or property are not known and cannot with reasonable diligence be ascertained, said notice shall be served by posting the same in a conspicuous place upon the premises where the property to be disinfected or destroyed is situated, as the case may be. In case the name and postoffice address of the owner are not known and cannot with reasonable diligence be ascertained and in the absence of fraud and gross neglect, service of such notice upon the person in possession or charge of said premises or property shall be construed to be substituted personal service upon the owner, and, in case service of such notice upon a person in possession or charge of such premises or property cannot be had and the name and postoffice address of the owner is not known and cannot with reasonable diligence be ascertained and in the absence of fraud and gross neglect, such posting of the notice upon the premises shall be construed to be constructive personal service upon the owner of such premises or property. Upon the giving of such notice as hereinabove provided it shall become and be the duty of the owner and person having possession or charge of the premises or property described in the notice to, within the time specified in said notice, disinfect said premises or disinfect or destroy said property, as the case may be: Provided, that in the case of nursery stock, fruit or vegetables about to be shipped or any shipment thereof, or which is offered for sale, or held for the purpose of delivery upon any shipment or sale thereof, if the officer making the inspection shall find that only a part thereof is so affected that it cannot be successfully disinfected, he shall state in such notice that the owner or person in charge thereof has the privilege of separating the same into two or more of the following classes, to wit, such as does not need disinfection, such as can be successfully disinfected, and such as cannot be successfully disinfected, and in such cases it shall be the duty of the owner and person in charge of such property to, within the time specified in said notice, disinfect such nursery stock, fruit or vegetables as can be successfully disinfected and destroy such as cannot be successfully disinfected: And provided, further, that in the case of fruit or vegetables that cannot be successfully disinfected the inspector may grant the owner or person in charge thereof the privilege of manufacturing the same into by-

products or of shipping the same to a by-product factory and issue a permit in writing so to do, and in such case it shall be unlawful for the person receiving such permit to sell or dispose of such infected fruit without having first manufactured the same into a by-product or shipped the same to a by-product factory, or to divert any such shipment when made, and it shall be unlawful for the consignee of any fruit or vegetables shipped to a by-product factory, to sell or dispose of the same without first manufacturing it into a by-product. It shall be unlawful for any person to ship, deliver, sell, barter, give away or otherwise dispose of or part with the possession of any nursery stock, fruit or vegetable which has been found infected and condemned until all of the requirements of said notice and order have been complied with, and permission given in writing so to do by an inspector. [L. '15, p. 504, § 10.]

§ 3082–11. Disinfection or Destruction by Inspector.—In case the owner or person in charge of any premises or property required to be disinfected or destroyed as in the previous section provided, shall fail or neglect to comply with the notice within the time specified therein, the officer giving the notice shall have the right and it shall be his duty to enter upon the premises to be disinfected or where the personal property required to be disinfected or destroyed is situated and perform the acts required in such notice, or cause the same to be performed at the cost and expense of the owner of such premises or property as the case may be. The officer shall keep an accurate account of such cost and expense and the same shall be a lien upon the premises or personal property so disinfected, which lien may be enforced by the methods hereinafter provided. The liens in this section provided for shall in the case of personal property have precedence over all other liens. [L. '15, p. 506, § 11.]

§ 3082–12. Impounding for Expenses—Notice and Sale—Actions —Records.—The officer disinfecting any personal property may, in case the owner or person in charge shall not pay such cost and expense, impound and sell such property to enforce the lien of the state and collect such cost and expense. The officer impounding personal property as above provided shall give notice in writing that the property is impounded which notice shall describe the property with reasonable certainty, state where the same is impounded, specify the amount of costs and expense charged against it and state that unless the charges are paid within a time specified in said notice the property will be sold to satisfy the charges against it and the transportation and storage charges accrued, if any, and the cost of making the sale. The officer giving such notice shall post it in a conspicuous place upon the premises where such property is impounded and serve

the same upon the owner or upon the person in possession or charge of such impounded property in like manner with like effect as hereinabove in this act provided for service of notice to disinfect. The time within which a sale shall be had after the giving of the notice shall not be less than ten days, provided that in the case of perishable fruits or vegetables, the same may be had immediately. Sales may be either at public auction or private sale as in the sound discretion of the officer may be for the best interest of the state and the owner of the property to be sold. The proceeds of any such sale shall be applied first to the payment of the cost of making the sale, second to the payment of the cost and expense of disinfection and third to the payment of accrued transportation and storage charges, if any, and the balance, if any, shall be paid the owner or person in charge of the property sold, upon demand. In case the proceeds of such sale be not sufficient to pay the cost of making the sale, and the cost and expense of disinfection, the deficiency may be recovered from the owner of the property disinfected in an action at law in the name of the state on the relation of the commissioner of agriculture, and the prosecuting attorney of the county where the property was disinfected shall, when directed so to do by the attorney general, bring such action for the recovery of such deficiency. The officer making such sale shall make and keep a full and detailed record of all acts done by him with reference to such property, stating the name of the owner or reputed owner of such property when known, the location thereof, the date of inspection, the facts found upon inspection, the date and manner of giving the notice to disinfect, the failure of the owner or person in charge to disinfect, the disinfection by or under the direction of the officer, the cost and expense thereof in detail, the date and manner of giving the notice of impounding and sale, the date, place and manner of sale, the name of the person to whom the property was sold, the amount of the proceeds of the same and the disposition made thereof, which record shall be signed by the officer making the same. Upon demand of the owner or person in charge of such property, the officer making the sale shall furnish him with a copy of such record verified under oath, and shall tender him the balance of said proceeds. If no demand is made upon the officer making such sale within thirty days from the date of sale, or in case the balance of said proceeds is not accepted when tendered, the officer shall file a verified copy of such record with and remit the balance of the proceeds of such sale to the commissioner of agriculture, who shall retain the same for a period of six months subject to the order of the owner of the property sold, and if at the end of six months such proceeds be not claimed and accepted by the owner or his order, the same shall be turned into

the state treasury. The record required to be kept as hereinabove provided and the verified copy thereof shall be prima facie proof of the truth of the facts therein stated in any court in any action or proceeding where proof of such facts is competent. [L. '15, p. 507, § 12.]

§ 3082–13. Levy of Horticultural Tax—Collection.—It shall be the duty of the board of county commissioners of each county at the time of making the regular annual tax levy in each year to include a tax upon the taxable property of such county in such an amount as they shall find will produce funds sufficient to meet the expense of inspecting and disinfecting orchards, vineyards, berry farms, vegetable farms, nurseries, fruit trees, vines or bushes, ornamental trees or shrubbery, horticultural plants, and packing-houses, warehouses, dry-houses, storerooms, depots, docks and other places where fruits, vegetables or nursery stock are packed, stored, shipped or held for shipment or delivery or offered for sale within said county, which shall be inspected or disinfected by or under the direction of an inspector, which tax shall be known as the "horticultural tax." In estimating the amount to be levied for such horticultural tax, the county commissioners shall take into consideration the expense of inspecting and disinfecting the above-mentioned property within said county for the ensuing year and the amount that will be collected from levies on property disinfected as in this act provided. The horticultural tax shall be levied and collected in the same manner as other general taxes and when collected shall be placed in the current expense fund of said county. Until the collection by any county of the taxes to be levied under the provisions of this section at the next annual tax levy after the taking effect of this act, the county commissioners of such county are authorized and empowered to cause to be paid, by warrants drawn upon the current expense fund of such county, all expenses for inspecting and disinfecting premises or property within said county properly chargeable to such county under the provisions of this act, and all expenditures made from and warrants drawn upon the current expense fund of any county by order of the board of county commissioners of such county, subsequent to the repeal of section 3133 of Remington and Ballinger's Annotated Codes and Statutes of Washington and prior to the passage of this act for the purpose of paying the cost and expense of inspecting or disinfecting premises or property in such county as provided in this act, are hereby validated. [L. '15, p. 509, § 13.]

§ 3082–14. Disinfection Expenses—Recovery—Lien—Hearings—Lien as Tax.—The cost and expense of disinfecting any nursery, orchard, berry farm, vineyard or vegetable farm, or any nursery

stock, fruit trees, vines or bushes, shade trees, ornamental trees or shrubbery or horticultural plants growing on any premises, or any packing-houses, warehouse, dry-houses, storerooms, depots, or other premises where nursery stock, fruits, vegetables or horticultural products are stored, situated or being prepared or packed for shipment or offered for sale or held for the purpose of delivery upon any shipment or sale, may be recovered as in this section provided. The officer disinfecting any premises or property growing upon any premises or causing the same to be disinfected as in this act provided shall make and keep a full and detailed record of all acts done by him with reference to such property or premises, stating the legal description of premises upon which property disinfected was growing, the name of the owner or reputed owner, the date of inspection, the facts found upon inspection, the date and manner of giving of notice to disinfect, the failure of the owner or person in charge to disinfect, the disinfection by or under the direction of the officer, the cost and expense thereof in detail, which record shall be signed by the officer making the same. In case the cost and expense of disinfecting any premises, or the property growing thereon, are not paid within five days after the completion of the work of disinfection, the officer making such record shall make and file with the county auditor of the county where such premises are situated two verified copies of the record of his acts with reference to said premises and the charge against the same, and shall also file a claim of lien against said premises for the amount of such charges and expenses, which said claim shall refer to said record. Upon the filing of such verified record and claim of lien the county auditor shall record the said claim of lien as other lien claims are recorded. The county auditor shall also, at the time when said record and claim are filed, forthwith issue proper warrants in payment for labor of men employed in the work and fix a day for a hearing upon the report before the board of county commissioners, which date shall not be less than twenty days from the date of said filing and shall prepare a notice of the filing of such record and claim and of the date of hearing upon the same and in all proceedings the county shall be deemed substituted to all the rights of laborers paid as herein provided. Said notice shall be directed to the owner, or reputed owner, and shall give notice of the filing of said record and claim and of the amount thereof and shall also give notice of the time and place when and where the board of county commissioners will hear and determine the same. The county auditor shall deliver said notice, together with a copy thereof, to the sheriff of the county in which said claim is filed and the sheriff shall make service thereof in like manner and with

like effect as herein provided for the service of notice to disinfect and shall make return of such service upon the original notice and file the same with the county auditor before the time of hearing of the same, and he shall also certify with said return the amount of his fees for such service, which shall be the same as is provided for service of summons in civil proceedings. In case the amount of said claim, together with the amount of sheriff's fees and auditor's fees, which shall be the same as is charged for the filing and recording of other liens, is paid to the county treasurer on or before the date of said hearing before said board of county commissioners, the auditor shall, upon the presentation to him of a duplicate receipt of said treasurer for the amount above specified, cancel the said lien in the records of his office and notify the board of county commissioners of his action in the premises. The county treasurer shall disburse the fund received by him as above provided to the parties entitled to receive the same according to the record as shown in the office of the county auditor. In case the amount of said claim, together with costs as above provided, is not paid at or before the time of the hearing before the board of county commissioners, the county auditor shall present a verified copy of said claim and record to the said board, which shall proceed with the hearing upon the same and shall, if offered, hear sworn testimony concerning the matter set forth in said record and claim. The record required to be kept by the officer disinfecting, as hereinabove provided, and the verified copy thereof filed with the county auditor, shall be prima facie proof of the facts therein stated in any proceedings before the board of county commissioners and in any court in any action or proceeding where proof of such facts is competent or the validity of such charges or any tax levied therefor is questioned. After the hearing as herein provided for, the county commissioners shall make an order fixing the amount of such claim and costs and shall order the amount so fixed paid out of the current expense fund of said county, and the auditor shall draw warrants for the payment of such claim as fixed by the county commissioners. The said order of said board fixing the amount of said claim and costs shall be recorded by the county auditor as are other lien claims and shall stand as a lien in favor of said county against the premises therein described until canceled as herein provided. In case the amount of said lien, together with interest thereon at the rate of six per cent per annum from the date of said order of said board of county commissioners, is paid to the county treasurer of said county on or before the first Monday in October following the date of said order and a duplicate receipt therefor of said treasurer is presented to said county auditor, the county auditor shall cancel said claim of lien in the records of his office. Payment to the county

treasurer as above set forth shall be made by presenting to said treasurer a statement over the signature of the county auditor of the amount due upon said claim together with the amount of money shown by said statement to be due. Upon said payment being so made the treasurer shall stamp said statement as paid, showing the date of said payment, and shall file said statement so stamped in the records of his office; he shall also issue a duplicate receipt for said payment and shall deliver one of said receipts to the party making payment and immediately transmit one of said receipts to the county auditor. In case the amount of said claim and costs, together with interest at the rate of six per cent per annum from the date of said order of said board of county commissioners, is not paid as hereinabove provided, on or before the first Monday in October following the date of said order, the board of county commissioners shall, at the regular meeting for the levy of taxes in the month of October following the date of said order, make an order that the amount of such claim, costs and interest, together with a penalty of six per cent thereon, shall be a tax on the premises described in said claim and collected as other taxes are collected and said last-named amount shall be added to the amount of taxes levied against said premises for current expenses. Upon the making of said order the county auditor shall mark the recorded order of said board fixing the amount of said claim of lien "canceled and amount hereof charged as taxes against the property." Upon the collection of said tax by the county treasurer the same shall be credited to the current expense fund of the county. [L. '15, p. 510, § 14.]

§ 3082–15. Importation of Infected Fruit.—It shall be unlawful for any person to import into this state, sell, barter, or otherwise dispose of or offer for sale or have in his possession for the purpose of sale or barter any fruit which is or has been infected with peach mildew, peach-twig borer, San Jose scale or other insect pests or the larvae of the codling moth or peach-twig borer, and the fact that any fruit bears the mark of any such scale insect or is worm eaten by any such larvae, shall be conclusive evidence that the fruit is infected, within the meaning of this section: Provided, that nothing in this section shall be construed to prevent the grower of such infected fruit grown within the state of Washington from manufacturing the same into a by-product or selling and shipping the same to a by-product factory. [L. '15, p. 513, § 15.]

§ 3082–16. Fruit Boxes, how Marked—Misuse of Labels.—It shall be the duty of every person growing or packing and selling, offering for sale or shipping in closed boxes or packages, any fruit grown in this state, to plainly mark the same on the outside of the box or

package with the name of the variety contained therein or with the words "variety unknown," the name of the place or locality where grown and the name of the grower, or, in case of sale or shipment through an association or organization of growers, the name of such association and the lot number of the grower, and, in case of apples, pears or peaches, the net weight or the number contained in the package, and it shall be unlawful for any person to mark, or place upon, any such package the name of any other place or locality than the place where such fruit was grown, except the place to which shipped, or to falsely mark any such package as to variety, name of grower, association or organization, or place where grown, or to obliterate or change the original marks on any such package or to re-mark the same with the name of any other grower or of any other place than that by or in which the contents were grown, or in case such package is marked with the name of an association or organization of growers to re-mark the same with the name of any other association or organization, and it shall be unlawful for any person having in his possession for sale or offering for sale or selling any fruit grown in this state and shipped in closed packages to repack the same in the boxes or packages of any other grower or shipper or from any other place, or to sell or offer for sale in closed packages any such fruit except in the original packages, or to pack in or offer for sale from any marked box or package any fruit other than that originally contained or shipped therein. In addition to the marks required to be placed upon any closed package of fruit grown in this state, as hereinabove provided, the grower thereof or association or organization of growers packing the same, may mark upon the outside of such package the grade of the fruit contained therein either as "First Grade," "Grade No. 1," or "Extra Fancy," "Second Grade," "Grade No. 2," or "Fancy," "Third Grade," "Grade No. 3," or "C Grade," or such other designation as will indicate first, second or third quality of fruit and "Washington Standard Pack" and it shall be unlawful for any person to re-mark any such closed package as a higher or superior grade than that originally marked by the grower thereof or association or organization packing the same, or for any person other than the grower or association or organization packing such fruit grown in this state to place upon any such closed package not marked with the grade of the contents thereof any mark or brand indicating the grade of such contents. Provided that nothing in this section shall be construed to apply to canned or dried fruit. [L. '15, p. 514, § 16.]

§ 3082–17. Apple Grades—Annual Publication of Regulations.—It shall be unlawful for any grower thereof or association or organization of growers packing apples to mark the package with the

grade of the contents unless such contents shall comply with the general rules and regulations made, adopted, issued and published from time to time by the commissioner of agriculture, which general rules and regulations shall define and establish the standard for (1) "First Grade," "Grade No. 1," or "Extra Fancy," (2) "Second Grade," "Grade No. 2," or "Fancy," (3) "Third Grade," "Grade No. 3," or "C Grade," and (4) "Orchard Run," which general rules and regulations shall be adopted, issued and published within thirty days after the taking effect of this act and the commissioner of agriculture is authorized and directed to in the month of December of each year, make, adopt, issue and publish general rules and regulations governing the packing of apples and establishing and defining the grades thereof for the ensuing calendar year and in adopting the same the commissioner is authorized to consult and advise with fruit growers, the officers of associations or organizations of apple growers or distributers or dealers in apples. Before making the rules and regulations for which provision is made in this section the commissioner of agriculture shall provide for a public hearing of horticulturists thereon, notice of which shall be given by mail to every horticultural society, growers' association or marketing organization which shall have filed with him a notice of its existence thirty days before the date of any such hearing, and which shall be a resident of the state of Washington. For the conducting of such hearing the commissioner of agriculture may prescribe all necessary reasonable rules, but said rules must be such as to insure a fair, full and impartial opportunity for all interested districts to be heard. In establishing the grading rules herein mentioned the commissioner of agriculture shall base them on the necessities and proprieties as shown at said hearing, taking into consideration the tonnage of commercial fruit in each district of the state affected by the grading rules to be established. [L. '15, p. 515, § 17.]

§ 3082–18. Time for Destroying Infected Prunings.—It shall be the duty of every person within forty-eight hours after removing any cuttings or prunings from bacterially infected trees or plants to destroy or disinfect the same by burning or scorching. [L. '15, p. 516, § 18.]

§ 3082–19. Disinfection of Trees, etc., on Public Property.—It shall be the duty of the proper state officials, of the board of county commissioners of each county, of the mayor and council or other governing officials of each city and town and of the officers of each irrigation district and school district to, in compliance with the provisions of this act, cause the disinfecting of all infected trees and shrubbery growing upon the public highways, grounds, canals or other public property of such state, county, city, town or district,

and such county commissioners and municipal officers are hereby authorized to expend the funds of such county or municipal corporation in carrying out the provisions of this section, and in case of the failure or neglect of any of the aforesaid officers to comply with this section, compliance therewith may be compelled by writ of mandate sued out in a superior court of competent jurisdiction in an action begun in the name of the state upon the relation of the commissioner of agriculture. [L. '15, p. 516, § 19.]

§ 3082–20. Nursery Stock—Dealer's Licenses—Fees.—It shall be unlawful for any person, firm or corporation to engage in, conduct or carry on the business of selling, dealing in or importing into this state for sale or distribution, any nursery stock, or to act as agent, salesman or solicitor for any nurseryman or dealer in nursery stock or to solicit orders for the purchase of nursery stock, without first having obtained from the commissioner of agriculture and having in force a license so to do, and it shall be unlawful for any person to falsely represent that he is the agent, salesman, solicitor or representative of any nurseryman or dealer in nursery stock. No license shall issue until the applicant therefor shall have paid the fee and furnished the bond, as in this act required. The license fee shall be five dollars for nurserymen and dealers in nursery stock and one dollar for agents, salesmen and solicitors. All licenses shall be in the name of the person, firm or corporation licensed, and shall show the purpose for which issued, the name and location of the nursery or place of business of the nurseryman or dealer licensed or represented by the agent, salesman or solicitor licensed, and no license shall be issued to any agent, salesman or solicitor unless the nurseryman or dealer represented shall be licensed. All licenses shall bear the date of issue and shall expire on the first day of July next following the date of issue: Provided, that all licenses in force at the time of the taking effect of this act shall continue in force during the term for which they were issued, unless sooner revoked, and any holder of such license applying for a license under this act prior to the first day of July next following the expiration of his former license, shall be required to pay therefor only the proportional part of the fee required for an annual license for the remaining portion of the year until the first day of July next following. [L. '15, p. 517, § 20.]

§ 3082–21. Dealer's Bond—Renewal of Licenses—Suspension.—Every nurseryman or dealer in nursery stock, applying for a license under this act shall make, execute and file with the commissioner of agriculture a bond running to the state of Washington, in the sum of one thousand dollars with surety or sureties to be approved by the commissioner, conditioned for the faithful compliance by the ap-

plicant with all of the provisions of this act and the laws of the state of Washington relating to the sale, disposition, delivery, inspection and disinfection of nursery stock grown, dealt in, imported, sold, handled or delivered by him during the term of the license applied for and the term or terms of any renewal of the same, and conditioned further that all nursery stock sold or delivered by him during said term or terms shall be true to name, age, and variety as represented, and free from the diseases and pests required to be guarded against by this act.

Every licensed nurseryman or dealer in nursery stock who shall have complied with the provisions of this section shall be entitled, upon the expiration of his license or any renewal thereof, by the payment of the fee of five dollars on or before the date of the expiration of his license or any renewal thereof, to have his license renewed for the ensuing year ending July 1st, by the giving of a bond as herein specified.

The cancellation or revocation of, or the withdrawal of the sureties from, any bond filed in accordance with the provisions of this section, shall ipso facto work a suspension of the license of the principal of said bond and the license of all agents, salesmen and solicitors employed by and representing him, until such time as such principal shall furnish a new bond to be approved by the commissioner of agriculture. [L. '15, p. 518, § 21.]

§ 3082–22. Complaints Against Licensees — Notice — Hearings — Appeals.—Upon complaint in writing, verified under oath by the complainant, being made to the commissioner of agriculture, that the holder of any license in this act provided for has violated or failed to comply with the provisions of this act or the laws of the state of Washington relating to horticulture, the commissioner, if in his judgment the complaint justifies a hearing thereon, shall serve upon the holder of such license by registered mail, a copy of such complaint and a notice of the time and place of hearing the same, which hearing shall not be less than ten nor more than thirty days from the date of mailing said notice, and shall be at such place to be determined by the commissioner, as shall be most convenient to all the parties to the hearing: Provided, in case the nursery and principal place of business is within this state then hearing shall take place in the county where the nursery or principal place of business is located for the attendance of witnesses.

The complainant and the person complained of shall have compulsory process to compel the attendance of witnesses at such hearing, to be issued by the commissioner. Hearings may be held by the commissioner in person or by the assistant who shall report in writing a synopsis of the testimony taken and his findings thereon to

the commissioner for his decision. If upon such hearing or report it shall appear to the satisfaction of the commissioner that the person complained of has violated or is violating or failing to comply with the provisions of this act or the laws of the state of Washington relating to horticulture, he may revoke the license of such person, and no new license shall issue to such person until it shall be made to appear to the satisfaction of the commissioner that the cause of the complaint has been removed.

From the decision of the commissioner revoking a license, or refusing to issue a new license, an appeal shall lie to the superior court of the county where the hearing shall have been held. [L. '15, p. 518, § 22.]

§ 3082–23. Sales—Fraud—Liability on Bond.—It shall be unlawful for any person to deceive or defraud any person on the sale of any nursery stock by substituting inferior or different varieties from those ordered, or to willfully or intentionally bring into this state or to offer for sale or distribution within this state or to ship, sell or deliver upon any sale any nursery stock that is infected, and in case of any such deceit, fraud or substitution, the person, firm or corporation damaged or injured thereby shall have recourse against the bond filed by the licensed nurseryman or dealer from whom such stock has been purchased, for all damages sustained, which damages may be recovered at the suit of the party injured against the nurseryman or dealer causing the damage and the sureties on such bond in any court of competent jurisdiction. [L. '15, p. 519, § 23.]

§ 3082–24. Sales—Duplicate Orders.—It shall be the duty of all nurserymen and dealers in nursery stock and all salesmen, solicitors and agents therefor to give to every person ordering any nursery stock a duplicate copy of such order which shall show: (a) the name of the nurseryman from whom ordered and the name of the solicitor, salesman or agent taking such order: (b) the season of the order and the date when delivery is to be made: and, (c) the number, name, and price of each variety of tree or plant ordered. [L. '15, p. 520, § 24.]

§ 3082–25. Shipments of Nursery Stock—Notice.—It shall be the duty of every person growing or dealing in nursery stock to notify the commissioner of agriculture of his, their or its intention to ship any nursery stock from one point in this state to another or from any point without the state to a point within the state for sale or delivery or for planting or propagation. Such notice shall be made in writing and in duplicate and signed by the person giving the notice and shall show the name and address of both the consignor and consignee, and the name of the person or transportation com-

pany from whom the consignee is to receive such goods, and whether such nursery stock has been inspected and approved at the initial point of shipment within this state by an horticultural inspector. Said notice shall be mailed not later than the date of shipment and the duplicate thereof shall be mailed to the horticultural inspector stationed nearest to the point of consignment and all such shipments of nursery stock shall be plainly marked on the outside of the package with the words "nursery stock." A descriptive invoice of all goods shipped during the season shall be mailed to the commissioner of agriculture before the first of July following shipment. [L. '15, p. 520, § 25.]

§ 3082–26 Inspection of Imported Stock.—In the event of the shipment into this state from any point without this state of any nursery stock by a person, firm or corporation not licensed to do business in this state as in this act provided, it shall be the duty of the purchaser or person receiving such nursery stock to have the same inspected by a horticultural inspector in the same manner as is required upon the delivery of nursery stock sold and delivered by a licensed nurseryman or dealer in nursery stock within this state and to pay an inspector's fee of ten per cent of the invoice price of such shipment, provided that the minimum fee for such inspection shall be fifty cents and the actual and necessary traveling expense of the inspector making the inspection: And provided further, that for the inspection of shipments of nursery stock shipped to nurserymen or dealers in nursery stock licensed under the provisions of this act to do business in this state, no fee shall be required. [L. '15, p. 521, § 26.]

§ 3082–27. Importations—Notice by Transportation Company—Demand for Inspection.—Upon the arrival at this point of destination of any nursery stock shipped into this state from another state or country or shipped from one point within this state to another, it shall be the duty of the freight agent, express agent or the agent of the persons or transportation company having such shipment in charge for delivery, unless the same is accompanied by a certificate of inspection and approval by a horticultural inspector of this state showing that the same was inspected and approved at the initial point of shipment within this state, to notify the horticultural inspector stationed nearest to the point where said shipment is received, of the receipt of such shipment giving the name of the consignor and consignee and stating that such shipment is ready for inspection and delivery. Said notification may be by telephone or telegraph, or by written notice delivered personally to said inspector or to some person of suitable age and discretion at his residence or office, or by mail addressed to said inspector at his place of resi-

dence or at his office; and it shall be unlawful for any such agent or person having such shipment in charge to deliver the same to the consignee or to any other person until the same shall have been inspected by a horticultural inspector: Provided, however, that such agent shall not be required to hold such shipment more than forty-eight hours after notifying the inspector as aforesaid, except in case the notice is given by mail, in which event such shipment shall be held for such period beyond said forty-eight hours as is ordinarily required for the delivery of mail to the address of said inspector; And provided further, that no inspection at the point of delivery shall be necessary if the shipment is accompanied by a certificate of a horticultural inspector of this state showing inspection and approval at the initial point of shipment within this state as aforesaid, and upon the delivery of such shipment to the consignee, the agent or person making the delivery shall deliver such certificate of inspection to the consignee and retain the duplicate to show his authority for making delivery without inspection. Any nurseryman or dealer in nursery stock within this state may demand the services of an inspector at his place of business or point of shipment during the shipping season by paying four dollars per day for his services.

Upon the arrival at its point of destination of any shipment of fruit or vegetables shipped into this state from another state or country, it shall be the duty of the freight agent, express agent or agent or persons or transportation company having such shipment in charge for delivery, to notify the horticultural inspector stationed nearest to the point where said shipment is received, of the receipt of such shipment giving the names of the consignor and consignee, and upon the delivery of such shipment to the consignee or his order, the agent or person making such delivery shall demand and receive from the person to whom such shipment is delivered a receipt therefor showing the name and address of the consignee or his order and the place to which said shipment is to be removed, and shall thereupon mail said receipt to the horticultural inspector stationed nearest to the point where said shipment is received. [L. '15, p. 521, § 27.]

§ 3082–28. Payment of Shipping Charges.—No inspection of shipments of nursery stock as provided in the last preceding section shal be made until all transportation charges thereon have been paid: Provided, however, that the agent or person having such shipment in charge for delivery may waive in writing the payment of such transportation charges prior to inspection, and in case the transportation charges are not paid or waived such shipment shall be held until the same are paid and inspection had. [L. '15, p. 523, § 28.]

§ 3082–29. Certificate of Inspection.—It shall be the duty of every horticultural inspector upon the inspection of any nursery stock found free from diseases and pests, to deliver to the owner or person in charge thereof a certificate of inspection over his signature, showing the date of inspection and stating that such nursery stock was not infected, which certificate, in case inspection be made at the initial point of shipment, shall be in duplicate, and it shall be unlawful for any person to substitute for any such nursery stock so inspected and approved, any other nursery stock not covered by said certificate, or to ship, sell or dispose of any other nursery stock than that actually inspected and approved, under such certificate of inspection, provided that the inspector may issue certificates of general inspection for shipment to points within this state in addition to the regular certificates of inspection. [L. '15, p. 523, § 29.]

§ 3082–30. Penalty — Disposition of Fines. — Every person violating or failing to comply with the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than twenty-five dollars. All fines imposed under the provisions of this act shall, when collected, be paid to the treasurer of the county where imposed and remitted to the state treasurer and placed to the credit of the general fund. [L. '15, p. 523, § 30.]

§ 3082–31. Actions to Restrain Violations of Act.—Whenever any person is about to or threatens to violate any provision of this act, the commissioner of agriculture may, with the advice of the prosecuting attorney of the county where such violation is threatened or of the attorney general, begin an action in the superior court of such county in the name of the state upon the relation of such commissioner to restrain and enjoin such threatened violation, and in case such prosecuting attorney shall fail or refuse to begin such action upon the request of the commissioner, the same may be begun by or under the direction of the attorney general. In such action no bond shall be required for the issuance of a restraining order or injunction, but the state shall be liable for any damages occasioned by the unlawful suing out of such restraining order or injunction. [L. '15, p. 524, § 31.]

§ 3082–32. Authority to Seize Infected Fruit, etc.—The commissioner of agriculture, the assistant commissioner and all horticultural inspectors are hereby authorized and empowered to seize and hold for use as evidence any article or thing found in the possession of or used, held for shipment, shipped, offered for sale or sold by any person in violation of any of the provisions of this act or

of any law relating to horticulture, and to serve and enforce compliance with any restraining order or writ of injunction or mandate or any other writ issued by any court under the provisions of this act. [L. '15, p. 524, § 32.]

§ 3082–33. Duty of Common Carriers to Assist Commissioner.—It shall be the duty of all clerks, bookkeepers, express agents, railroad officials, employees, or employees of common carriers to render to the commissioner of agriculture and his inspectors all the assistance in their power in tracing, finding, or discovering the presence of any article named in this act. Any refusal or neglect on the part of such clerks, bookkeepers, express agents, railroad officials, employees, or employees of common carriers to render such friendly aid to assist in the carrying out of the provisions of this act shall constitute a misdemeanor. [L. '15, p. 524, § 33.]

§ 3082–34. Repealing Clause.—That all acts incorporated and enumerated in the following schedule, and all acts and parts of acts in conflict with the provisions hereof, are hereby repealed.

SCHEDULE.

Sections 3075, 3079, 3080, 3083, to 3110, inclusive; 3113, 3115, 3116, 3117, 3119, 3120, 3122 to 3127, inclusive; 3131 and 3134 to 3139, inclusive of Remington and Ballinger's Annotated Codes and Statutes of Washington. [L. '15, p. 524, § 34.]

CHAPTER IX.

Land Development.

§ 3139–1. Agricultural Districts.—For the purpose of improving the agricultural lands of this state and encouraging their most productive use, agricultural development districts are hereby authorized to be established in the various counties in this state, as hereinafter provided. [L. '13, p. 492, § 1.]

§ 3139–2. County Districts—Election.—At any general election, or at any special election which may be called for that purpose, the board of county commissioners of any county in this state may, and on petition of ten per cent of the qualified electors of such county based on the total vote in the last general county election shall, by resolution submit to the voters of such county the proposition of creating an agricultural development district, which shall be coextensive with the limits of such county as now or hereafter established, except as provided in section 3139–7. [L. '13, p. 492, § 2.]

§ 3139–3. Petition.—Such petition shall be filed with the county auditor, who shall within fifteen (15) days examine the signatures thereto and certify to the sufficiency or insufficiency thereof, and for

such purpose the county auditor shall have access to all registration books in the possession of the officers of any incorporated city or town in such proposed agricultural development district. [L. '13, p. 492, § 3.]

§ 3139–4. Signatures—Amendment.—If the signatures to such petition are found to be insufficient the petition shall be returned to the persons filing the same, who may amend or add names thereto for ten days, when the same shall be returned to the county auditor, who shall have an additional fifteen (15) days to examine the same and attach his certificate thereto. No person having signed such petition shall be allowed to withdraw his name therefrom after the filing of the same with the county auditor. [L. '13, p. 492, § 4.]

§ 3139–5. Election—Notice.—Whenever such petition shall be certified to as sufficient, the county auditor shall forthwith transmit the same, together with his certificate of sufficiency attached thereto, to the board of county commissioners, who shall submit such proposition at the next general election or, if such petition so requests, the board of county commissioners shall, at their first meeting after the date of such certificate, by resolution call a special election to be held not less than thirty nor more than sixty days from the date of such certificate. Such notice of election shall describe the boundaries of the district and state the purpose for which such district is proposed to be formed. [L. '13, p. 493, § 5.]

§ 3139–6. Propositions.—In submitting the said question to the voters for their approval or rejection, the proposition shall be expressed on said ballot substantially in the following terms:

"—— Agricultural Development District of —— Yes."

(Inserting the name of the county or number of district and county.)

"—— Agricultural Development District of —— No."

(Inserting the name of the county or number of district and county.) [L. '13, p. 493, § 6.]

§ 3139–7. Districts Less Than County—Hearing on Petition.—Any petition for the formation of an agricultural development district may describe a district of less area than the county in which such petition is filed, and in such event the county commissioners shall fix a date for hearing on such petition and publish a notice of such hearing for two weeks in a newspaper of general circulation in such county, after which hearing the county commissioners may increase or diminish the boundaries of such proposed agricultural development district, and thereafter the same procedure shall be followed as is described in this act for the formation of the larger

agricultural development district, except that the petition and election shall be confined solely to the lesser agricultural development district: And provided, that whenever two or more petitions for the formation of an agricultural development district shall be filed as herein provided, the petition describing the greater area shall supersede all others and an election shall first be held thereunder, and no lesser agricultural development district shall ever be created within the limits, in whole or in part, of any agricultural development district. [L. '13, p. 493, § 7.]

§ 3139–8. Canvass of Vote.—Within five days after such election the board of county commissioners shall canvass the returns, and if at such election a majority of the voters voting upon such proposition shall vote in favor of the formation of such district, the board of county commissioners shall so declare in its canvass of the returns of such election and such agricultural development district shall then be and become a municipal corporation of the state of Washington and the name of such agricultural development district shall be "Agricultural Development District of ——" (inserting the name on the ballot). [L. '13, p. 494, § 8.]

§ 3139–9. Expenses of Election.—All expenses of election for the formation of such agricultural development district shall be paid by the county holding such election, and such expenditure is hereby declared to be for a county purpose, and the money paid out for such purpose shall be repaid to such county by the agricultural development district, if formed. [L. '13, p. 494, § 9.]

§ 3139–10. Commissioners—Contracts.—The powers of the agricultural development district shall be exercised through an agricultural development commission consisting of three members, who shall serve without pay, save expenses incurred in the course of their duties under the provisions of this act. For the purposes of this act the said commissioners shall be entitled to the advice and service of all state, county and municipal officers and institutions, particularly engineers, agricultural chemists, directors of experiment stations, and the state department of agriculture, and all such officers and institutions are hereby authorized and directed to co-operate with said commissioners in furthering the purposes of this act. Said commissioners are hereby forbidden to become interested, directly or indirectly in any purchase, contract or work under this act, and any such interest is hereby declared void. [L. '13, p. 494, § 10.]

§ 3139–11. Election of Commissioners—Terms.—The said commissioners shall be elected one from each of the county commissioner districts of the county in which the agricultural development district is located, when the agricultural development district is coextensive

with the limits of such county. When the agricultural development district comprises only a portion of the county, three commissioner districts numbered consecutively having approximately equal population and with boundaries following ward and precinct lines, shall be described in the petition for the formation of the agricultural development district, and one commissioner shall be elected from each of the said commissioner districts. Said commissioners shall hold office for a term of three years and until their respective successors are elected and qualified, each term to commence on the second Monday in January following the election thereto. At the same election at which the proposition is submitted to the voters as to whether an agricultural development district shall be formed, three commissioners shall be elected to hold office, respectively, for the term of one, two or three years. All candidates shall be voted upon by the entire agricultural development district, and the candidate residing in commissioner district number one receiving the highest number of votes in the agricultural development district shall hold office for the term of three (3) years; and the candidate residing in commissioner district number two receiving the highest number of votes in the agricultural development district shall hold office for the term of two years, and the candidate residing in commissioner district number three receiving the highest number of votes in the agricultural development district shall hold office for the term of one year, each of said terms to date from the second Monday in January following the election, but also to include the period intervening between the election and the second Monday in January following. [L. '13, p. 495, § 11.]

§ 3139-12. Qualifications.—No person shall be eligible to hold the office of an agricultural development commissioner unless he is a qualified voter, a freeholder within such agricultural development district, and is and has been a resident for a period of three (3) years of the commissioner district from which he is elected. [L. '13, p. 496, § 12.]

§ 3139-13. Nominations by Petition.—Nominations for agricultural development commissioners at the first special election and at subsequent general elections shall be by petition of not less than one per cent of the qualified electors of the commissioner district in which the candidate is a resident, to be filed in the office of the county auditor at least twenty days prior to such election. [L. '13, p. 496, § 13.]

§ 3139-14. Vacancies—Cause of.—A vacancy in the office of agricultural development commissioner shall occur by death, resignation, removal, conviction of a felony, nonattendance at meetings of the

agricultural development commission for a period of sixty days unless excused by the agricultural development commission, by any statutory disqualification, or by any permanent disability preventing the proper discharge of his duty. [L. '13, p. 496, § 14.]

§ 3139–15. Filling Vacancies—Special Election.—In the event of a vacancy in the office of agricultural development commissioner by death, resignation, or otherwise, such vacancy shall be filled at the next general election, the vacancy in the interim to be filled by appointment by a majority vote of the remaining agricultural development commissioners. In the event that such ad interim appointment shall not be made by the remaining commissioners within thirty (30) days following the occurrence of the vacancy, the appointment shall be made forthwith by the superior court of the county. If there should be at the time more than one vacancy, a special election shall be called to fill the same, by the remaining member, or, that failing, by the board of county commissioners of the county, such election to be held not more than forty days after the occurring of such vacancies. [L. '13, p. 496, § 15.]

§ 3139–16. General Election Laws Applicable.— The manner of conducting and voting at elections under this act, opening and closing of polls, keeping of poll lists, canvassing the votes, declaring the result, and certifying the returns, shall be the same as provided by the general election laws governing the election of state and county officers, except as otherwise provided in this act. [L. '13, p. 497, § 16.]

§ 3139–17. General District Election.—A general election shall be held on the first Saturday in December of each year, (except the first Saturday in December immediately following the creation of such agricultural development district), for the election of agricultural development commissioners and for the submission of propositions, and special elections shall be held at such other times and for such purposes as the agricultural development commissioners may by resolution prescribe, subject to the limitations and pursuant to the requirements of this act. [L. '13, p. 497, § 17.]

§ 3139–18. Notices of Election—Publication.—All notices of election shall be given by publishing the same for a period of ten days in a daily newspaper of general circulation in said agricultural development district, or in at least two issues of a weekly newspaper of general circulation in said agricultural development district, such publication to be made within a period of twenty days immediately preceding such election; and by posting, for at least ten days prior to the date of election, a written or printed notice of such election in each polling place within such agricultural development district.

The published notice shall give the time of holding the election, the hours the polls will remain open, the officer or officers to be elected, and a statement of the propositions to be submitted; and the posted notices shall, in addition, give the location of the polling places. [L. '13, p. 497, § 18.]

§ 3139-19. Registration-books.—Officers of the city and county having charge of the registration-books of any city or precinct in an agricultural development district shall deliver the same for the use of the election officers at all agricultural development elections. In the event of such registration books being required by law to be used by any school district or other public corporation at the same time as the use thereof will be necessary to the agricultural development district, such books shall be delivered to the agricultural development commission and school district or other public corporation jointly, and the same polling places and registration-books may be used jointly in such cases, and the same individuals may serve as election officers for all such joint elections, and in such cases the compensation of such election officers and other expenses shall be so divided that the agricultural development district shall bear only its proportionate share thereof. [L. '13, p. 497, § 19.]

§ 3139-20. Polling Places. — There shall be not less than one polling place in each of the various wards of any incorporated city within such agricultural development district, and one polling place within each precinct of each agricultural development district not within the limits of any incorporated city. It shall be the duty of the county commissioners in the formation of the agricultural development district, and of the agricultural development commission in all subsequent elections to designate the polling places and appoint three election officers for each place of voting at least twenty days before each election. [L. '13, p. 498, § 20.]

§ 3139-21. Opening of Polls.—The polls shall be open between such hours of the day as the commissioner shall designate, but in every case the polls shall be open between 1 o'clock P. M., and 8 o'clock P. M. [L. '13, p. 498, § 21.]

§ 3139-22. Counting Votes.—Immediately after the closing of the polls the election officers shall then and there, without removing the ballot-box from the place where the ballots were cast, proceed to count the votes, and as soon as such count is completed a return thereof shall be signed by such election officers and securely enveloped and sealed and delivered, together with the ballot-box containing the ballots, to the agricultural development commmission, or some person delegated to receive the same on their behalf.

Within five days after the election, the agricultural development commission shall meet and proceed to canvass the returns of such election and shall thereupon declare the result. [L. '13, p. 498, § 22.]

§ 3139–23. Who may Vote.—All electors who are, at the time of such election, duly qualified to vote within their respective precincts under the general election laws for state and county officers shall be entitled to vote at any election held in such agricultural development district. [L. '13, p. 499, § 23.]

§ 3139–24. Powers of District.—All agricultural development districts organized under the provisions of this act shall be and are hereby authorized to exercise the following rights and powers, and all other rights and powers necessary for the purposes of this act.

(a) To acquire by purchase, condemnation and purchase or otherwise, all lands, property rights, leases, or easements necessary for the purposes of the agricultural development district; also water for irrigation purposes from any public watercourse, lake, stream or any other source;

(b) To exercise the right of eminent domain in the acquirement or damaging of all lands, property, property rights, leases or easements, and levying and collection of assessments upon property for the payment of all damages and compensation in carrying out the provisions for which said district shall have been created. Such right shall be exercised in the same manner and by the same procedure as is or may be provided by law for cities of the first class, except in so far as such law may be inconsistent with the provisions of this act, and that the duties devolving upon the city treasurer under such law are hereby imposed upon the county treasurer for the purposes of this act;

(c) To own and control lands, leases, and all easements in land necessary for the purposes of such agricultural development districts;

(d) To sell or lease lands and other property owned and controlled by said agricultural development district as hereinafter provided, and to execute all titles, leases and any other papers and documents in connection therewith, or incidental thereto;

(e) To build, improve or repair any roads within the agricultural development district;

(f) To raise revenue by levy of an annual tax on all taxable property within such agricultural development district, not exceeding two mills in any one year: Provided, that such levy shall be made and taxes collected in the manner now or hereafter provided by law for the levy and collection of taxes in school districts of the first class;

(g) To purchase, manufacture or otherwise acquire all materials and equipment necessary for the improvement of agricultural lands

under the provisions of this act, and to sell or lease such materials and equipments at cost to farmers and settlers, within such agricultural development district;

(h) To give such aid in the production and marketing of agricultural products, not inconsistent with law, as said commissioners may deem proper;

(i) To borrow money and issue bonds as provided by the state Constitution for municipal corporations. General bonds of any such district may be issued for any period not exceeding twenty years;

(j) To create and fill such positions and offices and fix salaries and bonds thereof as may be necessary for the purposes of this act. [L. '13, p. 499, § 24.]

§ 3139–25. Officers of Commission.—The agricultural development commission shall organize by the election annually from its own members of a president and secretary, shall by resolution adopt rules governing the transaction of its business, and shall adopt an official seal. [L. '13, p. 500, § 25.]

§ 3139–26. Resolutions.—All proceedings of the agricultural development commission shall be by a resolution recorded in a book or books kept for such purpose, which shall be public records. [L. '13, p. 500, § 26.]

§ 3139–27. Claims—How Paid.—All funds of the agricultural development district shall be paid to the county treasurer, and all disbursements shall be made by such officer on warrants drawn by the county auditor upon order of or vouchers approved by the agricultural development commission. No payments of any kind under this act shall be paid except upon certificate of the agricultural development commission that the sum therein named has been justly incurred, is necessary for or is due to the person, firm or corporation therein named over and above all just credits and offsets for services performed or to be performed or material furnished or property sold to the agricultural development district for the uses of this act. [L. '13, p. 501, § 27.]

3139–28. Agricultural Development Fund—Special Funds.—The county treasurer shall create a fund to be designated the "Agricultural Development Fund," into which shall be paid all money received by him in behalf of such agricultural development district, and no money shall be disbursed therefrom except upon warrants of the county auditor issued as in this act provided. The county treasurer shall also maintain such other special funds as may be prescribed by the agricultural development commission, into which shall be placed such moneys as the agricultural development commmission may by its resolution direct, and from which disbursements shall

be made upon proper warrants of the county auditor issued against the same by the authority of the agricultural development commission. [L. '13, p. 501, § 28.]

§ 3139–29. Indebtedness.—Any agricultural development commission created under the provisions of this act is hereby authorized, prior to the receipt of taxes raised by levy, to borrow money or issue the warrants of the district in anticipation of the revenues to be derived by such district from the levy of taxes for the purpose of such district during the first year, and such warrants shall be redeemed from the first money available from such taxes when collected. [L. '13, p. 501, § 29.]

§ 3139–30. Investigation of Lands.—It shall be the duty of the said commissioners, as promptly as possible after the organization of such district, to commence an investigation of the unimproved agricultural lands within such district, for the purpose of determining what portions or areas of such lands are adapted to economical irrigation or clearing, and adapted for sale or lease as agricultural lands to settlers. For the purpose of such investigation the said commissioners are authorized to employ all necessary assistants, and shall be entitled to the services of all state, county and municipal officers and institutions in accordance with section 3139–10. [L. '13, p. 501, § 30.]

§ 3139–31. Matters Considered.—Such investigation shall include a description of the qualities of the soil and of the locality as regards existing highways and railway transportation, also an estimated cost of clearing such lands or of conducting water upon any proposed tract, and shall point out the opportunity for reservoir sites and the probable cost of acquiring such sites for purposes of irrigating tracts of land. The result of such investigation shall be kept on record in the office of said commissioners, and a certified copy thereof shall be sent to the state department of agriculture for public information and use. [L. '13, p. 502, § 31.]

§ 3139–32. Acquisition of Undeveloped Land.—The said commissioners shall have power to acquire by purchase or otherwise, except by condemnation, in accordance with the provisions of this act any undeveloped agricultural lands within the limits of the agricultural development district, for the purpose of improving and fitting such lands for productive use, but no lands may be acquired under this act from private owners (except from settlers under the provisions of sections 3139–35 and 3139–36) at a price exceeding twenty dollars an acre for logged-off lands and twenty-five dollars an acre for arid lands, and unless authorized by subsequent legislation no lands shall

be cleared when the estimate therefor shall exceed one hundred dollars an acre. [L. '13, p. 502, § 32.]

§ 3139–33. Refusal of Price Reported to Assessor.—In negotiating for the purchase of unimproved agricultural lands, whenever there shall have been offered in writing to a private owner a certain price and it shall be refused, the commissioners shall report that fact to the county assessor forthwith, and the price refused for such lands shall be considered by the assessor in respect to such and similar lands in that vicinity. [L. '13, p. 502, § 33.]

§ 3139–34. Purchase or Lease Lands.—The said commission may lease or purchase any undeveloped agricultural lands at public auction or otherwise in accordance with law, including school and granted lands, for the purpose of bringing such lands into productive use, and may sell or lease the lands so acquired and improved for agricultural use as provided in sections 3139–44 to 3139–49. [L. '13, p. 503, § 34.]

§ 3139–35. Who Entitled to Benefit of Act—Preference Rights.—All citizens of this state shall be entitled to the benefits of this act as provided in this and the next following section. Any settler, being a citizen of the United States may offer not to exceed twenty acres of undeveloped, logged-off agricultural lands for sale to the commissioners of the agricultural development district in which such lands are located, and if the offer be accepted, then such vendor shall have a preferential right after such lands have been cleared and improved for agricultural use to repurchase and entry of not to exceed twenty acres of such lands, upon the terms described in sections 3139–44 to 3139–49, notwithstanding that such vendor may retain ownership of other lands not offered to said commissioners. Such vendors and repurchasers shall be subject to all the terms and conditions imposed by this act upon other purchasers. [L. '13, p. 503, § 35.]

§ 3139–36. Preference in Letting Contracts.—When logged-off or cut-over lands have been sold by settlers subject to the right of preferential repurchase as provided in the next preceding section of this act, the commissioners shall give preference to the vendors of such lands when letting contracts for the clearing and improving of the same: Provided, such vendors undertake by contract in writing, on such terms and conditions as said commissioners may prescribe, to effect such clearing and improving at a price not exceeding the most satisfactory tender received by the commissioners from outside bidders, or in any case not exceeding a reasonable price in view of the value of such lands for agricultural purposes. [L. '13, p. 503, § 36.]

3139-37. Notice of Letting of Contracts.—Before awarding any contract (except only in the case of preferential repurchasers provided for in section 3139-36), the agricultural development commission shall cause to be published, in some newspaper within the district for at least fifteen days before the letting of such contract, a notice inviting sealed proposals for such work, plans and specifications for which must at the time of publication of such notice be on file in the office of the agricultural development commission subject to public inspection: Provided, however, that the agricultural development commission may at the same time, and as a part of the same notice, invite tenders for said work or materials upon plans and specifications to be submitted by the bidder. Such notice shall state generally the work to be done and shall call for proposals for doing the same to be sealed and filed with the commission on or before the day and hour named. [L. '13, p. 504, § 37.]

§ 3139-38. Check to Accompany Bid.—Each bid, tender or proposal named in section 3139-37 shall be accompanied by a certified check payable to the order of the agricultural development commission for a sum not less than five per cent of the amount of such bid, and no bid, tender or proposal shall be considered unless accompanied by such check. [L. '13, p. 504, § 38.]

§ 3139-39. Opening Bids and Letting Contracts.—At the time and place named such bids shall be publicly opened and read and the commission shall proceed to canvass the bids and may let such contract to the lowest responsible bidder upon plans and specifications on file, or to the best bidder submitting his own plans and specifications. If, in the opinion of the commission, all bids are unsatisfactory, they may reject all of them and readvertise, and in such case all checks shall be returned to the bidders. [L. '13, p. 504, § 39.]

§ 3139-40. Retention of Check — Bond.—If such contract be let, then and in such case all checks shall be returned to the bidders, except that of the successful bidder, which shall be retained until a contract shall be entered into for the purchase of such materials or doing of such work, and a bond given to the agricultural development district for the performance of the contract and otherwise conditioned as required by law, with sureties satisfactory to the commissioners, in an amount to be fixed by the commission, but not in any event less than twenty-five per cent of the contract price. If said bidder fails to enter into said contract in accordance with said bid and furnish such bond within fifteen days from the date at which he is notified that he is the successful bidder, the said check and the amount thereof shall be forfeited to the agricultural development district. [L. '13, p. 504, § 40.]

§ 3139-41. Material or Labor by Contract or Otherwise.—All materials and equipments required by the agricultural development district for the purposes of this act may be manufactured or purchased in the open market or by contract, and all work ordered may be let by contract or done by day labor, as the agricultural development commission may determine. [L. '13, p. 505, § 41.]

§ 3139-42. Lands to be Subdivided.—The commissioners shall cause all lands in their possession or control to be subdivided into the smallest practicable tracts, in order to provide for as many settlers as possible, giving preference whenever practicable to resident householders with families depending upon them. All tracts distant less than one mile from a state or county highway shall be connected by a temporary road, and the proportion which any particular tract should bear of the expense of that road shall be estimated by said commissioners against that tract in the price subsequently to be placed upon it for purposes of future sale or lease. [L. '13, p. 505, § 42.]

§ 3139-43. Prospectus of Each Tract.—Whenever agricultural lands have been cleared or otherwise improved under the provisions of this act, the commissioners shall prepare a statement finally showing, in respect to each tract, in detail, the original cost of acquired lands, the cost of clearing, the quantity cleared, the soil analysis, the condition of the uncleared portion, and such other particulars as experience may show to be useful data for colonists, and shall keep such statements on permanent record and transmit a certified copy thereof to the state department of agriculture for public information and use. [L. '13, p. 505, § 43.]

§ 3139-44. Sale of Lands.—The said commissioners, as soon and so often as any lands acquired by purchase or otherwise are cleared and improved as aforesaid, shall cause the same to be appraised and offered to settlers on twenty equal annual payments (or less if so requested by the settler) at not less than the cost of their acquisition and improvement plus five per cent. One-half of one per cent per annum above the rate realized by the agricultural development district on its issue of bonds, and not less than four and one-half per cent per annum, interest shall be charged on deferred payments. [L. '13, p. 506, § 44.]

§ 3139-45. Application to Purchase.—The manner of sale shall be by application and entry with priority to the first applicant. The commissioners shall execute the contracts of sale to purchasers on behalf of the agricultural development district in such form as shall carry out the intent of this statute to encourage settlement, and they

shall make reasonable rules and regulations in respect thereto to insure good faith from the purchaser. [L. '13, p. 506, § 45.]

§ 3139–46. Assignability of Right to Purchase.—No assignment of any claim by any purchaser shall be permitted until after such purchaser has made at least three annual payments and also has actually resided on the land at least two years. Continuous residence of not less than three years shall be required of any purchaser who may desire to anticipate the remaining payments and pre-empt the tract. The commissioners may on written application therefor, but are not required to permit in writing an absence from the land of not to exceed five continuous months in any one year. [L. '13, p. 506, § 46.]

§ 3139–47. Purchasers Limited to One Tract.—No purchaser shall directly or indirectly acquire more than one tract. Tracts may be entered by persons who are not yet citizens of the United States, but all contracts shall provide that title shall not be delivered, notwithstanding the acceptance of payments meantime, until the purchaser has declared intention in good faith to become a citizen of the United States. All tracts shall be entered in parcels of not to exceed twenty acres each. [L. '13, p. 506, § 47.]

§ 3139–48. Irrigable Lands — Acquisition of Reservoir Sites.—In respect of irrigable lands, whenever and so often as the commissioners shall have decided upon improvement thereof by a system of irrigation, then said commissioners are authorized to acquire by purchase, by condemnation and purchase, or by any other lawful means any reservoir sites or other land necessary for reservoirs, canals, ditches and laterals, within or without the district: Provided, they shall first have obtained offers from the owners of two-thirds of the lands that can be watered therefrom, or from an irrigation district or company, to accept distribution from such reservoirs, which offer shall be in form binding upon such owners or irrigation districts or companies during a period sufficient and reasonable for the construction of the reservoir. The commissioners, having obtained such binding offers, may then call for the written opinion of some competent engineering expert, showing the estimated cost of the reservoir, its capacity, the area that can be watered therefrom and the source and constancy of supply thereto, and when reports thereon satisfactory to the commissioners shall be filed, they may proceed with the construction of any works within or without the district which in the opinion of said commissioners may be necessary for the impounding and distribution of the waters. [L. '13, p. 507, § 48.]

§ 3139–49. Refusal of Price Reported to Assessor.—The commissioners may make offer to purchase from private owners any lands

necessary, in whole or in part, for the purpose of such reservoir, canals, ditches and laterals aforementioned and if the price offered be refused, they shall certify such offer and refusal to the assessor of taxes in the county where such lands are situated and the price refused for such lands shall be considered by the assessor in respect of such and all similarly situated lands in the next assessment. [L. '13, p. 507, § 49.]

§ 3139–50. Irrigation System—Construction.—Whenever the said commissioners feel justified in so doing, in view of the provisions of section 3139–48, they may construct any reservoirs, canals, pipe-lines, ditches, laterals and other necessary works, within or without the district, by contract or by direct labor, in such manner as in their judgment shall most effectively and economically store and distribute the water at least cost; and may sell perpetual water rights to individual lands owners, or may supply water to irrigation districts or companies, on terms of twenty annual payments (or less if so requested by such owners, districts or companies), with interest on deferred payments at the rate of not less than four and one-half per cent per annum, and not in any case less than one-half of one per cent per annum above the rate realized by the agricultural development district upon its issue of bonds, of which the proceeds, directly or indirectly, may go into such undertaking. [L. '13, p. 507, § 50.]

§ 3139–51. Price of Water — Maintenance.—The price per acre, for a water right shall be determined by dividing the total cost to the district of acquiring and constructing the reservoir and distribution system (including all expenses in connection therewith or incidental thereto), by the number of acres furnished with water rights therefrom; and an annual charge per acre for water rights may be levied for maintenance of such reservoir and distribution systems. [L. '13, p. 508, § 51.]

§ 3139–52. Sale of Irrigable Lands.—Whenever and so often as the district may itself own or acquire any lands watered by such irrigation works, it may dispose of such lands to settlers, irrigation districts or companies upon the terms, interest rates and conditions described in section 3139–50. [L. '13, p. 508, § 52.]

§ 3139–53. Limitation on Sales to One Person.—Until the legislature shall otherwise provide the commissioners shall not sell or dispose of any irrigable lands to any one firm, person, or corporation exceeding forty acres, directly or indirectly, or sell or dispose of water rights to any firm, person or corporation to any tract exceeding one hundred and sixty acres, nor shall any assignment between holders be effective to evade these provisions without the written consent of the commissioners. [L. '13, p. 508, § 53.]

§ 3139–54. Lease — Time Limit.—Any land or other property owned or controlled by the agricultural development district may, in the discretion of the commissioners, be leased for a period of not exceeding twenty years, on such terms and conditions as the commissioners may determine: Provided, that in all leases of land or property the net income therefrom to the agricultural development district, after allowing for depreciation, shall be not less than six per cent per annum of the fair selling value of such land or property, and shall in any case be sufficient to yield a net interest return to the district upon such investment at the rate of one-half of one per cent above the rate realized by the district upon any issues of bonds, the proceeds of which directly or indirectly may enter into the cost to the district of such land or property. [L. '13, p. 508, § 54.]

§ 3139–55. By-products.—It shall be the duty of the commissioners to utilize, as far as practicable, any and all by-products from the lands secured, cleared and otherwise improved by them, and to make tests for the utilization and sale of by-products, and to manufacture or purchase equipment for any processes that may prove successful for that purpose. [L. '13, p. 509, § 55.]

§ 3139–56. Issuance of Bonds.—To provide funds for its purposes, any agricultural development district formed under authority of this act may issue negotiable bonds, to be designated "Agricultural Development Bonds." These bonds shall be payable not more than twenty years after their date, and shall be executed in accordance with law by the president of the agricultural development commission and attested by the secretary thereof. They shall be registered or coupon bonds, issued in denominations of not less than one hundred nor more than one thousand dollars each, numbered from one up consecutively, and shall bear interest, payable semi-annually, at a rate not to exceed six per cent per annum. They shall be disposed of serially, dated the day of issuance, and shall not bear interest until after their actual sale, and shall be sold only when their proceeds may from time to time be required. The principal and interest shall be payable at such place as may be designated in the bond. The bonds and each coupon shall be signed by said presiding officer, and shall be attested by the secretary under the seal of the agricultural development district. Such bonds shall be sold in such manner as the agricultural commission may by resolution declare to be for the best interest of the district. A register shall be kept of all the bonds issued, showing the number, date, amount, interest, to whom delivered (if coupon bonds) and the name of payee (if registered bonds); and also showing each and every bond executed, issued or sold under the provisions of this act, and when and where payable.

The coupons for the payment of interest on said bonds shall be considered for all purposes as warrants drawn upon the general fund of the agricultural development district issuing such bonds, and when presented to the treasurer of the county having custody of the funds of such agricultural development district, if there are no funds in the treasury to pay the said coupons, it shall be the duty of the county treasurer to indorse said coupons as presented for payment, in the same manner as county warrants are indorsed, and thereafter said coupons shall bear interest at the rate named in the bond. [L. '13, p. 509, § 56.]

§ 3139–57. Form of Bond.—The form of the bond shall be substantially as follows:

$——. No. ——.

UNITED STATES OF AMERICA
STATE OF WASHINGTON
AGRICULTURAL DEVELOPMENT BOND.

The —— Agricultural Development District of —— in the state of Washington, for value received, hereby promises to pay to bearer, or to the registered holder of this bond, if the same be registered, on the 1st day of ——, 19—, the sum of —— Dollars with interest thereon at the rate of —— per centum per annum, payable semi-annually on the first day of —— and —— in each year upon the presentation and surrender of the annexed interest coupons, as they severally become due; both principal and interest of this bond are payable in gold coin of the United States, of the present standard weight and fineness, at the —— County Treasury, in the state of Washington; for the prompt payment whereof, both principal and interest as they mature, the full faith, credit and resources of the —— Agricultural Development District of ——, in the state of Washington, are hereby irrevocably pledged.

It is redeemable on any interest date occurring —— or more years after the date hereof, at par, and interest on this bond shall cease when it is called for payment either at maturity or by redemption before maturity.

This bond is one of an issue of —— similar bonds authorized by the legislature of the state of Washington in a statute passed in the year 1913 and entitled: (here insert the exact title of act.)

It is hereby certified and declared that all conditions and things required by the Constitution and laws of the state of Washington to exist and be done precedent to the issuance of this bond have existed and been done in due and regular form, as required by law, and that this bond is by virtue of the law made incontestable for any informalities preceding its issuance, and the signatures of the president

and the secretary hereto attached, together with the seal of the —— Agricultural Development District of —— in the state of Washington, are warrants to the holder thereof of the due execution and valid consideration for this instrument.

In Testimony Whereof the said president and secretary have hereto affixed their signatures and attached an impression of the seal of the —— Agricultural Development District of ——, in the state of Washington, and the coupons hereto annexed have been executed by lithographed facsimile in accordance with the act this —— day of ——, 19—. [L. '13, p. 510, § 57.]

§ 3139–58. Public Funds may be Invested in Bonds.—All state, county, municipal and other public funds may be invested in such bonds of any agricultural development districts established under authority of this act, and such bonds shall be a preferential investment for the permanent school fund, second only to school district bonds, except when a higher rate of interest can be secured for the school fund by investment in other municipal bonds. [L. '13, p. 511, § 58.]

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CHAPTER I.

Regulation of Livestock Industry.

§ 3140. Commissioners, How Appointed.—Whenever three or more counties in this state shall vote to accept the benefits and share the burdens of this chapter as hereinafter provided, then the governor of the state, by and with the advice and consent of the senate, shall appoint a board of stock commissioners, consisting of one member from each of such counties, and such stock commissioners, upon entering upon their duties, shall take an oath to uphold and support the constitution of the United States and the constitution and laws of this state, and to well and truly perform their duties as provided by law, which oath shall be filed in the office of the secretary of state. [L. '95, p. 75, § 1.]

See infra, § 5415, duties of state board of health as to diseases of domestic animals.

See infra, §§ 9119, 9120, taxation of grazing stock.

§ 3141. Notice of Election, How Submitted—Ballots.—It shall be the duty of the county commissioners of any county in this state, whenever petitioned by fifty or more electors of the county, unless such petition be counterbalanced by a remonstrance of electors more numerously signed, to submit to the qualified electors of such county at a special election to be held upon thirty days' notice, the question of accepting the benefits and sharing the burdens of this chapter. For the purpose of giving time for remonstrance, such petition shall lie over unacted on for ten days after the filing of the same. Said election shall be ordered advertised, held and conducted, and the vote canvassed and returned as other elections held under the provisions of the code: Provided, the officers of the board of said special election shall receive two dollars only for their service. The question shall be submitted to the electors in the following form: "For stock law," "Against stock law." Should the vote of the county be in the affirmative, the result shall be certified to the governor under the hand and seal of the auditor of the county, whereupon, when three or more counties have so voted in the affirmative, the governor shall make the appointments provided by section 3140. [L. '95, p. 75, § 2.]

§ 3142. Place of Meeting.—Said board when appointed shall meet at the city of Sprague and organize by the election of a president

and secretary, and shall have power to fix the times and places of meeting thereafter, and to establish the place where the office of the secretary and records of the board shall be kept. The members of said board shall receive no compensation or mileage for their services, but shall be allowed their actual expenses incurred in the performance of their duties. [L. '95, p. 76, § 3.]

§ 3143. Duties of Board.—It shall be the duty of said board to exercise a general supervision over and as far as may be protect the stock interests of the state from theft and disease, and it shall have power and authority to make rules and regulations governing the recording of stock brands and governing the recording of the shipment of livestock on railroads, and the keeping of a record thereof. Such regulations, concerning the matters aforesaid, as may be made, shall be filed in the offices of the county auditors of the several counties to be affected by this chapter. A copy of the regulations concerning recording of the shipment of livestock shall be certified by the president and secretary of the board to railroad companies whose lines run through or traverse said counties. Said board shall also have the power, whenever deemed necessary by it, to assist in the prosecution of any and all crimes or misdemeanors against the laws of this state in feloniously branding or stealing any stock, or any other crime or misdemeanor under any of the laws of this state for the protection of the rights and interests of stock owners, and may employ counsel out of the fund hereinafter provided for to assist in any such prosecution. Said board shall also devise and recommend to the legislature from time to time such legislation as in their judgment will foster the stock industry of the state. It shall be the duty of railroad companies to require a compliance on the part of their employees with such regulations as the board may make concerning the record to be kept of the shipment of livestock. [L. '95, p. 76, § 4.]

§ 3144. Inspectors Appointed, How — Duties of.—The said board of stock commissioners are hereby authorized, and it is made their duty, to appoint such stock inspectors as they may deem necessary for better protection of the livestock interests of the state, and such inspector shall perform such duties in the inspection of stock and in the bringing to justice of such persons depredating on stock, and persons violating the provisions of this chapter, as may be prescribed by the board, and such inspectors shall have the same power to summon a posse when necessary to make arrests in the same manner and to the same extent as sheriffs. Such inspector may, when deputized, exercise the powers of deputy sheriffs, but shall not receive any fee or emolument therefor from the state or county. Inspectors

shall be paid such compensation out of the funds hereinafter provided for as the board may determine. [L. '95, p. 77, § 5.]

§ 3145. Annual Tax Levied.—An annual tax shall be laid on all the horses and cattle of the several counties affected by this chapter for the purpose of raising a fund for the purpose of carrying out its provisions: Provided, eight head of stock shall be exempt from said tax to every owner. The rate of taxation to be laid on such livestock for each year shall be fixed by the board of stock commissioners and be by them certified to the county auditors of the several counties each year prior to the annual tax levy, and the county commissioners of the several counties shall include in their tax levy the rates so fixed by said board of stock commissioners on said livestock, and cause the same to be collected along with other state and county taxes. The taxes so collected shall be covered into the state treasury as other state taxes, and shall there be kept intact for the purpose of meeting the expenditures to be incurred under this article. The treasurer shall disburse the same on warrants drawn by the state auditor upon the certificate of the president and secretary of the stock board under regulations to be prescribed by the state auditor. [L. '95, p. 77, § 6.]

See infra, § 9212, taxes, how levied.

§ 3146. Brands Recorded.—From and after the passage of this act it shall be the duty of all butchers engaged in the business of slaughtering cattle in this state to keep a true and correct report of all marks and brands of all cattle slaughtered by them, recording also the name or names of persons from whom said cattle were bought, together with their residence and date of purchase and delivery of said cattle. The said record shall be kept in a suitable book in the butcher's place of business, subject at all times to the inspection of the public. [L. '95, p. 77, § 7.]

See infra, § 3159.

§ 3147. Butchers to Attest Records.—It shall be the duty of all butchers keeping a record as provided in the last preceding section to make or cause to be made on or before the first day of each month two exact and correct copies of the said record as kept by him or them, and shall be and appear before the nearest acting justice of the peace within the county in which said butcher carries on and conducts his business, and shall make affidavit to the correctness of the said record, one copy of which shall be placed and kept on file in the office of the said justice of the peace and the other copy shall be sent by the said butcher to the county auditor of the county and be placed and kept on file by the said auditor, and be subject as other papers in his office to the inspection of the public. [L. '95, p. 78, § 8.]

§ 3148. License—Bonds Given.—All persons carrying on the business of butchering in the counties adopting the provisions of this chapter shall, on the first day of January of each year or at such later period of the year as they shall commence business, pay into the county treasury of the county in which they do business an annual license tax of ten dollars, and shall enter into bond with sureties to the satisfaction of the county auditor in the sum of five hundred dollars, conditioned that they will in all respects comply with the provisions of this article concerning their business. The obligee in said bond shall be the state of Washington. Said bond shall be filed with the county auditor, and any person suffering loss by reason of noncompliance with the provisions of this chapter on the part of any such butcher shall be entitled to sue on said bond for his damages. The license tax collected from butchers shall be paid into the state treasury and there become a part of the fund provided for by section 3145. [L. '95, p. 78, § 9.]

§ 3149. Preservation of Hides.—Any person or persons, other than a licensed butcher, who shall slaughter any cattle shall preserve the hides of said cattle intact for thirty days at his usual place of abode, and permit the same to be inspected by any and all persons. [L. '95, p. 79, § 10.]

§ 3150. Estrays, Examination of Marks on.—No person shall take up estray stock in this state without first examining the marks and brands before two disinterested witnesses, and swearing to the marks and brands before the nearest justice of the peace prior to advertising said stock. The said affidavit shall be filed with said justice of the peace, and shall contain the names of the witnesses before whom the marks and brands were examined. [L. '95, p. 79, § 11.]

§ 3151. Branding.—It shall be unlawful for any person to brand or mark any calf, calves or other cattle that are running at large between the first day of December of each year and the first day of April following: Provided, any owner of stock may brand on his own premises at any time in the presence of one or more responsible citizens. [L. '95, p. 79, § 12.]

§ 3152. Penalty.—Any persons who shall violate any of the provisions of section 3146, 3147, 3149, 3150, 3151, or shall willfully fail or refuse to comply with any of the requirements thereof, shall be deemed guilty of a misdemeanor, and on conviction thereof in a court of competent jurisdiction shall be punished by a fine of not less than fifty dollars or more than five hundred dollars, or by imprisonment in the county jail not less than one month and not exceeding six months, at the discretion of the court, or by both such fine and imprisonment, at the discretion of the court. All moneys col-

lected by such fines shall be paid into the general fund of the county for the benefit of the public schools of the county. [L. '95, p. 79, § 13.]

§ 3153. Driving Another's Stock from Range.—No person shall be permitted to lead, drive, or in any manner remove any horse, mare, colt, jack, jenny, mule, or any head of neat cattle, or hog, sheep, goat, or any number of these animals, the same being the property of another person, from the range on which they are permitted to run in common, without the consent of the owner thereof first had and obtained: Provided, the owner of any such animals as aforesaid, finding the same running on the herd grounds, or on common range with other animals of the same, may be permitted to drive his own animal or animals, together with such other animals as he cannot conveniently separate from his own, to the nearest and most convenient corral, or other place for separating his own from other animals, if he, in such case, immediately, with all convenient speed, drive all such animals not belonging to himself back to the herd ground or range from which he brought such animals. [L. '91, p. 25, § 1; 1 H. C., § 2514.]

§ 3154. Penalty.—Any person violating the provisions of the foregoing section shall be guilty of a misdemeanor, and on conviction thereof shall be punishable by a fine of not less than twenty nor exceeding five hundred dollars, or imprisonment not exceeding six months nor less than thirty days, or both such fine and imprisonment, discretionary with the court having jurisdiction of the same. [L. '91, p. 26, § 2; 1 H. C., § 2515.]

§ 3155. Separation of Stock — Penalty.—It shall be the duty of any and all persons searching or hunting for stray horses, mules, or cattle to drive the band or herd in which they may find their stray horses, mules, or cattle into the nearest corral before separating their said stray animals from the balance of the herd or band; that in order to separate their said stray animals from the herd or band, the person or persons owning said stray animals shall drive them out of and away from the corral in which they may be driven, before setting the herd at large. Any person violating this section shall be deemed guilty of a misdemeanor, and on conviction thereof, before a justice of the peace, shall be fined in any sum not exceeding one hundred dollars, and half the costs of prosecution; said fine so recovered to be paid into the school fund of the county in which the offense was committed; and in addition thereto shall be imprisoned until the fine and costs are paid. [L. '69, pp. 408, 409, §§ 1, 2; Cd. '81, § 2537; 1 H. C., § 2516.]

CHAPTER II.

Marks and Brands.

§ 3156. Owner may Have Mark and Brand.—Any person or persons being the owner or owners of horses, mules, cattle, sheep, goats, or hogs may keep a mark, brand and counter-brand, different from the brand of his neighbors, and as far as practicable, different from any others. [Cd. '81, § 2550; 1 H. C., § 2496.]

For former laws on this subject, see L. '55, pp. 37, 38; L. '68, pp. 42–44; L. '75, pp. 130, 131; L. '77, p. 401.

See supra, §§ 3146, 3149, duty of butchers as to.

See supra, § 3150, duty as to, on taking up branded estrays.

See supra, § 3151, unlawful to brand except within certain months.

See infra, § 3182, brand of stallion running at large, proof.

See infra, § 3288, penalty for unlawful mutilation of domestic animals.

§ 3157. Record of Brands—Data Accompanying.—Every owner adopting a brand or mark shall record with the county auditor his mark, brand, and counter-brand, dewlaps or wattles, by delivering to such auditor his brand and counter-brand, burnt upon a piece of leather, and a description of his mark, dewlaps, or wattles; and the auditor shall enter, in a book kept by him for that purpose, a description of said mark, dewlaps or wattles, and brands, together with the owner's name and time of recording, also describing the part or place on the animal where such mark, dewlap, wattle, or brand is designed to be used, and any person other than the owner thereof using or imitating, or causing to be used or imitated, any such recorded mark, dewlap, wattle, brand, or counter-brand within the county where the same is recorded shall be deemed guilty of a misdemeanor, and punished as provided in section 3160. The auditor, when any mark, dewlap, wattle, or brand is presented for record, shall satisfy himself that they are different from any other recorded in his office, and he shall be entitled to charge a fee of fifty cents for every entry made under the provisions of this article. [Cf. Cd. '81, § 2551; L. '91, p. 136, § 1; 1 H. C., § 2497.]

See, also, supra, §§ 2594, 2595.

§ 3158. Certified Copy of Brand, etc., as Evidence.—On trial of any action involving ownership of any animal, a certified copy of the marks and brands made by the auditor, over the seal of his office, shall be considered as prima facie evidence in such trial as to such ownership. [L. '75, p. 131, § 3; Cd. '81, § 2552; 1 H. C., § 3498.]

§ 3159. Record of Slaughtered Animals.—Any person or persons slaughtering cattle, and having a definite place of slaughter, shall keep at such place a book, in which shall be entered, on the day of slaughter, the age, as near as may be, and brands of cattle, or other

animals slaughtered; also a full description of every mark or brand on such animal, together with the date of receipt or purchase, and the name of the person from whom the same was received or purchased, and such book shall be kept for the inspection of any person desiring so to do. [L. '75, p. 131, § 4; Cd. '81, § 2553; 1 H. C., § 2499.]

See supra, § 3146, duty of butchers.

§ 3160. Penalty for Violation of This Chapter.—Any person violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined, for the first offense, in any sum not exceeding fifty dollars, and for a repetition of the offense, not less than fifty dollars nor more than one hundred dollars, and in default of payment, imprisonment in the county jail at the discretion of the court. One-half of the fines collected under the provisions of this chapter shall go to the informant, and the residue shall be paid to the county treasurer for the school funds of the county where the said offense was committed. [L. '75, p. 131, § 6; Cd. '81, § 2554; 1 H. C., § 2500.]

CHAPTER III.

Liens for Service of Sires.

§ 3161. Proceedings to Secure Lien.—In order to secure to the owner or owners of sires payment for service, the following provisions are enacted: That every owner of a sire having a service fee, in order to have a lien upon the female served, and upon the get of any such sire under the provisions of this chapter for such service, shall file for record with the county auditor of the county where said sire is kept for service a statement, verified by oath or affirmation to the best of his knowledge and belief, giving the name, age, description, and pedigree, as well as the terms and conditions upon which such sire is advertised for service: Provided, that owners of sires who are not in possession of pedigrees for such sires shall not be debarred from the benefits of this chapter. [L. '90, p. 451, § 1; 1 H. C., § 2501.]

§ 3162. Auditor to Issue Certificate, etc.—The county auditor, upon the receipt of the statement as specified in the last preceding section of this chapter, duly verified by affidavit, shall issue a certificate to the owner or owners of said sire, which shall be posted by the owner in a conspicuous place where said sire may be stationed, which certificate shall state the name, age, description, pedigree, and ownership of such sire, the terms and conditions upon which the said sire is advertised for service, and that the provisions of this

chapter, so far as relates to the filing of the statement aforesaid, have been complied with. [L. '90, p. 451, § 2; 1 H. C., § 2502.]

§ 3163. Owner may Have Lien—Statement to be Filed.—The owner or owners of any such sire receiving such certificate, by complying with the last two preceding sections of this chapter, shall obtain and have a lien upon the female served for the period of one year from the date of service, or upon the get of any such sire for the period of one year from the date of birth of such get: Provided, said owner or owners shall file for record a statement of account, verified by affidavit, with the county auditor of the county wherein the service has been rendered, of the amount due such owner or owners for said service, together with a description of the female served, within ten months from the date of service or date of birth, as the case may be: Provided further, that the lien upon the get of any such sire shall be a preferred lien: And provided further, that no sale or transfer of any female animal served shall defeat the right of such lienholder. [L. '13, p. 155, § 1. Cf. L. '90, p. 451, § 3; 1 H. C., § 2503.]

§ 3164. Foreclosure of Lien.—Liens under this chapter [are] to be foreclosed in the same manner as liens upon other personal property are foreclosed. [L. '90, p. 452, § 4; 1 H. C., § 2504.]

§ 3165. Fees of Recording Officer.—For filing certificate, making copy of such affidavit, and the certificate of date of such filing, the clerk of record shall be entitled to the same fees as are provided by law for similar service in regard to chattel mortgages. [L. '90, p. 452, § 5; 1 H. C., § 2505.]

§ 3165-1. Pedigree Enrolled—Certificate—Disqualification.—Every person, firm or company, owning any draft stallion, or jack, for sale, exchange or for public service in this state shall cause the name, description and pedigree of such stallion or jack to be enrolled by the department of animal husbandry of the State College of Washington, and procure a certificate of such enrollment from said department, which shall thereupon be presented to and recorded by the auditor of the county in which said stallion or jack is used for public service.

In order to obtain the license certificate herein provided for, the owner of each stallion or jack shall file a certificate of soundness, signed by a veterinarian registered to practice in the state of Washington and shall forward the veterinarian's certificate, together with the stud-book certificate of registry of the pedigree of the said stallion or jack, and other necessary papers relating to his breeding and ownership to the department of animal husbandry of the said college.

The presence of any one of the following named diseases shall disqualify a stallion or jack for public service;

Bone spavin; ringbone, sidebone, navicular disease.

Bog spavin; curb with curby formation of hock.

Glanders, farcy, maladie du coit; urethal gleet; mange; melanosis; and the department of animal husbandry is hereby authorized to refuse its certificate of enrollment to any stallion or jack affected with any one of the diseases hereby specified and to revoke the previously issued enrollment certificate of any stallion or jack found on investigation of the department to be so infected. [L. '11, p. 483, § 1.]

§ 3165–2. Standard Used.—The professor of animal husbandry of the said college whose duty it shall be to examine and pass upon the merits of each pedigree submitted, shall use as his standard for action the stud-books and signatures of the duly authorized officers of the various horse or jack pedigree registry associations, societies or companies recognized by the department of agriculture, Washington, D. C., and shall accept as pure-bred and entitled to a license certificate as such, each stallion or jack for which a pedigree registry certificate is furnished bearing the signature of the duly authorized officers of a government recognized and approved stud-book. [L. '11, p. 484, § 2.]

§ 3165–3. Posting Certificate.—The owner of any stallion or jack used for public service in this state shall post and keep affixed, during the entire breeding seasons, copies of the license certificate of such stallion or jack, issued under the provisions of the next succeeding section, in a conspicuous place both within and upon the outside of every stable or building where the said stallion or jack is used for public service at his home or elsewhere. [L. '11, p. 484, § 3.]

§ 3165–4. Forms of Certificate.—Subd. 1. The license certificate issued for a stallion or jack whose sire and dam are of pure breeding and the pedigree of which is registered in a stud-book recognized by the government department of agriculture, shall be in the following form:

THE STATE COLLEGE OF WASHINGTON,
DEPARTMENT OF ANIMAL HUSBANDRY.

CERTIFICATE OF PURE-BRED STALLION OR JACK NO. ——.

The pedigree of the stallion or jack (name) ——. Owned by ——. Described as follows: (Color) ——. (Breed) ——. Foaled in the year ——, has been examined at the state college, and it is hereby certified that the said stallion or jack is of pure breeding and is registered in a stud-book recognized by the department of agriculture, Washington, D. C.

(Signature) —— ——,
Professor of Animal Husbandry.

Subd. 2. The license certificate issued for a stallion or jack whose sire or dam is not of pure breeding shall be in the following form:

THE STATE COLLEGE OF WASHINGTON,
DEPARTMENT OF ANIMAL HUSBANDRY.

CERTIFICATE OF GRADE STALLION OR JACK NO. ——.

The pedigree of the stallion or jack (name) ——. Owned by ——. Described as follows: (Color) ——. Foaled in the year ——, has been examined at the state college, and it is found that the said stallion or jack is not of pure breeding and is, therefore, not eligible for registration in any stud-book recognized by the department of agriculture, Washington, D. C.

(Signature) ——,
Professor of Animal Husbandry.

Subd. 3. The license certificate issued for a stallion whose sire and dam are pure-bred, but not of the same breed, shall be in the following form:

THE STATE COLLEGE OF WASHINGTON,
DEPARTMENT OF ANIMAL HUSBANDRY.

CERTIFICATE OF CROSS-BRED STALLION NO. ——.

The pedigree of the stallion (name) ——. Owned by ——. Described as follows: (Color) ——. Foaled in the year ——, has been examined at the state college and it is found that his sire is registered in the —— and his dam in the ——.

Such being the case, the said stallion is not eligible for registration in any stud-book recognized by the department of agriculture, Washington, D. C.

(Signature) ——,
Professor of Animal Husbandry.

Subd. 4. The license certificate issued for a nonstandard-bred stallion shall be used in the following form:

THE STATE COLLEGE OF WASHINGTON,
DEPARTMENT OF ANIMAL HUSBANDRY.

CERTIFICATE OF NONSTANDARD-BRED STALLION NO. ——.

The pedigree of the stallion (name) ——. Owned by ——. Described as follows: (Color) ——. Foaled in the year ——, has been examined at the state college, and it is found that the stallion is not eligible to registration as standard-bred, and for the

purpose of the license is not pure-bred, although recorded in the nonstandard department of the American Trotting Register.

(Signature) —— ——,

Professor of Animal Husbandry.

[L. '11, p. 484, § 4.]

§ 3165–5. Form of Poster—Fee for Certificate—Assignment.—Each bill and poster issued by the owner of any stallion or jack enrolled under this act, or used by him or his agent for advertising such stallion or jack's certificate of enrollment shall be printed in boldface type, not smaller than long primer, on said bill or poster, and the first mention thereon of the name of the stallion or jack shall be preceded by the words: "Pure-bred," "grade," "cross-bred," or "nonstandard-bred," in accordance with the wording of the certificate or enrollment; and it shall be illegal to print upon the poster any misleading reference to the breeding of the stallion or jack, his sire or his dam, or to be used upon such bill or poster the portrait of a stallion or jack in a misleading way; and each newspaper advertisement printed to advertise any stallion or jack for public service shall show the enrollment certificate number and state whether it reads "pure-bred," "grade," "cross-bred," or "nonstandard-bred."

A fee of two dollars shall be paid to the department of animal husbandry of said college for the examination and enrollment of each pedigree and for the issuance of a license certificate, in accordance with the breeding for the stallion or jack as above provided, and a renewal license fee of one dollar shall be paid to said department every second year from the date of the issuance of the original license certificate.

Upon the transfer of the ownership of any stallion or jack enrolled under the provisions of this act, the certificate of enrollment may be transferred to the transferee by said department upon submittal of satisfactory proof of such transfer and upon payment of the fee of fifty cents; and a fee of fifty cents shall be paid for a duplicate license certificate issued where proof is given of loss or destruction of the original certificate. [L. '11, p. 486. § 5.]

§ 3165–5½. Certificate for Animals Brought into State.—Any person, firm or corporation bringing any stallion or jack into the state shall within sixty days thereafter procure the license certificate provided for in section 3165–1. Any person, firm or corporation offering any stallion or jack for sale for breeding purposes shall first procure the license certificate provided for in section 3165–1. [L. '11, p. 487, § 5½.]

§ 3165–6. Penalty.—Any person, firm, or corporation violating any of the provisions of this act shall be guilty of a misdemeanor and

upon conviction thereof be fined in any sum not exceeding fifty dollars and for each and every subsequent violation of the provisions of this act shall be guilty of a misdemeanor and subject to a fine of not less than fifty dollars. [L. '11, p. 487, § 6.]

§ 3165-7. Complaint of Unsoundness.—When a complaint is made to the department of animal husbandry that a stallion or jack is unsound, and, on investigation an examination is by the department deemed necessary, such examination shall be made by the state veterinarian, or his deputy; but the owner of the stallion or jack shall have the right to select some registered veterinarian to act with the state veterinarian, and in case these two shall fail to agree they shall appoint a third registered veterinarian to act as referee, and his decision shall be final. [L. '11, p. 487, § 7.]

§ 3165-8. Annual Report.—All moneys collected under the provisions of this act shall be expended by the professor of animal husbandry under the direction of the board of regents, in carrying out the provisions thereof, and such officer shall take vouchers for all moneys disbursed and shall keep an account of all moneys received and disbursed and shall make an annual report thereof, which report shall be published with and as a part of the annual report of the agricultural experiment station of said state college. If, at the expiration of any fiscal year, there shall be on hand moneys in excess of the disbursements made under the provisions of this act for the preceding year, such moneys shall be transmitted to the state treasurer and placed in the general fund. [L. '11, p. 487, § 8.]

CHAPTER IV.

Stock Running at Large.

§ 3172-1. Livestock Area.—That the board of county commissioners of any county of this state shall have the power to designate by an order made and published, as provided in section 3172-3, certain territory within such county in which it shall be unlawful to permit livestock of any kind to run at large: Provided, that no territory so designated shall be less than two square miles in area: And provided further, that this act shall not affect counties having adopted township organization. [L. '11, p. 93, § 1. Cf. L. '05, p. 194. § 1; L. '07, p. 566, § 1.]

Cited in 77 Wash. 502.

§ 3172-2. Petition—Notice—Hearing.—Whenever ten residents within a proposed district shall file with the county auditor a petition, asking, within the territory therein named, no livestock of any kind shall be permitted to run at large, the county commissioners shall, at

their next meeting, make an order fixing a time and place when a hearing will be had upon such petition, which time shall not be less than twenty days nor more than ninety days from the filing of such petition; and shall cause notice of the time to be given by publishing such notice in some newspaper having a general circulation within such territory for three sucessive weeks before the day fixed in such order; if there be no newspaper having a general circulation in such territory, then by posting such notice in three public places in such territory at least twenty days before the day of hearing, and such notice shall set forth the petition. It shall be the duty of the board of county commissioners at the time fixed for such hearing, or at the time to which such hearing may be adjourned, to hear all persons interested in the question presented by such petition, and to determine whether such district shall be created. [L. '11, p. 93, § 2.]

§ 3172–3. Commissioners Make Order.—If the board of county commissioners shall determine to prohibit the running at large of livestock within the territory described in such petition or in any portion thereof, it shall make an order defining the boundaries of such territory, which shall be entered upon the records and published in a newspaper having general circulation in such territory for four successive weeks, or by posting in three public places in such territory for four weeks. [L. '11, p. 94, § 3.]

§ 3172–4. Penalty.—Any person, or any agent, employee or representative of a corporation, violating any of the provisions of such order after the same shall have been published or posted as provided in section 3172–3, shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than two dollars, nor more than ten dollars, for each offense, and it shall be the duty of the prosecuting attorney of such county, on complaint of any resident or freeholder of said territory to forthwith enforce the provisions of this section. [L. '11, p. 94, § 4.]

§ 3172–5. Swine not Permitted at Large.—The owner of swine shall not allow them to run at large at any time or within any territory, and any violation of this section shall render such owner liable to the penalties provided for in section 3172–4: Provided, that swine may be driven upon the highways while in charge of sufficient attendants. [L. '11, p. 94, § 5.]

§ 3173. Unlawful for Swine to Run at Large.—It shall be unlawful for the owner or owners of any swine to allow them to run at large in any county in the state. [L. '09, p. 454, § 1; 1 H. C., § 2488.]

For former laws on this subject see L. '69, pp. 362, 363; L. '83, p. 54; L. '88, pp. 55–57.

§ 3174. Liability of Owner.—If any swine shall be suffered to run at large in any county of this state contrary to the provisions of this act, and shall trespass upon the land of any person, the owner or person having possession of such swine shall be liable for all damages the owner or occupant of such land may sustain by reason of such trespass; and for a second or subsequent act of trespass by such swine, such owner or person shall be liable for treble the amount of damages done by the same; such damages may be recovered in a civil action before any justice of the peace. [L. '90, p. 454, § 2; 1 H. C., § 2489.]

"Act" refers to §§ 3173–3180.

§ 3175. Swine may be Restrained—Proceedings.—If any swine shall be found running at large contrary to the provisions of this act, it shall be lawful for any person to restrain the same forthwith and shall immediately give the owner notice in writing that he has restrained said swine, and the amount of damages he claims in the premises, and requiring the owner to take said swine away and pay such damages. If said owner fails to comply with the provisions of this section within three days after receiving such notice, such damages may be recovered in a civil action before any justice of the peace, and such person who sustains damages as aforesaid shall have a lien upon said swine for the damages sustained by the said swine, and for keeping same: Provided, that if the owner of such swine is unknown, the notice required in this act shall be published for two weeks in a newspaper published in the county. [L. '99, p. 52, § 1. Cf. L. '90, p. 454, § 3; 1 H. C., § 2490.]

"Act" refers to §§ 3173–3180.
See infra, § 3187 et seq., damages by notice, etc.

§ 3176. Assessment of Damages by Swine—Notice to Freeholders. If the owner of such swine so restrained shall object to the damages claimed by the persons having such swine in possession, and the parties cannot agree upon the same, either party may apply to any justice of the peace in the precinct, and if there be no justice of the peace in the precinct, then the nearest justice in [the] county, for the appointment of appraisers to assess the damages done by such swine, and the reasonable cost of taking up and keeping the same; and it shall be the duty of such justice of the peace to issue notice to three disinterested freeholders of the precinct to appear upon the premises where such swine may be, and assess the damages as herein required. [L. '90, p. 455, § 4; 1 H. C., § 2491.]

§ 3177. Appraisers—Oath and Duties of—Right of Possession.—The persons so notified, or any two of them attending, shall take an oath that they will fairly and impartially assess the damages in con-

troversy, and they shall make out, sign, and deliver to each party a written statement of their appraisement of damages in the premises, and upon the payment of the damages and expenses allowed by such appraisers the owner shall be entitled to take his swine away; and if refused, the same may maintain an action therefor, as in other cases of wrongful taking or detention of property. [L. '90, p. 455, § 5; 1 H. C., § 2492.]

§ 3178. Fees of Justice, etc., How Collected.—The justice of the peace shall be allowed a fee of fifty cents for issuing the notice and swearing the appraisers, and the constable or person serving the notice shall be allowed a fee of one dollar for each appraiser notified, and mileage to and from the place of service; each appraiser shall be allowed a fee of one dollar, which fee shall be paid by the owner of such swine before he shall be entitled to take them away. Or if such owner fails to pay such fees, the person having such swine shall pay the same, and may add the same to the damages allowed him in premises. [L. '90, p. 455, § 6; 1 H. C., § 2493.]

§ 3179. Unnecessary to Fence Against Swine.—It shall not be necessary for any person to fence against swine in this state, and it shall be no defense to any action or proceeding brought or had under the provisions of this act that the party injured or taking up any swine did not have his lands inclosed by a lawful fence. [L. '90, p. 456, § 7; 1 H. C., § 2494.]

"Act" refers to §§ 3173–3180.

§ 3180. Swine may be Driven on Highway—Liability of Owner.—Nothing in this act shall be so construed as to prevent owners or other persons from driving swine from one place to another along any public highway, the owner or owners being responsible for all damages that any person or persons may sustain in consequence. [L. '90, p. 456. § 8; 1 H. C., § 2495.]

"Act" refers to §§ 3173–3180.

§ 3181. Castration of Bulls Running at Large.—It shall be lawful for any person having cows or heifers running at large in this state to take up or capture and castrate, at the risk of the owner, at any time between the first day of March and the fifteenth day of June, any bull above the age of ten months found running at large out of the inclosed grounds of the owner or keeper, and if the said animal shall die, as a result of such castration, the owner shall have no recourse against the person who shall have taken up or captured and castrated, or caused to be castrated, the said animal: Provided, such act of castration shall have been skillfully done by a person accustomed to doing the same: And provided further, that if the person

so taking up or capturing such bull, or causing him to be so taken up or captured, shall know the owner or keeper of such animal, and shall know that such animal is being kept for breeding purposes, it shall be his duty forthwith to notify such owner or keeper of the taking up of said animal, and if such owner or keeper shall not within two days after being so notified pay for the keeping of said animal at the rate of fifty cents per day, and take and safely keep said animal thereafter within his own inclosures, then it shall be lawful for the taker-up of said animal to castrate the same, and the owner thereof shall pay for such act of castration the sum of one dollar and fifty cents, if done skillfully, as hereinbefore required, and shall also pay for the keeping of said animal as above provided; and the amount for which he may be liable therefor may be recovered in an action at law in any court having jurisdiction thereof: And provided further, that if said animal should be found running at large a third time within the same year, and within the prohibited dates hereinbefore mentioned, it shall be lawful for any person to capture and castrate him without giving any notice to the owner or keeper whatever. [L. '90, p. 453, § 1; 1 H. C., § 2506.]

§ 3182. Stallions, Unlawful to Run at Large.—It shall be unlawful for the owner of stallions in this state to permit the same to run at large. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not less than one hundred and fifty dollars nor more than two hundred and fifty dollars, and one-half of the fine so enforced shall, in each case, be paid to the complaining witness: Provided, that this section will not apply to stallions running with and belonging to bands of horses which are herded and corralled by the owners once each day. [L. '95, p. 335, § 1.]

See infra, § 3196, damages by.

§ 3183. Evidence.—In any prosecution under the last preceding section proof that the animal runing at large is branded with the registered or known brand of the defendant shall be prima facie evidence that the defendant is the owner of said animal and proof that said animal is found at large shall be prima facie evidence that the owner permitted the same to be at large. [L. '95, p. 335, § 2.]

§ 3184. Animals to be Removed.—The complaining witness shall notify the owners of said animals, and a reasonable time shall be allowed for the removal of the same. [L. '95, p. 336, § 3.]

§ 3185. Gelding Certain Animals Running at Large.—It shall be lawful for any person to take up and geld, at the risk of the owner, within the months of April, May, June, July, August and September, in any year, any stud-horse, jackass, or stud-mule of the age of eigh-

teen months and upwards that may be found running at large out of the inclosed grounds of the owner or keeper; and if the said animal shall die, the owner shall have no recourse against the person or persons who may have taken up and gelded, or caused to be gelded, the said animal, if the same has been done by a person in the habit of gelding, and the owner shall pay one dollar and a half therefor. [Cd. '81, § 2547; 1 H. C., § 2507.]

Compare L. '71, p. 89.

§ 3186. Certain Animals Excepted — Penalty.— It shall not be lawful for any person or persons to geld any animal, knowing such animal is kept or intended to be kept for covering mares; and any person so offending shall be liable to the owner for all damages, to be recovered in any court having proper jurisdiction thereof; but if any owner or keeper of the covering animal shall willfully or negligently suffer the said animal to run at large out of the inclosed grounds of said owner or keeper, any person may take the said animal and convey him to his owner or keeper, for which he shall receive three dollars per day, recoverable before any justice of the peace of the county; for the second offense, six dollars per day; and for the third offense said animal may be taken up and gelded. [Cd. '81, § 2548; 1 H. C., § 2508.]

CHAPTER V.

Damages by Domestic Animals.

§ 3187. Injured Party may Take Up Animals.—Any person suffering damages done by any horses, mares, mules, asses, cattle, goats, sheep, swine or any such animals, which shall trespass upon any cultivated land, inclosed by lawful fence, may retain and keep in custody such offending animals until the owner of such animals shall pay such damage and costs, or until good and sufficient security be given for the same. [L. '93, p. 46, § 1.]

See supra, § 295, answer in action for property distrained.
See infra, § 4979, trespass by breaking lawful fence.
Damages to stock on unfenced railroad, see infra, §§ 8729–8732.

§ 3188. Notice of Restraint—Damages.—Whenever any animals are restrained as provided in the last section, the person restraining such animals shall within twenty-four hours thereafter notify in writing the owner, or person in whose custody the same was at the time the trespass was committed, of the seizure of such animals, and the probable amount of the damages sustained: Provided, he knows to whom such animals belong. [L. '93, p. 46, § 2.]

See supra, § 3175 et seq., damages by swine at large in certain counties.

§ 3189. Posting Notices.—If the owner or the person having in charge or possession of such animals is unknown to the person sustaining the damage, the notice provided in the last section shall be given by posting three notices, in three public places in the neighborhood where the animals are restrained, for ten days. [L. '93, p. 47, § 3.]

§ 3190. Suit for Damages.—If the owner or person having such animals in charge fails or refuses to pay the damages done by such animals, or give satisfactory security for the same within twenty-four hours from the time the notice was served, if served personally, and within ten days from the date of posting of the notice as provided in the last section, the person damaged may commence a suit, before any court having jurisdiction thereof, against the owner of such animals, or against the persons having the same in charge, or possession, when the trespass was committed, if known; and if unknown, the defendant shall be designated as John Doe, and the proceedings shall be the same in all respects as in other civil actions, except as herein modified. [L. '93, p. 47, § 4.]

§ 3191. Sale of Animals to Satisfy Judgment.—Upon the trial of an action as herein provided the plaintiff shall prove the amount of damages sustained and the amount of expenses incurred for keeping the offending animals, and any judgment rendered for damages, costs, and expenses against the defendant shall be a lien upon such animals committing the damage, and the same may be sold and the proceeds shall be applied in full satisfaction of the judgment as in other cases of sale of personal property on execution: Provided, that no judgment shall be continued against the defendant for any deficiency over the amount realized on the sale of such animals, if it shall appear upon the trial that no damage was sustained, or that a tender was made and paid into court of an amount equal to the damage and costs, then judgment shall be rendered against the plaintiff for costs of suit and damages sustained by defendant. [L. '93, p. 47, § 5.]

§ 3192. Continuance.—If upon the trial it appears that the defendant is not the owner or person in charge of such offending animals, the case shall be continued, and proceedings had as in the next section provided, if the proper defendant be unknown to plaintiff. [L. '93, p. 47, § 6.]

§ 3193. Unknown Owner—Service, How Made.—If the owner or keeper of such offending animals is unknown to plaintiff at the commencement of the action, or if on the trial it appears that the defendant is not the proper party, defendant, and the proper party is unknown, service of the summons or notice shall be made by publi-

cation, by publishing a copy of the summons or notice, with a notice attached, stating the object of the action and giving a description of the animals seized, in a weekly newspaper published nearest to the residence of the plaintiff, if there be one published in the county; and if not, by posting said summons or notice with said notice attached in three public places in the county, in either case not less than ten days previous to the day of trial. [L. '93, p. 48, § 7.]

§ 3194. Disposal of Funds Arising from Sale.—If when such animals are sold, there remains a surplus of money, over the amount of the judgment and costs, it shall be deposited with the county treasurer, by the officer making the sale, and if the owner of such animals does not appear and call for the same, within six months from the day of sale, it shall be paid into the school fund, for the use of the public schools of said county. [L. '93, p. 48, § 8.]

§ 3195. Jurisdiction—Appeal.—Justices of the peace shall have exclusive jurisdiction of all actions and proceedings under this act when the damages claimed do not exceed one hundred dollars: Provided, however, that any party considering himself aggrieved shall have the right of appeal to the superior court as in other cases. [L. '93, p. 48, § 9.]

"Act" refers to the foregoing sections of this chapter.

§ 3196. Damage by Stud, etc., Running at Large—Liability for.—If any stud-horse, stud-mule, jackass, ridgling, or stag, while running at large out of the inclosed grounds of the owner or keeper, shall damage any other animal by biting or kicking him, or shall do any damage to person or property of any kind whatever, the owner, of said stud-horse, stud-mule, jackass, ridgling, or stag shall be liable for all damages done by him. [Cd. '81, § 2549; 1 H. C., § 2509.]

§ 3197. Trespass by Sheep on Lands of Another.—It shall be unlawful in this state for sheep to enter any land or lands, inclosed or uninclosed, belonging to or in the possession of any person other than the owner of such sheep, unless by the consent of the owner of said land other than the public lands of the United States. [L. '13, p. 519, § 1. Cf. L. '88, p. 203, § 1; 1 H. C., § 2510; L. '07, p. 78, § 1.]

§ 3198. Penalty for Driving Sheep upon Another's Land.—Any person, being the owner or having in his possession, charge, or control, as herder, or otherwise, any sheep, who shall herd or drive such sheep upon the lands of another for the purpose of pasture, against the consent of the owner of such lands, shall be deemed guilty of a misdemeanor. [L. '13, p. 519, § 2. Cf. L. '88, p. 204, § 2; 2 H. C. P., § 87; L. '07, p. 78, § 2.]

§ 3199. When Public Lands Deemed Private.—Lands owned or claimed by any person under any of the land laws of the United States, subject to the paramount title of the United States, shall be deemed in possession of such person for the purposes of this and the last preceding section. [L. '88, p. 204, § 3; 1 H. C., § 2511.]

§ 3200. Liability of Owners of Dangerous or Vicious Cattle.—Any person or persons who own or are owners of dangerous or vicious cattle, which animal or animals are known to endanger the safety of persons traveling through neighborhoods, by their dangerous and vicious disposition, having twelve hours' notice of the dangerous disposition of such animal or animals, and shall neglect or refuse effectually to prevent such cattle from disturbing the peace and safety of the neighborhood where such animals may range, such owner or owners shall be liable to a fine of not less than five dollars nor more than fifty dollars, which may be recovered before any justice of the peace of the county, with costs of suit, for the use of the school fund. [L. '54, p. 445, § 1; L. '63, p. 447, § 1; L. '69, p. 400, § 1; Cd. '81, § 2555; 1 H. C., § 2512.]

As to repeal of this section, see § 2304, and note to next section.

§ 3201. Killing Vicious Cattle in Self-defense.—Any person who shall, in defense of himself or others, kill one or more such animals, shall not be liable for any damage for any such act. [L. '54, p. 445, § 2; L. '63, p. 447, § 2; L. '69, p. 400, § 2; Cd. '81, § 2556; 1 H. C., § 2513.]

As to repeal of this section, see § 2304. The title of that act does not cover civil remedies. See, also, §§ 2295, 2296, supra.

CHAPTER VI.

Diseased and Infected Stock.

§ 3201-1. Tuberculine Tests—Inspector—Bond.—On the written application of the owner of any bovine animal to the commissioner of agriculture for the examination and testing of such animal to ascertain whether the same is infected with tuberculosis, it shall be the duty of the commissioner of agriculture to cause such examination and test to be made and in case more than one application shall be filed, the examination and tests shall be made in the order of the filing of the applications. The inspector of the department of agriculture making the examination and test shall be a veterinarian duly licensed to practice veterinary medicine, surgery and dentistry in this state, and shall qualify by giving a bond to the state of Washington with sufficient surety to be approved by the commissioner of agriculture in the penal sum of two thousand dollars, ($2000). [L. '15, p. 292, § 1.]

§ 3201–2. Indemnity or quarantine—Appraisal and Payment—Expenses.—On such examination and test being completed, if the inspector shall believe that the animal inspected is infected with tuberculosis, the owner of the animal shall have the option of indemnity or quarantine, if he selects indemnity the owner and inspector shall appraise the value of the suspected animal. In the event of their failing to agree upon the value, they shall call upon the nearest county agricultural expert to decide the matter or in case there be no county agricultural expert in the county they shall apply to the judge of the superior court of the county where the animal or animals are located to appoint a third appraiser. The animal shall then be slaughtered under the inspection of the owner or his agent, should either of them desire to be present, and under the supervision of the inspector of the department of agriculture, and the inspector shall make a post-mortem examination and determine whether or not the animal is infected with tuberculosis. The slaughtered animal shall then be sold under the supervision of the inspector and the proceeds of the sale shall be remitted to the owner of the animal. If the proceeds of the sale shall not equal the appraised value of the animal the department of agriculture shall cause to be paid to the owner of the animal the difference between the proceeds of the sale and the appraised value of the animal; Provided, that in no case shall the state be required to pay any deficiency that will make the total amount received by the owner more than seventy-five dollars for an animal found free from tuberculosis upon post-mortem examination or more than thirty-five dollars for an animal found infected with tuberculosis. Every county agricultural expert who shall act as an appraiser as hereinabove provided shall receive his actual necessary traveling expenses in going to and returning from the place of appraisal, and every appraiser appointed by the judge of the superior court shall receive his actual and necessary traveling expenses and a per diem of three dollars for the time actually spent, to be paid by the state: And provided further, that the state shall not be required to pay the owner of any animal imported into this state within six months prior to such inspection and test the sums hereinabove provided for, but the owner of such animal shall receive the proceeds of the sale of such slaughtered animal: And provided further, that the right to indemnity shall not exist, nor shall payment be made for any animal owned by the United States, this state or any county, city or village in this state. [L. '15, p. 293, § 2.]

§ 3201–3. Exhaustion of Appropriation.—Whenever the appropriation made by the legislature for the purpose of carrying out the provisions of this act during any biennium shall be exhausted, no further animals shall be slaughtered under the provisions of this act. [L. '15, p. 294, § 3.]

§ 3201–4. Quarantine and Test at State Line.—Whenever the commissioner of agriculture shall have reason to believe that any bovine animal about to be imported into this state is infected with tuberculosis he shall have the power and authority to quarantine such animal at the state line and make an examination and test thereof and if any such animal shall be found to be infected with tuberculosis it shall not be permitted to enter this state. [L. '15, p. 294, § 4.]

§ 3203. Commissioner of Agriculture—Quarantine for Tuberculosis—Penalty.—The commissioner of agriculture shall have general supervision of all contagious and infectious diseases among domestic animals within or that may be in transit through the state and he is empowered to establish quarantine against any and all such animals affected with any contagious or infectious disease or diseases or that may have been exposed to others thus diseased, whether within or without the state: Provided, that no bovine animal that has been in this state more than six months shall be quarantined for tuberculosis without the tuberculine test and the commissioner of agriculture is empowered to establish and enforce quarantines for such length of time as he may deem necessary to determine whether any bovine animal about to be imported into this state for feeding, breeding or dairy purposes is infected with tuberculosis, and he may with the concurrence of the state board of health, make such rules and regulations as he may deem necessary for the protection against the spread and for the suppression of contagious or infectious diseases among domestic animals, which rules and regulations shall be published and enforced, and in doing said things, or any of them, he shall have the power to call on any one or more peace officers, whose duty it shall be to give him all the assistance in their power, and every person violating or failing to comply with any such rule or regulation shall be guilty of a misdemeanor. [L.' 15, p. 294, § 5.]

§ 3204. Quarantine—Penalty for Violation.—Quarantine shall mean the placing and restraining of any animal or animals by the owners or agents in charge of them within certain inclosures described or designated by the commissioner of agriculture, the assistant commissioner of agriculture assigned to the division of dairy and livestock or any inspector of the department of agriculture, in writing. Any owner or owners or agent who fails to comply with or willfully violates or negligently allows such quarantine to be violated by the escape and running at large of quarantined animals shall be guilty of a misdemeanor. [L. '15, p. 295, § 6. Cf. L. '03, p. 29, § 2.]

§ 3205. Penalty for Resisting or Obstructing.—Any person who willfully hinders, obstructs or resists said veterinary surgeon or his assistants, or any peace officer acting under him or them when en-

gaged in the duties or exercising the powers herein conferred, shall be guilty of a misdemeanor, and punished accordingly. [L. '95, p. 457, § 3.]

§ 3206. To Respond to Calls, When—Substitutes.—Whenever a majority of any board of health, county commissioners, city council, trustees of incorporated towns or township, whether in session or not, shall, in writing or by telegraph, notify the state veterinary of the prevalence of or probable danger from any of said diseases, he shall at once repair to the place designated in said notice and take such action as the exigencies may demand, and he may in case of emergencies appoint substitutes or assistants, with equal power, whose compensation shall be five dollars per day and actual traveling expenses. [L. '95, p. 457, § 4.]

§ 3207. Veterinary Surgeons to Report Diseased Stock.—It shall be the duty of every graduate veterinary surgeon and every person professing to be a veterinary surgeon practicing their profession within this state to report to the state veterinary surgeon immediately upon the discovery thereof the existence or suspected existence of the following diseases: Glanders, tuberculosis, actinomycosis, hog cholera, swine plague, anthrax, contagious keratitis, stomatitis, pustulosa, contagiosa, scabies, contagious abortion and rabies. In the event of the failure or refusal on the part of the above-named persons to so do he shall be guilty of a misdemeanor and punished accordingly. [L. '03, p. 29, § 3.]

§ 3208. Destruction of Diseased Stock.—Whenever in the opinion of the state veterinary surgeon the public welfare demands the destruction of any diseased animal under the provisions of this act, he shall cause the same to be destroyed. No stock shall be destroyed except on the written order of the state veterinary surgeon. The governor of the state with the state veterinary surgeon may cooperate with the government of the United States for the object of this act and the governor is hereby authorized to receive and receipt for any money receivable by this state through provisions of any act of congress which may at any time be in force upon this subject, and to pay the same into the state treasury to be used according to the act of congress and the provisions of this act. [L. '95, p. 457, § 5; L. '01, p. 229, § 3.]

Cited in 50 Wash. 125.

"Act" in this section refers to the foregoing sections of Laws 1895.

§ 3209. Importation of Cattle Infected With Texas Disease or Spanish Fever.—The introduction of Texas cattle, or cattle infected with what is known as the Texas cattle disease or Spanish fever, into

the state of Washington, is hereby prohibited. [L. '69, p. 404, § 1; 1 H. C., § 2517.]

See infra, § 3215, civil liability.
See infra, § 3216, duty of sheriffs.

§ 3210. Penalty.—Any person or persons introducing or bringing into said state any Texas cattle, or cattle infected with the Texas disease or Spanish fever, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be imprisoned in the county jail for a term not exceeding twelve months, or fined in a sum not less than five thousand dollars, or be both fined and imprisoned at the discretion of the court. [L. '69, p. 401, § 2; 1 H. C., § 2518.]

See notes to last section.

§ 3211. Importation of Infected Stock Prohibited—Examination and Permit—Fees.—It shall be unlawful to bring into the state of Washington any horses, cattle or swine for work, feeding, breeding or dairy purposes without first having such animals examined and found free from the following contagious diseases: Glanders, farcy, tuberculosis, actinomycosis, rinder pest, foot and mouth diseases, contagious abortion, contagious keratitis, scabies, maladie du coit, swine plague and hog cholera and without having obtained a permit so to do from the commissioner of agriculture, the assistant commissioner of agriculture assigned to the division of dairy and livestock or an inspector of the department of agriculture assigned to the division of dairy and livestock and no railroad or transportation company, or other common carrier shall bring any such animals into this state without first having had the same examined and found free from said diseases and having obtained the permit hereinabove provided for. The provisions of this section shall not apply to animals imported into this state for immediate slaughter, or to range stock cattle imported into this state for range pasturage or beef cattle imported for the purpose of breeding in transit, but it shall be unlawful to sell such cattle for dairy purposes. [L. '15, p. 295, § 7. Cf. L. '03, p. 234, § 1; L. '05, p. 338, § 1.]

For former law, see L. '05, c. 143, pp. 356-359; Bal. Code, §§ 3447-3469, repealed by L. '07, p. 111, § 1.

§ 3211-1. Importations for Slaughter.—It shall be unlawful for any person, firm or corporation to sell for dairy or breeding purposes any animal imported into this state for immediate slaughter. [L. '15, p. 296, § 8.]

§ 3211-2. Appropriation.—For the purpose of carrying out the provisions of this act the sum of twenty-five thousand dollars, or so much thereof as may be necessary, is hereby appropriated out of any moneys in the general fund not otherwise appropriated. [L. '15, p. 296, § 9.]

§ 3212. Disposition of Moneys Collected.—Any money or moneys collected by the state veterinarian or his deputies under this act, shall be turned over to the state treasurer upon the first day of each month to be turned into the general fund of the state. [L. '05, p. 339, § 1½.]

"Act" in this section, refers to §§ 3211–3214.

§ 3213. Stock Imported for Exhibition.—Animals brought into the state for the purpose of exhibition at town, county, district or state fairs shall not be subject to above regulations: Provided, however, that in event of sale being made from such exhibition, the animal sold shall be submitted to examination by the state veterinarian or his authorized deputy and thereby be subject to the rules and regulations governing native Washington cattle. [L. '03, p. 235, § 2.]

§ 3214. Penalty for Unlawful Importation.—All railroad, livestock, transportation and stockyard companies and their employees and all other persons are hereby forbidden to bring horses, cattle and swine into the state except in compliance with the foregoing regulations, and any violation of the same will constitute a misdemeanor and be punished accordingly. [L. '03, p. 235, § 3.]

This section applies to the last three sections.

§ 3215. Liability for Damages from Infected Cattle.—Any person or persons offending, as stated in section 3209, shall be liable for any and all damages to any person or persons that may be injured by reason of the introduction of such Texas or diseased cattle. [L. '69, p. 405, § 3; 1 H. C., § 2519.]

§ 3216. Duty of Sheriffs and Constables.—It shall be the duty of the sheriffs and constables of the several counties in the state to arrest and bring before a justice of the peace, for examination, any person they have reason to believe has violated section 3209. [L. '69, p. 405, § 4; 1 H. C., § 2520.]

CHAPTER VII.

Sheep Inspection and Diseased Sheep.

For former laws on the subject of this chapter see L. '66, pp. 105, 106; L. '67, pp. 148–153; L. '68, pp. 57–59; repealed L. '69, p. 356; L. '69, pp. 377, 378; L. '73, p. 481; L. '75, pp. 125–129; L. '79, pp. 87–90; Code '81, §§ 2228–2237; L. '88, pp. 204–207; 1 H. C., §§ 2477–2487; L. '97, pp. 25–30; Bal. Code, §§ 3402–3415b; L. '01, pp. 137–150; L. '07, p. 210, § 1.

See infra, § 3238, county to furnish supplies for deputies free.

§ 3219. Duties of Inspectors—Investigating Diseases.—It shall be the duty of the state veterinarian and of the deputies under his direction, to investigate all cases of contagious and infectious diseases

among sheep within the state which may come to his or their knowledge, and to make official visits of inspection to any locality where such diseases exist or where they have reason to believe such diseases may exist, and to inspect or cause to be inspected any sheep within the state, and all sheep brought into the state from any other state, territory or foreign country, and he or they shall have authority to order a quarantine of any infected premises, and in case such disease shall become prevalent in any locality within the state, the state veterinarian may issue a proclamation forbidding any sheep being transferred from said locality without certificate issued by himself or one of his deputies showing such animals to be in good health, and the expense of herding, feeding and caring for all sheep quarantined under these provisions shall be paid by the owner thereof. The state veterinarian and his deputies shall have the power to administer oaths and to examine witnesses in so far as the same may be necessary in the performance of their duty. [L. '09, p. 657, § 2.]

See supra, § 3000–6, duties devolve upon commissioner of agriculture.
See infra, §§ 3232, 3233, fees, how paid.

§ 3220. Governor may Prohibit Importations.—Whenever the governor of the state has reason to believe that scab or other contagious or infectious diseases of sheep have become prevalent in any locality or localities of any other state or territory, or that conditions exist that render sheep from such localities likely to convey disease or whenever the state veterinarian shall certify in writing to the governor that conditions exist in localities in any other state or territory, which may render any of the sheep coming therefrom likely to convey disease, the governor shall by proclamation declare such locality as presumably infected, and prohibit importation therefrom of any sheep into this state, except under such restriction as the state veterinarian may deem proper. Any person, persons, firm or corporation who, after publication of such proclamation, has or received in charge any sheep from any of the prohibited districts and transports, conveys or drives the same to and within the limits of this state, shall be guilty of a misdemeanor and shall be punished by a fine not exceeding one thousand dollars nor less than five hundred dollars. And such offending person, persons, firm or corporation shall likewise be liable for all damage sustained by any person, persons, firm or corporation by reason of the importation into this state of such sheep from prohibited districts: Provided, however, that nothing herein contained shall prohibit the transportation of animals from such prohibited districts through the state by railroad trains or steamboat lines under such restrictions as may be prescribed by the law of this state or by the government of the United States. [L. '09, p. 657, § 3.]

§ 3221. Co-operation by U. S. Bureau. — The governor shall, through the secretary of agriculture of the United States government, request the co-operation of the United States bureau of animal industry in controlling and eradicating contagious and infectious diseases in sheep, and when said bureau, through its duly authorized representatives, agents, or employees, shall be thus engaged, they shall possess the same power and authority in this state as the state veterinarian and his deputies under and by virtue of this act; and all dipping and other treatment required for the control and eradication of such diseases within this state shall be performed in the manner prescribed by the United States bureau of animal industry, and the dips, remedies and appliances used shall be those approved by the said bureau of animal industry. [L. '09, p. 658, § 4.]

See note to § 3223.

§ 3222. Dipping for Scabies—Certificate.—Whenever it becomes necessary by reason of the prevalence of scabies, or exposure of scabies, of the sheep of any county or counties in this state, the state veterinarian shall have full authority to issue an order compelling the dipping of all the sheep in such district or localities, whether all the sheep at the time be affected with or exposed to scabies or not; and such dipping shall be done under the supervision of the deputy sheep inspector or federal inspectors, and shall be done in some dip or dips approved by the United States bureau of animal industry; and the dipping shall be performed in a manner in accordance with the rules and regulations of said bureau of animal industry. After dipping, when the official in charge shall be satisfied that the sheep are in a sound and healthy condition, the owner shall be entitled to receive a certificate to that effect signed by the said official; and the said certificate shall be in such form as the state veterinarian shall adopt; such certificate shall permit the sheep to move in and through all counties in this state so long as they remain free from disease and exposure thereto. [L. '09, p. 658, § 5.]

§ 3223. Inspection and Quarantine—Expenses Paid by Owner.—The state veterinarian and his deputies and the officials of the United States bureau of animal industry shall have authority to inspect and quarantine and treat sheep affected with a contagious, infectious or communicable disease or diseases, or suspected of being so affected, or that have been exposed to any such disease; and it shall be the duty of the deputy inspector to inspect once each year all the sheep that may be within his county; and his fees and expenses for the inspection of such sheep shall be as hereinafter provided for in this act: Provided, however, that where it is necessary to inspect the same band of sheep more than once during any one year the owner

or agent in charge of such sheep shall not be charged by the deputy inspector any fees or expenses for the second inspection, unless such inspection should reveal the said sheep to be actually affected with or exposed to scab or scabies, and in such event the owner or agent in charge of such sheep shall pay the fees and expenses of the deputy inspector as hereinafter provided for. [L. '09, p. 659, § 6.]

"Act" in this section refers to all except the last two sections of this chapter.

§ 3224. Quarantine of Infected Sheep—Penalty.—Whenever upon examination by such state veterinarian, his deputy, or deputies or federal inspector, as the case may be, any sheep, band or flock of sheep, or any portion of them kept or herded in any county of the state of Washington, shall be found infected with scab or any other contagious or infectious disease, the entire band or flock in which said infected sheep are running or ranging shall be considered as infected and treated as such, and said state veterinarian, his deputy or deputies, or the federal inspector, as the case may be, shall immediately quarantine the entire band or flock and forthwith notify the owner or person in charge of said sheep in writing, to dip said sheep twice for said disease within the period of thirty days from said notice; the first dipping not to exceed fifteen days from the receipt of said notice, and the second dipping to be within the period of from ten to fourteen days thereafter; and also during such period, to keep such sheep free from contact with other sheep by such means as said inspector shall specify until after the second dipping: Provided, that in case the owner shall regard it unsafe to dip the same on account of their condition, especially ewes heavy with lamb, or by reason of the inclemency of the weather, the official in charge may authorize such owner or person in control to place such sheep in a corral, field, feedyard or appropriate range, where such sheep shall be kept under quarantine regulations and free from contact with other sheep until such time as they are in condition to dip. Any person or persons so allowed to keep sheep in such corral, field, feedyard, or range, or who shall willfully or knowingly take or permit to be taken any such sheep therefrom, except as permitted or directed by the inspector in charge, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars. [L. '09, p. 659, § 7.]

§ 3225. Moving Infected Sheep—Permit—Notice.—Any person persons, firm or corporation within this state who shall desire to move his or their sheep which are infected with scab or other infectious or contagious disease from place to place within this state, shall first obtain from the state veterinarian or one of his deputies a traveling

permit. Upon receipt of the application for such a permit the state veterinarian or one of his deputies shall examine the sheep, and such permit shall only be granted for the purpose of removing said sheep to the nearest suitable point where there are available dipping works or where such works can be constructed, at which place said sheep shall be dipped under the direction of such official. In such removal only that route shall be used which such official shall designate in his permit, and before moving said sheep the owner or person in charge shall first notify all parties herding said sheep along or over said route that the infected sheep must travel, of the fact that they are to pass and the time at which they will pass over said route, and such route shall be considered as quarantined, and any person, persons firm or corporation injured or damaged by reason of the moving of said sheep shall be entitled to recover from the owners thereof in civil action the amount of such damages: Provided, however, that no party shall be entitled to recover damages who shall voluntarily herd or cause to be herded any sheep on such quarantined ground, and any sheep so voluntarily herded on such ground shall be considered as affected as in this act provided for infected sheep within this state. Any person, persons, firm or corporation violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars. [L. '09, p. 660, § 8.]

"Act" refers to all except the last two sections of this chapter.

§ 3226. Importation—Inspection—Quarantine.—Any person, persons, firm or corporation, their agent or employees, who shall drive or herd, or cause to be driven or herded, or bring or cause to be brought, by road or trail, into the state of Washington from any other state, any sheep shall immediately upon crossing the said line and before proceeding into the state a distance greater than two miles, make written application to the state veterinarian or his nearest deputy, for the inspection of said sheep, and said application shall be delivered in person or by telegraph or telephone or registered letter. The notice must state the time and place when and where the said sheep crossed the line, the locality from which they came, the name and residence of the owner or owners thereof, and of the person in control of the same, the number, the brands and character of the animals. The state veterinarian on receiving such notice shall at once proceed, either by himself or his deputies to inspect the sheep, and if upon inspection he shall deem it necessary to prevent or avoid infection, he shall cause said sheep to be quarantined not more than three miles from where they entered the state for such period as may be necessary, not to exceed thirty days. And if he shall regard it necessary, shall cause

said sheep to be dipped not to exceed three times if infected, or once if exposed, before they are released from such quarantine. Any person, persons, firm or corporation, their agent or employees, who shall ship into the state by railroad or steamboat lines from any other state any sheep, shall immediately upon unloading the same at any point within this state notify personally or by telephone or by telegraph or registered letter the state veterinarian; and thereupon the said official or one of his deputies shall proceed to inspect said animals, and if upon inspection he shall deem it necessary to prevent or avoid infection he shall cause said sheep to be quarantined not more than three miles from the point where they are unloaded for such period not to exceed thirty days as may be necessary, and if he shall deem it necessary shall cause said sheep to be dipped not to exceed three times if infected, or once if exposed, before they are released from such quarantine: Provided further, however, that such sheep are not for immediate slaughter or en route through the state on railroad trains or boat lines to other states, and that any sheep held in quarantine under this section may be released therefrom at any time for the purpose of immediate slaughter: And provided further, that if in the opinion of the state veterinarian it is unnecessary to inspect sheep coming into this state from certain districts or localities from other states he may issue an order dispensing with such inspection and restriction. Any person, persons, firm or corporation violating any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars. Such fine shall be a lien upon the sheep and may be foreclosed as personal property liens are foreclosed under the existing laws of this state or may be enforced as a judgment against the offending party. [L. '09, p. 661, § 9.]

§ 3227. Refusal of Owner to Dip—Powers of Inspectors.—If any other owner or person in charge of any sheep shall neglect or refuse to dip the same as required by the terms of this act upon request of the state veterinarian or any of his deputies or any federal official clothed with power under this act, or to permit the same to be dipped by them, it shall be the duty of such official to seize such animals and dip the same, and he is hereby given authority so to do, and when in his opinion they are restored to health and free from possible infection he shall notify in writing the owner or person in charge of the sheep of the amount of the costs, charges and expenses incurred by him, and the same shall be paid within ten days of the receipt of such notice and the same shall be collected as in this act provided for the collection of like charges. [L. '09, p. 662, § 10.]

"Act" refers to all except the last two sections of this chapter.

§ 3228. Importing Infected Sheep — Penalty—Disinfection.—Any person, persons, firm or corporation who shall drive or cause to be driven, bring or cause to be brought, ship or cause to be shipped into this state from any other state any sheep infected with scab or any other infectious or contagious disease and knowing of the condition of the same, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than two hundred and fifty dollars nor more than one thousand dollars, and in case the offending party is a corporation, its officers shall be liable in the same manner as individuals would be liable. Any transportation company which shall convey from point to point within this state any sheep infected with scab or any other contagious or infectious disease, knowing the condition of the same, shall be deemed guilty of a misdemeanor and shall be punished as in this section above provided. All corrals, yards, pens, sheds, chutes, cars or boats of such company which shall have been occupied by infected sheep shall immediately thereafter, and within forty-eight hours be disinfected by said company, and failure on its part so to do shall likewise be deemed a misdemeanor and punished as in this section above provided. Such disinfection shall be done in accordance with the rules of the United States bureau of animal industry relating to the disinfection of such places, boats and cars, and the state veterinarian, his deputy, and the officials of said bureau of animal industry shall each have authority to enforce the provisions of this section, and when such company shall neglect for a period of forty-eight hours to so disinfect, such officials may take possession of such corrals, yards, pens, sheds, chutes or boats, and proceed to disinfect them at the expense of such company, such expense to be recovered by an action in the name of the state veterinarian in any court of competent jurisdiction. [L. '09, p. 663, § 11.]

§ 3229. Sale of Diseased Sheep—Penalty.—It shall be unlawful to sell, exchange, give away or in any manner part with to another, any sheep infected with a contagious or infectious disease, or any animal which has, or which the owner of or his agent or employee or the party in possession thereof has reason to believe has, within thirty days next preceding such transfer, been exposed to any infectious or contagious disease, without first notifying the proper purchaser or purchasers of said sheep that it is so infected, or that it has been so exposed; and any violation of the provisions of this section shall constitute a misdemeanor, and the penalty upon conviction shall be a fine of not less than one hundred dollars nor more than five hundred dollars. [L. '09, p. 664, § 12.]

§ 3230. Quarantine Limits.—In all cases where quarantine of sheep is authorized by the provisions of this act, the state veter-

inarian and his deputies and the officials of the United States bureau of animal industry are each and all empowered to designate and specify the place, limits and boundaries of any quarantine area or territory, and they are hereby given authority over the same until the purpose of such quarantine shall have been effected, and any person, persons, firm or corporation owning or having in his or their possession sheep within such quarantined area, who shall permit or allow any of such sheep to go beyond the limits of the same, without permit from the official in charge, shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, and all of the officials above named are hereby clothed with full authority to control sheep and territory in quarantine, and to take and hold possession thereof as provided by the terms of this act, and for all purposes thereof. [L. '09, p. 664, § 13.]

"Act" refers to all except the last two sections of this chapter.

§ 3231. Report to Veterinarian of Infection.—It shall be the duty of any person, persons, firm or corporation owning or having in his or their control any sheep which have become infected with scab or any other infectious, communicable or contagious disease, or which have been exposed in any manner to such disease, to immediately report the same to the state veterinarian by registered letter, telegraph, telephone or in person within ten days after the said condition has come to his or their knowledge, and failure to do so, or any attempt on the part of any person, persons, firm or corporation to conceal the existence of such disease, or to willfully or maliciously obstruct or hinder the inspector or his deputies in the discharge of his or their duties shall be deemed guilty of a misdemeanor and shall subject the offender to a fine, upon conviction, of not less than one hundred dollars, nor more than five hundred dollars. [L. '09, p. 664, § 14.]

§ 3232. Inspection Expenses—Owner to Pay.—The expense of inspection, feeding, holding, dipping, treating and taking of all sheep inspected, quarantined, dipped or otherwise treated under the provisions of this act, including the fees and expenses of any deputy sheep inspector arising in connection with the same, must be paid by the owner of such sheep and such charge shall be a lien upon such sheep for such charges and expenses, which lien shall be prior and paramount to any and all other liens, demands or other claims against such sheep, and the state veterinarian or his deputies may retain possession of such sheep until such charges and expenses have been paid. Such lien shall be enforced at any time after ten days from the date when said charge shall be incurred and shall not be dependent upon

possession of said sheep and may be foreclosed in the name of the state veterinarian in the manner provided for the foreclosure of other liens upon personal property; or in lieu of foreclosing such lien said state veterinarian may bring an action in his own name in any court of competent jurisdiction to recover the amount of such charges and expenses: Provided, however, that when work is done by the state veterinarian in person he shall charge no fees. [L. '09, p. 665, § 15.]

§ 3233. Compensation of Inspectors—Record and Reports.—The deputy inspectors provided for under this act shall be entitled to no salary, but shall receive fees and expense as follows, to wit: For all services performed in the examination or inspection of sheep or in quarantining or dipping sheep or any duties made incumbent upon them under this act, the sum of four dollars per diem for any day or part of a day so utilized by them, and in addition thereto their actual, necessary expenses attending the performance of such duties, the same to be paid by the owner of the sheep as in this act provided: Provided, however, that no inspector of the United States bureau of animal industry shall make any charge for fees or expenses against the owner or owners of any sheep in the state for any service performed. And every deputy inspector appointed under the provisions of this act must keep a book to be known as the "Inspection record," in which he must enter and record all his official acts and accounts as such deputy inspector, and such record shall show the names of owners of all animals so inspected, the number thereof, the reason why such inspection was made, the names of the persons to whom certificates of health were granted and the date thereof, the brands upon said sheep, all orders and directions made by him in each case, the amount of his per diem and expenses in each case, and such other matters as the state veterinarian may require. And each deputy must, on or before the first day of October in each year, and as often as may be required by the state veterinarian, report to him in writing, in such detail as may be required, his work and the conditions of the sheep industry in his section of the state. [L. '09, p. 665, § 16.]

"Act" refers to all except the last two sections of this chapter.

§ 3234. Annual Report to Governor.—The state veterinarian shall make this a part of his annual report each year to the governor, upon all matters connected with his work for the year ending. [L. '09, p. 666, § 17.]

§ 3235. Wrongful Handling of Sheep by Inspectors—Penalty.—All officers appointed under the provisions of this act shall use every precaution to protect the sheep under their care from injury

and shall select proper places for quarantine and dipping, and shall so enforce quarantine regulations as to make the expenses as light as possible upon the owner, consistent with public interest; and any officer who by virtue or power conferred upon him under this act, willfully oppresses, wrongs or injures any person, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars. [L. '09, p. 666, § 18.]

"Act" refers to all except the last two sections of this chapter.

§ 3236. Mingling Infected Sheep—Liability of Owner.—Whenever any sheep suffering from scab or any infectious or contagious disease shall mingle with healthy animals belonging to another, through the fault or negligence of the owner of said diseased sheep, his agent or employees, such owner shall be liable in an action at law for all damages sustained by the owner of such healthy sheep. [L. '09, p. 667, § 19.]

§ 3237. Disposition of Fines—Lien on Sheep.—All fines and penalties imposed under the provisions of this act shall be collected in behalf of and in the name of the state and shall become a part of the general fund thereof, and the offenses herein declared to be misdemeanors shall be prosecuted by the several prosecuting attorneys of the state in the superior courts thereof in the same manner that misdemeanors are prosecuted under the general laws of the state. And it is hereby made incumbent upon such prosecuting attorneys to foreclose liens herein provided, when necessary, and to act in either civil or criminal matters under this act when requested to do so by the veterinarian or his deputies. [L. '09, p. 667, § 20.]

"Act" refers to all except the last two sections of this chapter.

§ 3238. County to Furnish Supplies.—It shall be the duty of the boards of county commissioners of the several counties in this state to furnish free to the deputy sheep inspectors all the books, blanks and other stationery necessary for them in the performance of their duties. Such books and stationery as may be needed by the state veterinarian shall be furnished by the state. [L. '09, p. 667, § 21.]

§ 3239. Action on Inspector's Bond.—The official bonds provided in this act shall be given to the state as herein provided, but may be sued upon by any person injured because of the negligent or unfaithful performance of duty upon the part of the official giving such bond: Provided, that no action shall be instituted after six months have elapsed from the date the cause of such action accrued. [L. '09, p. 667, § 22.]

§ 3240. Spreading Disease—Liability of Owner—Lien—Actions.—Nothing in this act shall be construed as exempting any person owning sheep from liability in a civil action for damages for negligently or carelessly spreading scab, or scabies, or any other contagious or infectious diseases, but any person so spreading or causing said disease to be spread, either personally or through his agents in charge of sheep belonging to him, shall be liable in a civil action for damages sustained by any other person for injury to such other person's sheep by the infecting of such sheep with the scab or scabies or any other contagious or infectious disease, the same as if this act had not been passed, and no certificate issued under the provisions of this act shall be any defense or excuse in an action for damages of this character. Any damages that may be recovered in such a civil action for damages shall be a lien upon the sheep infected as stated herein by any other band or herd of sheep, for which infection such suit may have been brought, and the court in rendering judgment in any action brought for such damages shall declare such judgment to be a lien upon such sheep and direct them to be sold under special execution to pay such judgment. [L. '01, p. 146, § 21.]

"Act" in this section refers to the next section.
The force of this and the next section is doubtful.

§ 3241. Foreclosure of Liens — Costs and Attorneys' Fees.—The liens herein provided for shall be foreclosed by an action brought in the superior court for the county wherein the lien originated in the name of the said county by the prosecuting attorney for said county as chattel mortgages are foreclosed by a suit in superior court, and upon commencing such an action in said court the prosecuting attorney shall immediately move for the appointment of a receiver to take charge of said sheep and keep the same pending the action, and it shall be the duty of the court to appoint such receiver without notice, and all the expense thereof and all the costs that are taxed in civil actions between individuals shall be taxed up in favor of the county in such a proceeding, and an attorney's fee of fifty dollars shall be taxed in such a proceeding in addition to the attorney's fee allowed by law in a civil action, and all the said costs and attorney's fees shall be paid into the county treasury and shall be credited to the same fund to which the fees collected by county officers are credited: Provided, that the sheep inspector may employ an attorney to assist the prosecuting attorney in such case, when said attorney's fees will go to such attorney so employed. [L. '01, p. 147, § 22.]

See note to last section.

CHAPTER VIII.

Estrays.

§ 3242. County Auditor to Keep Record of Estrays.—It shall be the duty of the county auditors of the several counties of the state to keep a book of suitable dimensions to be called the "Record of estrays." The book shall be divided into two parts; the first part shall be designated "Estrays lost," and the second part "Estrays found." The part designated "Estrays lost," shall be ruled and spaced substantially as follows: The first column to contain the name of the owner; the second, his address; the third, the date lost or strayed; fourth, the kind of animal and age; fifth, the color; sixth, brands; seventh, earmarks; eighth, other marks of identification; ninth, customary range; tenth, page registered in 'Estrays found." The part designated "Estrays found" shall be ruled and spaced substantially as follows: The first column to contain the name of the finder; the second, his address; third, the date found; the fourth, fifth, sixth, seventh, and eighth, columns to be the same as in "Estrays lost"; the ninth column to designate the place where the owner may claim and obtain the animal; and the tenth the page registered in "Estrays lost"; eleventh, the date sold; twelfth, to whom sold; thirteenth, price obtained; fourteenth, publication fee; fifteenth, other costs; sixteenth, balance. If the animal be breachy or vicious such fact shall also be noted in the third column. The part designated "Estrays lost" shall be so arranged that the names of the owners shall be registered in alphabetical order, and thumb indexed so that each letter may be readily found. The part designated "Estrays found," shall be so arranged, that the names of the finders will be registered in alphabetical order, and indexed as specified for the part designated "Estrays lost." In addition to the foregoing each portion of said two parts of said record of estrays, shall contain an alphabetical index reference to the following: the age and kind of animal, the color, brands, earmarks; said index to refer to the page and the number of the line in which the particular animal is referred to. It shall be the duty of the auditor of each county to keep said index up to date, and as complete as practicable. [L. '05, p. 44, § 1.]

For former acts on this subject see L. '54, pp. 380–382; L. '60, pp. 337–339; L. '63, pp. 435–437; L. '68, p. 72, § 1; L. '75, p. 99, § 1; Cd. '81, § 2538; 1 H. C., § 2535; Bal. Code, §§ 3500–3508.

§ 3243. Registration by Person Losing Animal.—Any person losing an animal shall register the same with the county auditor of his county under "Estrays lost," for which the auditor shall collect a fee of fifty cents, for each animal registered, and deliver to the

owner a receipt with his seal attached which receipt shall describe the animal registered. [L. '05, p. 45, § 2.]

§ 3244. Registration by Finder.—Any person about whose premises any animal may be in the habit of running at large at any time between the first day of October and the first day of March east of the Cascade range and between the first day of December and the first day of March, west of the Cascade range, may take up such animal, and shall within ten days thereafter cause the same to be registered with the county auditor of his county under "Estrays found," giving the information required by the record as fully as practicable, and the auditor shall charge against such estrays the said fee of fifty cents for each animal so registered. Breachy or vicious animals may be taken up and registered as herein provided. The word "animal" or "animals" for the purpose of this chapter, shall include only horses, mules, cattle and hogs. [L. '05, p. 45, § 3; L. '07, p. 60, § 1.]

See supra, § 3150, duty to examine brand and notify owner in certain counties.

§ 3245. Auditor to Notify Owner of Estrays Found — Form of Notice.—Immediately upon registering any animal as found, the auditor shall examine the record of "Estrays lost" and if the animal found appears thereon, he shall immediately notify the owner by mailing him a notice addressed to the postoffice designated opposite his name on the record, which notice shall contain the information appearing in the fourth, fifth, sixth, seventh and eighth columns of the record, and shall require the owner to appear within twenty days from the date of such notice and pay all charges and take the said animal into his possession.

The several county auditors shall keep on hand blank forms of such notice which shall be substantially as follows:

—— To ——

—— Washington.

You are hereby notified that your (here state the kind of animal), color ——, branded ——, earmarked ——, otherwise marked ——, has been taken up and by ——, and is now at ——, and unless you pay all charges against the said estray, and take possession thereof within twenty days from this date, the same will be sold according to law.

Dated this —— day of ——, 19—.

P. O. Address ——. —— ——, Auditor.

[L. '05, p. 45, § 4.]

§ 3246. Payment of Fees—Animals Found not to be Worked.—The owner of any estray upon learning that the same has been

found, shall pay to the auditor the fee for registering the estray as found, and take his receipt therefor with his official seal attached, which receipt shall describe the animal registered, and upon exhibiting such receipt and making out his title, and paying the finder the sum of one dollar for taking up the animal and reporting the same to the auditor, and the further sum of ten cents per day for keeping the estray, from the time of registering the same as found, shall be allowed to take possession of the animal. The claimant's possession of the auditor's receipt showing payment of the fee for registering the same as lost, and of the auditor's receipt, showing payment of the fee for registering the same as found, shall be proof of ownership sufficient to justify the finder in surrendering possession of the estray. Any taker-up of an estray who shall work such animal, or otherwise use the same so as to derive benefit therefrom shall forfeit all pay for the keep thereof. [L. '05, p. 46, § 5.]

§ 3247. Disposition of Fees.—All fees collected by the auditor hereunder, and all sums derived from estray sales shall be turned into the current expense fund of the county. [L. '05, p. 46, § 6.]

§ 3248. Sale of Unclaimed Estrays—Publication of Notice.—If the person entitled to the possession of an estray shall not appear and make out his title thereto as herein provided, and pay the charges against the same as herein specified within twenty days from the time it is registered as found, as provided in this chapter, it shall be the duty of the auditor to immediately publish notice once a week for two consecutive weeks, in the paper doing the county printing, which notice shall give the name of the finder of the estray, the date when taken up, place where kept, description of the animal as shown by the record, and shall state that if the owner does not appear and make out his title and pay all charges against said estray on or before the day and hour fixed for such sale, which shall be stated in the notice, and which shall not be less than fifteen nor more than twenty days from the date of the first publication thereof, such estray will be sold at the place where kept to the highest bidder for cash. If the owner or his legal representative appear he shall pay all charges incurred up to the time of his appearance including publication fee, and sheriff's or constable's fees if any have been incurred. [L. '05, p. 46, § 7.]

§ 3249. Form of Notice.—Such notice for publication may be substantially as follows:

ESTRAY SALE.

Notice is hereby given that (name of finder) on the —— day of ——, 19—, took up and now keeps at —— Washington, (kind and age of animal), branded ——, earmarked ——, otherwise marked

——, and said estray will be sold to the highest bidder for cash, at the place kept, as above specified on —— the —— day of ——, 19—, at the hour of —— o'clock in the —— noon of said day, unless the owner thereof or his legal representatives shall appear prior to that time and make out his title, and pay all charges against said estray.

Date of the first publication of this notice ——, 19—.

—— ——

Auditor of —— County.

[L. '05, p. 47, § 8.]

§ 3250. Notice of Sale of Several Animals.—In any community where any number of estrays are registered as found at or near the same time, all such estrays may be advertised for sale by the auditor in the same notice, by describing each animal. It shall be the duty of the county auditor to specify in said notice the place where the sale is to take place, and any person holding any estray or estrays so advertised shall take the same to the place specified in said notice so that the same may be sold as provided in this act. [L. '05, p. 47, § 9; L. '09, p. 417, § 1.]

§ 3251. Sale to Highest Bidder.—At the time stated in such notice, the sheriff or any constable, or any elector, other than the finder, deputized by the sheriff for such purpose shall sell the same at public auction for cash to the highest bidder, and the finder may bid therefor at such sale, and after deducting all charges of the finder as herein provided, and the fees of the sheriff or constable for selling, which shall be the same as a sale on execution the remainder of the proceeds shall be turned into the auditor within ten days, by the party conducting the sale. Provided, that if any person other than the sheriff or a constable conducts such sale no fees for selling shall be allowable. [L. '05, p. 47, § 10.]

§ 3252. Redemption.—If the owner of the property sold, or his legal representative, within six months after the sale shall have been made, furnish satisfactory evidence to the auditor of the ownership of the said property, he or they shall be entitled to redeem said property upon the payment of all costs incurred in connection therewith. Any person buying an estray at a sale had under the provisions of this act shall be vested with an absolute title to the same after six months from the date of such sale, unless notified by the auditor of the redemption of same by its owner or his legal representative. [L. '05, p. 48, § 11; L. '09, p. 418, § 2.]

§ 3253. Publisher's Fees.—The publisher's fees for publishing the notices specified herein, shall be paid for in the manner and at the

rate provided for the publication of the proceedings of the county commissioners. [L. '05, p. 48, § 12.]

§ 3254. Registration of Animals Presumably Estrays.—Any person knowing of any animal running at large in any month, which he believes to be an estray, may take the same into his possession and register the same as found, or may register the same without taking the animal into his possession by specifying the range where the owner may be likely to find the same, but no charges shall be allowed any finder for taking or keeping such animal and no such animal shall be advertised for sale between the first day of March and the first day of October, except breachy or vicious animals, or estrays taken up prior to said first day of March, as herein provided. The several county auditors shall make no charge for registering estrays as found between the first day of March and the first day of October. [L. '05, p. 48, § 13.]

See supra, §§ 3150, 3170.

§ 3255. Sale, Where to be Held.—Any owner or finder of any estray may register the same as lost or found in any one or more counties of the state, but the sale must be in the county where the estray is taken up, and the finder shall pay the registration fee outside the county where the estray is taken up. [L. '05, p. 48, § 14.]

§ 3256. Penalty.—If any person shall take up, keep or use any estray without complying with the provisions of this chapter, he shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined in any sum not to exceed one hundred dollars. [L. '05, p. 48, § 15.]

§ 3257. Conversion of Estrays.—If the taker-up of estray property shall convert the same to his own use, before the title thereto shall vest in him according to law, or if he shall knowingly and willfully violate any of the provisions of the law regulating the taking up of estrays, such person so offending shall be fined in any sum not exceeding five hundred dollars, and not less than double the value of such estray property. [L. '54, p. 94, § 101; Cd. '81, § 916; 2 H. P. C., § 91.]

See supra, § 2076, allegation of ownership.

This section was repealed by L. '01, p. 264, § 6, but the repeal was void as this section was not within the title of that act.

CHAPTER IX.

Apiaries and Their Inspection.

§ 3258. County Apiary Inspector — Appointment. — Whenever a petition is presented to the board of county commissioners of any county, signed by ten or more persons, each of whom is a property

holder resident of the county, and owner of an apiary or place where bees are kept, stating that certain or all apiaries within the county are infected with the disease known as "foul brood," or any other disease which is infectious or contagious in its nature; and injurious to the bees, their eggs or larvae, and praying that an inspector be appointed by them, whose duty it shall be to supervise the treatment of said bees and apiaries as herein provided, the board of county commissioners shall, within twenty days thereafter, appoint a suitable person, who shall be a skilled bee-keeper, inspector of apiaries. The said board of county commissioners may remove said inspector at any time for cause. [L. '05, p. 217, § 1.]

§ 3259. Duty of Inspector—Infected Apiaries Abated as Nuisance. It shall be the duty of the inspector in each county to cause an inspection to be made when he deems it necessary, of any apiary, or other place within his jurisdiction in which bees are kept, and if found infected with foul brood, or any other infectious or contagious disease injurious to the bees, or their eggs, or larvae he shall notify the owner or owners, person or persons, in charge, or in possession of said apiaries or places where bees are kept, that the same are infected with foul brood, or any other disease infectious or contagious in its nature, and injurious to bees, their eggs, or larvae, and he shall require such person or persons to eradicate and remove such disease or cause of contagion within a certain time to be specified. Said notice may be served upon the person or persons, or either of them, owning or having charge, or having possession of such infected apiaries, or places where bees are kept, by any inspector, or by any person deputized by the said inspector for that purpose, or they may be served in the same manner as a summons in a civil action. All such apiaries, or places where bees are kept, found infected with foul brood, or any other infectious or contagious disease, are hereby adjudged and declared to be a public nuisance; and whenever any such nuisance shall exist at any place within his jurisdiction, or on the property of any nonresident, or on any property the owner or owners of which cannot be found by the inspector, after diligent search, within the county or upon the property of any owner or owners upon whom notice aforesaid has been served and who shall refuse or neglect to abate the same within the time specified, it shall be the duty of the inspector to abate the same, either by treating the disease, or by destroying the infected hives, together with their combs and bees therein. The expense thereof shall be a county charge and the board of county commissioners shall allow and pay the same out of the general fund of the county. [L. '05, p. 217, § 2.]

§ 3260. **Inspector's Records and Reports.**—It shall be the duty of the county inspector of apiaries to keep a record of his official acts

and doings, and make report thereof to the board of county commissioners at their October meeting of each year. [L. '05, p. 218, § 3.]

§ 3261. Compensation of Inspector.—The salary of the county inspector of apiaries shall be three dollars per day when actually engaged in the performance of his duties: Provided, that the expenditures under this act in any county shall not exceed the sum of one hundred dollars per annum. [L. '05, p. 218, § 4.]

§ 3262. Transfer of Infected Bees.—The inspector of apiaries may, in his discretion, order the owner or owners, or other person in charge of bees kept in box or other immovable or stationary comb-hives in apiaries infected with foul brood or other infectious or contagious disease, or within a radius of three miles of such diseased apiaries, to transfer such bees to movable frame hives within a reasonable time, to be specified in such order or notice, and in default of such transfer by the owner, or owners, or other persons in charge of such bees, the inspector may destroy, or cause to be destroyed, all such hives, together with their contents, and the expense thereof shall be a county charge, as provided in section 3259. [L. '05, p. 218, § 5.]

§ 3263. Removal of Inspected Bees—Notice to Inspector.—It shall be unlawful for any person owning or controlling bees within this state, which are known to be infected with foul brood or other infectious or contagious disease, to remove said bees to a new location, without first giving ten days' notice to the county inspector of apiaries, stating when and where he intends moving said bees. [L. '05, p. 218, § 6.]

§ 3264. Penalty for Sale of Infected Bees, etc.—Any person or persons whose apiary is infected with foul brood or any other infectious or contagious disease, and who sells or offers for sale, from such infected apiary any bees, hives, bee fixtures or appurtenances, or who shall expose in his bee-yard or elsewhere, any infected comb-honey, beeswax, or other infected things, or who conceals the fact that his apiary is so infected, or who shall resist, impede, or hinder in any way, the inspector of apiaries in the discharge of his duties, under the provisions of this act, or who shall violate any of the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not to exceed one hundred ($100) dollars. [L. '05, p. 219, § 7.]

"Act" refers to the foregoing sections of this chapter.

§ 3265. Poisoning Honey-bees—Penalty.—It shall be unlawful for any person within the state of Washington to willfully or maliciously

kill or poison any honey-bees. It shall further be unlawful for any person within said state to willfully or maliciously place any poisonous or sweetened substance for the purpose of injuring honey-bees, in any place where such poisoned or sweetened substance is accessible to honey-bees within this state. Any person or persons violating the provisions of this section shall, upon conviction thereof, be punished by a fine of not less than ten dollars, nor more than one hundred dollars. [L. '97, p. 11, §§ 1, 2.]

CHAPTER X.

Prevention of Cruelty to Animals.

§ 3266. Humane Societies, etc.—Incorporation.—Any citizens of the state of Washington who have heretofore, or who shall hereafter, incorporate as a body corporate, under the laws of this state as a humane society or as a society for the prevention of cruelty to animals may avail themselves of the privileges of this act: Provided, that the corporate body existing at any given time and first incorporated as aforesaid in any county, shall be the only one entitled to the benefits and privileges of this act in such county. [L. '01, p. 302, § 1.]

"Act" refers to §§ 3266–3283.

§ 3267. Authority of Members to Suppress Cruelty to Animals.—All members and agents, and all officers of any society so incorporated, as shall by the trustees of such society be duly authorized in writing, approved by any judge of the superior court of the county, and sworn in the same manner as are constables and peace officers, shall have power lawfully to interfere to prevent the perpretation [perpetration] of any act of cruelty upon any animal and may use such force as may be necessary to prevent the same, and to that end may summon to their aid any bystander; they may make arrests for the violation of any of the provisions of this act in the same manner as herein provided for other officers; and may carry the same weapons that such officers are authorized to carry: Provided, that all such members and agents shall, when making such arrests, exhibit and expose a suitable badge to be adopted by such society. All persons resisting such specially authorized, approved and sworn officers, agents or members shall be guilty of a misdemeanor. [L. '01, p. 302, § 2.]

"Act" refers to §§ 3266–3283.

§ 3268. Certain Officers Empowered to Make Arrests for Violations.—All sheriffs, constables, police and peace officers are empow-

ered to make arrests for the violation of any provisions of this act, as in other cases of misdemeanor. [L. '01, p. 302, § 3.]

"Act" refers to §§ 3266-3283.

§ 3269. What Constitutes Cruelty. — Every person who cruelly overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, cruelly beats, mutilates or cruelly kills, or causes, procures, authorizes, requests or encourages so to be overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, cruelly beaten or mutilated or cruelly killed, any animal; and whoever having the charge or custody of any animal, either as owner or otherwise, inflicts unnecessary suffering or pain upon the same, or unnecessarily fails to provide the same with the proper food, drink, air, light, space, shelter or protection from the weather, or who willfully and unreasonably drives the same when unfit for labor or with yoke or harness that chafes or galls it, or check rein or any part of its harness too tight for its comfort, or at night when it has been six consecutive hours without a full meal, or who cruelly abandons any animal, shall be guilty of a misdemeanor. [L. '01, p. 303, § 4. Cf. L. '93, p. 41, § 2; see Cd. '81, § 930; 2 H. P. C., § 164.]

See infra, §§ 4704, 4705, dissection, and penalty.

§ 3270. Transportation in Cruel Manner—Penalty.—If any person shall carry, transport, or confine, or cause to be carried, transported or confined upon any wagon, railway, car, vehicle, boat, vessel or otherwise, any domestic animal, in a cruel or unnecisarily [unnecessarily] painful manner, posture or confinement, he shall be guilty of a misdemeanor. And whenever any such person shall be taken into custody therefor by any officer or authorized person, such officer or person may take charge of such car, wagon, vehicle, boat or vessel and its contents together with the horse or team attached to any such wagon or vehicle, and place or leave the same in some reasonably safe place of custody; and any necessary expense which may be incurred for taking care of and keeping the same, shall be a lien thereon, to be paid before the same can be lawfully recovered; and if the said expenses, or any part thereof, remain unpaid, they may be recovered by the person incurring the same, of the owner of such domestic animal, or of the person guilty, as aforesaid, in any action therefor. [L. '01, p. 303, § 5.]

§ 3271. Docking Horses' Tails Prohibited. — Every person who shall cut or cause to be cut, or assist in cutting the solid part of the tail of any horse in the operation known as "docking," or in any other operation for the purpose of shortening the tail or changing the

carriage thereof, shall be guilty of a misdemeanor. [L. '01, p. 304, § 6.]

§ 3272. Unlawful to Cause Certain Animals to Fight.—Every person who wantonly or for the amusement of himself or others, or for gain, shall cause any bull, bear, cock, dog, or other animal to fight, chase, worry or injure any other animal, or to be fought, chased, worried or injured by any man or animal, and every person who shall permit the same to be done on any premises under his charge or control; and every person who shall aid, abet, or be present at such fighting, chasing, worrying or injuring of such animal as a spectator, shall be guilty of a misdemeanor. [L. '01, p. 304, § 7.]

§ 3273. Owning or Training Fighting Animals — Attending Exhibitions — Penalty.—Every person who owns, possesses, keeps, or trains any bird or other animal with the intent that such bird or other animal shall be engaged in an exhibition of fighting, or is present at any place, building or tenement, where training is being had or preparations are being made for the fighting of birds or other animals, with the intent to be present at such exhibition, or is present at such exhibition, shall be guilty of a misdemeanor. [L. '01, p. 304, § 8.]

§ 3274. A Misdemeanor to Attempt Violation.—Every person who shall attempt to do any act or thing which by this act is made a misdemeanor shall be guilty of a misdemeanor. [L. '01, p. 304, § 9.]

"Act" refers to §§ 3266–3283.

§ 3275. Complaints — Issuance of Search-warrants.—When complaint is made on oath, to any magistrate authorized to issue warrants in criminal cases that the complainant believes that any of the provisions of law relating to or in any way affecting animals, are being or are about to be violated in any particular building or place, such magistrates shall issue and deliver immediately a warrant directed to any sheriff, constable, police or peace officer, or officer of any incorporated society qualified as provided in section 3267, of this chapter, authorizing him to enter and search such building or place, and to arrest any person or persons there present violating or attempting to violate any law relating to or in any way affecting animals, and to bring such person or persons before some court or magistrate of competent jurisdiction within the city or county within which such offense has been committed or attempted to be committed, to be dealt with according to law. [L. '01, p. 304, § 10.]

§ 3276. Power to Arrest Without Warrant.—Any person qualified under section 3267 of this chapter, and any sheriff, constable, police or peace officer may enter any place, building or tenement, where

there is an exhibition of the fighting of birds or animals or where preparations are being made or training had for such exhibition, and without a warrant arrest all or any persons there present and bring them before some court or magistrate of competent jurisdiction to be dealt with according to law. [L. '01, p. 305, § 11.]

§ 3277. Confinement of Animals Without Food and Drink, Prohibited.—Any person who shall impound or confine or cause to be impounded or confined any domestic animal, shall supply the same during such confinement with a sufficient quantity of good and wholesome food and water, and in default thereof shall be guilty of a misdemeanor. In case any domestic animal shall be impounded or confined as aforesaid and shall continue to be without necessary food and water for more than twenty-four consecutive hours, it shall be lawful for any person, from time to time, as it shall be deemed necessary to enter into and open any pound or place of confinement in which any domestic animal shall be confined, and supply it with necessary food and water so long as it shall be confined. Such person shall not be liable to action for such entry, and the reasonable cost of such food and water may be collected by him of the owner of such animal, and the said animal shall be subject to attachment therefor and shall not be exempt from levy and sale upon execution issued upon a judgment therefor. [L. '01, p. 305, § 12.]

§ 3278. Old or Diseased Animals, Unlawful to Abandon.—Every owner, driver, or possessor of any old, maimed or diseased horse, cow, mule, or other domestic animal, who shall permit the same to go loose in any lane, street, square, or lot or place of any city or township, without proper care and attention, for more than three hours after knowledge thereof, shall be guilty of a misdemeanor: Provided, that this shall not apply to any such owner keeping any old or diseased animal belonging to him on his own premises with proper care. Every sick, disabled, infirm or crippled horse, ox, mule, cow or other domestic animal, which shall be abandoned on the public highway, or in any open or inclosed space in any city or township, may, if, after search by a peace officer or officer of such society no owner can be found therefor, be killed by such officer; and it shall be the duty of all peace and public officers to cause the same to be killed on information of such abandonment. [L. '01, p. 305, § 13.]

§ 3279. Prosecutions.—Any member of such society authorized as provided in section 3267, may appear and prosecute in any court of competent jurisdiction for any violation of any of the provisions of this act, whether or not he be an attorney or counselor at law: Provided, that all such prosecution shall be conducted in the name of the people of the state of Washington. [L. '01, p. 306, § 14.]

"Act" refers to §§ 3266–3283.

§ 3280. Punishment—Disposition of Fines Collected.—Every person convicted of any misdemeanor under this act, shall be punished as is by law provided for the punishment of misdemeanors and all fines imposed or collected in any county under the provisions of this act, shall inure to the society in said county, organized and incorporated as in section 3266 provided, in aid of the benevolent object for which it is incorporated, and shall be paid out of the county treasury to such society and the county auditor shall draw warrants in favor of such society upon the county treasurer therefor. [L. '01, p. 306, § 15.]

"Act" refers to §§ 3266–3283.

§ 3281. Fine and Term of Imprisonment.—Every person convicted of any misdemeanor under this act, shall be punished by a fine of not exceeding one hundred and fifty dollars, or by imprisonment in the county jail not exceeding sixty days, or both such fine and imprisonment, and shall pay the costs of the prosecution. [L. '01, p. 306, § 16.]

"Act" refers to §§ 3266–3283.

§ 3282. Terms Defined.—In this act, the singular shall include the plural; the word "animal" shall be held to include every living creature, except man; the words "torture," "torment," and "cruelty," shall be held to include every act, omission, or neglect whereby unnecessary or unjustifiable physical pain or suffering is caused or permitted; and the words "owner" and "person" shall be held to include corporations as well as individuals; and the knowledge and acts of agents of and persons employed by corporations in regard to animals transported, owned, or employed by, or in the custody of such corporations, shall be held to be the act and knowledge of such corporations as well as of such agents or employees. [L. '01, p. 306, § 17. Cf. L. '93, p. 41, § 31; Bal. Code, § 7402.]

"Act" refers to §§ 3266–3283.

§ 3283. Application of Act.—No part of this act, shall be deemed to interfere with any of the laws of this state known as the "Game laws," nor shall this act be deemed to interfere with the right to destroy any venomous reptile or any known as dangerous to life, limb or property, or to interfere with the right to kill animals to be used for food or with any properly conducted scientific experiments or investigations, which experiments or investigations shall be performed only under the authority of the faculty of some regularly incorporated college or university of the state of Washington. [L. '01, p. 307, § 18.]

"Act" refers to §§ 3266–3283.

§ 3284. Forfeiture of Fighting Animals—Sale of.—After such seizure of said fowls, birds, dogs, or other animals as provided for in section 2982, application shall be made to a trial justice or municipal court for an order of forfeiture of the same, and if upon the hearing of the same, such notice having been given of the hearing as the court shall order, it shall be found that such fowls, birds, dogs or other animals, or any of them, at the time of such seizure, were engaged in fighting at an exhibition thereof, or were owned, kept, possessed or trained by any person with intent that they should be so engaged, all such fowls, birds, dogs or other animals shall be adjudged forfeit, and such justice or court shall thereupon issue an order for selling the same at auction to the highest bidder within twenty-four hours, the proceeds to be paid into the common school fund of the county where such seizure is made. Any fowls, birds, dogs or other animals seized as hereinbefore provided which are not adjudged forfeit, shall be delivered to the owner or the person entitled to the possession thereof. The necessary costs in the aforesaid proceedings shall be allowed and paid as costs in criminal prosecutions are paid. [L. '93, p. 42, § 7.]

§ 3285. Wanton Cruelty to Fowls, etc.—Whosoever shall wantonly or cruelly pluck, maim, torture, deprive of necessary food or drink, or wantonly kill any fowl or insectivorous bird, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding twenty dollars. [L. '93, p. 43, § 8.]

§ 3286. Arrest Without Warrant, When.—Any judge, justice of the peace, police judge, sheriff, constable or police officer may arrest any person found committing any of the cruelties hereinbefore enumerated, without a warrant for such arrest, and any officer or member of any humane society, or society for the prevention of cruelty to animals, may cause the immediate arrest of any person engaged in, or who shall have committed such cruelties, upon making oral complaint to any sheriff, constable, or police officer, or such officer or member of such society may himself arrest any person found perpetrating any of the cruelties herein enumerated: Provided, that said person making such oral complaint or making such arrest shall file with a proper officer a written complaint, stating the act or acts complained of, within twenty-four hours, excluding Sundays and legal holidays, after such arrest shall have been made. [L. '93, p. 43, § 9.]

The application of this section may be somewhat limited by later acts superseding parts of the act of 1893. See supra, § 3276, same authority conferred.

See supra, § 2762, cruelty to children is embraced within the provisions of this section.

§ 3287. Disposition of Fines.—All fines herein provided for shall be paid into the common school fund of the county in which such fine shall be imposed. [L. '93, p. 43, § 10.]

See note to § 2825, disposition of fines.

§ 3288. Unlawful Mutilation of Domestic Animals.—It shall not be lawful for any person to cut off more than one-half of the ear or ears of any domestic animal, such as an ox, cow, bull, calf, sheep, goat, or hog, and any person cutting off more than one-half of the ear or ears of any such animals shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum less than twenty dollars. [L. '71, p. 103; Cd. '81, § 840; 2 H. P. C., § 61.]

§ 3289. Malicious Injury to Animals.—If any person maliciously kill, maim, or disfigure any horse, cattle, dog, or other domestic animal of another, or maliciously administer poison to any such animal or animals, or expose any poisonous substance with intent that the same should be taken by it or them, he shall be punished by imprisonment in the county jail not exceeding one year or by fine not exceeding three hundred dollars. [Cf. Cd. '81, § 838; 2 H. P. C., § 59; L. '93, p. 236, § 1.]

Apiaries. See "Animals," § 3258.
Apiculture. See "Animals," § 3258.
Appeals. From justice's court, see §§ 1910–1924.
To the supreme court, see §§ 1716–1764.
Appropriation. Of waters, see "Irrigation and Water Rights," § 6315.
Of property, see § 891.
Arbitration. See § 420.
Of labor claims, see "Labor Law," § 6589.
Archives. Public archives commission, see "State and State Boards," § 8968.
Arid Lands. See "Lands of the State," § 6705; "Irrigation and Water Rights," § 6315.
Arraignment. See §§ 2077–2130.
Arrest and Bail. See §§ 748–777.
In justice's court, see §§ 1790–1795.
Artesian Wells. See "Irrigation and Water Rights," § 6404.
Assessment. Of property for taxation, see "Taxation," § 9101.
Of state lands, for local improvements, see "Lands of the State," § 6872.
Equalization of, see "Taxation," § 9200.
For local improvements, see "Municipal Corporations"; "Navigation," and other specific heads.
Of taxes in cities, see "Municipal Corporations," §§ 9280-9299.

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CHAPTER I.

State Bank Examiner.

§ 3290. State Bank Examiner — Appointment — Qualifications. — The governor shall appoint, by and with the advice of the senate, a state examiner for the state of Washington, whose term of office shall be four years, unless sooner removed, and until his successor is appointed and qualified. No person shall be appointed to such office who shall not be at the time of his appointment, and for at least two years previous thereto, a citizen of the state of Washington, and who has not had at least four years of experience in the banking

business. Nor shall any person be eligible for such office who shall be at the time interested in any bank as owner, officer, or stockholder. [L. '07, p. 518, § 1; L. '09, p. 692, § 1.]

§ 3290–1. Change of Title.—The title of the state examiner of banks and trust companies is hereby changed from "state examiner" to "state bank examiner." Whenever in any law, contract or document the name of such officer appears as "state examiner" or reference is made to such officer, such term or reference shall be deemed to mean or refer to the "state bank examiner." [L. '15, p. 117, § 1.]

§ 3291. Governor to Fill Vacancies.—If a vacancy shall occur in the office of state examiner, by death, resignation or otherwise, the same shall be filled by appointment of the governor, and such appointee shall hold office until the next ensuing session of the legislature. [L. '07, p. 518, § 2.]

Cited in 50 Wash. 208, 209, 210.

§ 3292. Deputies—Clerical Assistance.—The state bank examiner may appoint three deputies and revoke such appointment at pleasure, who shall have the qualifications and possess the powers, and perform the duties attached by law to the office of the state bank examiner. He may also employ from time to time such clerical assistance as shall be necessary to the proper conduct of his office; but in no case shall the expenses incident to the conduct of the office exceed the appropriation provided by legislative action. [L. '15, p. 126, § 1. Cf. L. '07, p. 519, § 3; L. '09, p. 692, § 2.]

§ 3293. Oath and Bond of Examiner and Deputies.—The state examiner and his deputies shall, each before entering upon his office, take and subscribe an oath to faithfully discharge the duties of his office, and shall each execute to the state of Washington a bond in the sum of twenty-five thousand dollars, with some surety company authorized to do business in this state, to be approved by the governor, as surety, conditioned that he will faithfully and impartially discharge the duties of his office and pay over to the person entitled by law to receive it, all moneys coming into his hands by virtue of his office. The cost of such bonds to be paid by the state. [L. '07, p. 519, § 4.]

§ 3294. Location of Office.—The state examiner may maintain an office at the state capitol, and there shall be, at his request, assigned to him suitable rooms in the state capitol building for conducting the business of his office; but such office may, with the consent of the governor, be maintained at some other convenient banking center in the state. [L. '07, p. 519, § 5; L. '09, p. 693, § 3.]

§ 3295. Salaries and Expenses.—The state examiner shall receive a salary of thirty-six hundred dollars a year, and each deputy state examiner shall receive a salary of two thousand four hundred dollars a year; and the state examiner shall be allowed an additional sum as may be necessary for clerical assistance in his office, office rent, traveling and other expenses, detailed vouchers for all of which shall be filed with his report. [L. '07, p. 529, § 34; L. '09, p. 696, § 9.]

§ 3296. Seal of Examiner—Certificates as Evidence.—The state examiner, with the approval of the governor, shall devise a seal with a suitable inscription, for his office, a description of which, with a certificate of approval by the governor, shall be filed in the office of the secretary of state, with an impression thereof, which shall thereupon be and become the seal of office of the state examiner. Every certificate, assignment and conveyance, executed by the said state examiner in pursuance of the authority conferred upon him by law, and sealed with the seal of his office, shall be received as evidence and recorded in the proper recording offices, in the same manner and with like effect as a deed regularly acknowledged as required by law, and all copies of papers in the office of said examiner, certified by him and authenticated by his seal, shall be received in evidence equally and in like manner as the originals. [L. '07, p. 530, § 35.]

§ 3297. Banks to Make Reports to Examiner and Publish Same.—Every bank shall make at least three reports each year to the state examiner, on days designated by the comptroller of the currency on which national banks shall make reports, according to forms to be prescribed by him, verified by the president, manager or cashier, and by two directors, which shall exhibit in detail, and under appropriate heads, the resources and liabilities of the bank, and shall be transmitted to the state examiner within ten days of the receipt of a request therefor from him. And such report in condensed form, according to forms to be prescribed by the state examiner, shall be published once in a newspaper of general circulation published in the place where the bank is located, or if there be no newspaper published in such place, then in some newspaper published in the same county. Proof of publication shall be transmitted to the state examiner, within twenty days from the day fixed for such report. The state examiner shall also have power to call for special reports from any bank whenever in his judgment the same is necessary, in order to obtain a full knowledge of its condition. [L. '07, p. 530, § 36; L. '09, p. 697, § 10.]

§ 3298. Penalty for Failure to Report.—Every bank which fails to make, transmit and publish any report required under the preceding section shall be subject to a penalty of ten dollars ($10) per day

for each day's delay after the period specified in said section. [L. '07, p 530, § 37.]

§ 3299. Blanks and Forms—Examiner's Annual Report to Governor.—The state bank examiner shall receive and place on file in his office the reports required to be made by banks under this act, prepare and furnish to all such banks the blank forms for such statements or reports as may be by this act required of them; make on or before the first day of February of each year, a report for the preceding year to the governor of this state showing:

1. A summary of the conditions of the banks subject to his control at the date of their last report.

2. A list of banks which have been organized or closed during the year.

3. The amount of money collected and expended by him.

It shall be his duty to publish annually at the expense of the state, in pamphlet form, at least five hundred copies of such report, and he shall furnish a copy of same free to each bank doing business under the provisions of this act and in his discretion to other interested persons. [L. '15, p. 126, § 2. Cf. L. '07, p. 531, § 38.]

§ 3300. Examination of Banks—Authority.—It shall be the duty of the state examiner, or his deputy, without previous notice to visit each and every bank doing business in this state, except national banks, at least once in each year and oftener if necessary, for the purpose of making a full and careful investigation and inquiry into the condition of affairs of such bank, and for that purpose the examiner or deputy is hereby authorized and empowered to administer oaths and to examine under oath the owners and directors and all officers and employees and agents of such bank; and any willful false swearing in any such examination shall be deemed perjury and punished as such. [L. '07, p. 531, § 39.]

Cited in 83 Wash. 422.

§ 3301. Examination Fees.—The state bank examiner shall collect from each bank for each complete examination of its condition, twenty-five dollars ($25) for each examination, and in addition thereto, one two hundredths per cent (1-200%) on all deposits, including those of banks, and certificates of deposit at the time of the examination of the bank, but in no case shall the charge be more than two hundred dollars. All money collected under the provisions of this section shall be paid into the general fund of the state. [L. '15, p. 127, § 3. Cf. L. '07, p. 531, § 40; L. '09, p. 697, § 11.]

This and other sections of this chapter made applicable to mutual savings banks: See § 3345-50, infra.

§ 3302. Impairment of Capital.—Whenever it shall appear from any report of any bank, or whenever the examiner shall have reason to

believe that the capital of such bank is reduced by impairment or otherwise below the amount required by this act, or by its certificate or articles of incorporation, it shall be the duty of the examiner to require such bank to make good the deficiency so appearing, or to reduce its capital in accordance with the provisions of section 3326, of this code; and to give effect to such requisition he shall have the power to examine or cause to be examined any such bank, to ascertain the amount of any such impairment of capital, and whether his requirements have been complied with. And if such bank shall neglect for three months to comply with such requirements, the same shall be cause for the proceedings provided for in section 3303. [L. '07, p. 532, § 41.]

"Section 3303" of Rem. & Bal. Code, was repealed by § 3303–19, infra

§ 3303–1. Administration by State Bank Examiner.—Whenever it shall appear to the state bank examiner from any report, examination or otherwise that any bank or trust company has been guilty of violating any provision of law, or is conducting its business in an unsafe manner or is in an unsafe or unsound condition, or that it is unsafe or inexpedient for such bank or trust company to continue business, or if any bank or trust company shall refuse to submit its books, papers and concerns to the inspection of the state bank examiner or any examiner appointed by him, or if any director or officer thereof shall refuse to submit to be examined on oath touching the concerns of such bank or trust company, the state bank examiner may direct such bank or trust company to cease conducting its business in such unlawful, unsafe, unsound or inexpedient manner or if he shall deem necessary, he may take possession of such bank or trust company and administer the same as herein provided. [L. '15, p. 279, § 1.]

§ 3303–2. Notice of Possession by Examiner.—Upon taking possession of the property and business of any such bank or trust company, the state bank examiner shall forthwith give written notice of such fact to all banks, trust companies, associations and individuals holding or in possession of any assets of such bank or trust company. No bank, trust company, association or individual knowing that the state bank examiner has taken possession of such bank or trust company shall have a lien or charge for any payment advanced or any clearance thereafter made, or liability thereafter incurred, against any of the assets of the bank or trust company of whose property and business the state bank examiner shall have taken possession. Such bank or trust company may, with the consent of the state bank examiner, resume business upon such conditions as may be approved by him. [L. '15, p. 280, § 2.]

§ 3303–3. Liquidation by Examiner—Conveyances—Special Deputies—Attorney.—Upon taking possession of the property and business of any bank or trust company, the state bank examiner is authorized to collect money due to such bank or trust company, and do such other acts as are necessary to preserve its assets and business and shall proceed to liquidate the affairs thereof, as hereinafter provided. The state bank examiner shall collect all debts due and claims belonging to it and, upon the order of the superior court of the state of Washington in and for the county in which the office of such bank or trust company is located, may sell or compound all bad or doubtful debts, and, on like order, may sell all the real estate and personal property of such bank or trust company, on such terms as the court shall direct; and the state bank examiner, upon the terms of sale or compromise directed by the court, shall execute and deliver to the purchaser of such real or personal property such deeds or instruments as shall be necessary to evidence the passing of the title; and if said real estate is situated outside the county in which the office of the bank or trust company is located, a certified copy of such order, authorizing and ratifying said sale, shall be filed in the office of the recorder of conveyances of the county within which said property is situated; and may, if necessary to pay the debts of such bank or trust company, enforce the individual liability, if any, of the stockholders. The state bank examiner shall under his hand and official seal appoint one or more special deputy state bank examiners, as agent or agents, to assist him in the duty of liquidation and distribution, a certificate of appointment to be filed in the office of the state bank examiner and a certified copy in the office of the clerk of the county in which the office of such bank or trust company is located. The state bank examiner shall require from such agent or agents such surety for the faithful discharge of their duties as he may deem proper.

The state bank examiner may employ an attorney for legal assistance in taking charge of any bank or trust company, or administering the affairs thereof. [L. '15, p. 280, § 3.]

§ 3303–4. Notice to Present Claims — Actions — Payment. — The state bank examiner shall cause notice to be given by advertisement in such newspaper as he may direct weekly for three consecutive months, calling on all persons who may have claims against such bank or trust company to present the same to the state bank examiner and to make legal proof thereof at a place and within a time not later than the last day of publication to be therein specified. The state bank examiner shall mail a similar notice to all persons whose names appear as creditors upon the books of the bank or trust company. If the state bank examiner doubts the justice and validity of any claim,

he may reject the same and serve notice of such rejection upon the claimants, either by mail or personally, and an affidavit of the service of such notice, which shall be prima facie evidence thereof, shall be filed in his office. An action upon a claim so rejected must be brought within three months after such service. Claims presented and allowed after the expiration of the time fixed in the notice to creditors shall be entitled to be paid the amount of all prior dividends therein if there be funds sufficient therefor and share in the distribution of the remaining assets in the hands of the state bank examiner equitably applicable thereto. [L. '15, p. 281, § 4.]

§ 3303–5. Expenses of Liquidation.—The expenses incurred by the state bank examiner in the liquidation of any bank or trust company in accordance with the provisions of this act shall include the expenses of deputy or assistants, clerks and examiners employed in such liquidation, together with reasonable attorney fees for counsel employed by said state bank examiner, and the reasonable compensation of any special deputy and assistants placed in charge of such bank or trust company, in the course of such liquidation. Such compensation and expenses of counsel, of deputies or assistants, clerks and examiners in the liquidation of any bank or trust company and all expenses of supervision and liquidation shall be fixed by the state bank examiner, subject to the approval of said court. The expense of such liquidation shall be paid out of the property of such bank or trust company in the hands of the state bank examiner and such compensation and expenses shall be a valid charge against the property in the hands of said state bank examiner and shall be paid first, in the order of priority. [L. '15, p. 282, § 5.]

§ 3303–6. Inventory—Supplemental Lists—Time of Filing.—Upon taking possession of the property and assets of any bank or trust company, the state bank examiner shall make an inventory of the assets of such bank or trust company, in duplicate, one to be filed in the office of the state bank examiner and one in the office of the clerk of the county in which the office of such bank or trust company is located; upon the expiration of the time fixed for the presentation of claims, the state bank examiner shall make in duplicate a full and complete list of the claims presented, including and specifying such claims as have been rejected by him, of which one shall be filed in the office of the state bank examiner and one in the office of the clerk of the county in which the office of such bank or trust company is located. And the state bank examiner shall in like manner make and file supplemental lists, showing all claims presented subsequent to the filing of the first list, such supplemental lists to be at least fifteen days before the declaration of any dividend; and in any event such supplemental lists shall be filed at intervals of not exceeding six

months. Such inventory and list of claims shall be open at all reasonable times for inspection. [L. '15, p. 282, § 6.]

§ 3303–7. Dividends.—At any time after the expiration of the date fixed for the presentation of claims the state bank examiner may, out of the funds remaining in his hands after the payment of expenses, declare one or more dividends, and after the expiration of one year from the first publication of notice to creditors, he may declare a final dividend, such dividends to be paid to such persons and in such amounts and upon such notice as may be directed by the said court. [L. '15, p. 283, § 7.]

§ 3303–8. Objections to Claims—Trial—Unclaimed Deposits.—Objection to any claim not rejected by the state bank examiner may be made by any party interested by filing a copy of such objection with the state bank examiner, who shall present the same to the said court, upon written notice to the party filing the same, said notice setting forth the time and place of the presentation, The court upon return day of said notice shall hear the objections raised to said claim, or refer the determination of said objections to a referee for a report, or, upon demand of either the state bank examiner or the party filing the objections, direct that the issues be tried before a jury. The court may make proper provision for unproved or unclaimed deposits. [L. '15, p. 283, § 8.]

§ 3303–9. Injunction Against Bank Examiner.—Whenever any such bank or trust company of whose property or business the state bank examiner has taken possession, as aforesaid, deems itself aggrieved thereby, it may at any time within ten days after taking possession apply to the said court, to enjoin further proceedings, and said court, after citing the state bank examiner to show cause why further proceedings shall not be enjoined, and hearing the allegations and proofs of the parties and determining the facts, may, upon the merits, dismiss such application or enjoin the state bank examiner from further proceedings and direct him to surrender such business and property to such bank or trust company. [L. '15. p. 283, § 9.]

§ 3303–10. Receiverships and Assignments—Ouster of Receiver.—No receiver shall be appointed by any court, nor shall any deed of assignment for the benefit of creditors be filed in any court within this state, for any bank or trust company doing business under the laws of this state except upon notice to the state bank examiner, unless in case of urgent necessity it becomes in the judgment of the court necessary so to do in order to preserve the assets of such bank or trust company. The state bank examiner may, within five days after the service of such notice upon him take possession of such bank or trust company, in which case, no further proceedings shall

be had upon such application for the appointment of receiver or under such deed of assignment, or if a receiver has been appointed or such assignee shall have entered upon the administration of his trust, such appointment shall be vacated or such assignee shall be removed upon application of the state bank examiner to the proper court therefor, and the state bank examiner shall proceed in all such cases to administer the assets of such bank or trust company as herein provided. [L. '15, p. 283, § 10.]

§ 3303–11. Meeting of Stockholders—Call—Vote on Liquidation.—Whenever the state bank examiner shall have paid to each depositor and creditor of such bank or trust company (not including stockholders) whose claim or claims as such depositor or creditor shall have been duly proved and allowed, the full amount of such claims, and shall have made proper provision for unclaimed or unpaid deposits or dividends, and shall have paid all the expenses of the liquidation, the state bank examiner shall call a meeting of the stockholders of such bank or trust company, by giving notice thereof for thirty days in one or more newspapers published in the county wherein the office of such bank or trust company is located.

At such meeting the stockholders shall determine whether the state bank examiner shall continue to administer its assets and wind up the affairs of such bank or trust company, or whether an agent or agents shall be elected for that purpose; and in so determining the said stockholders shall vote by ballot in person, or by proxy, each share entitling the holder to one vote, and the majority of the stock shall be necessary to a determination. In case it is determined to continue the liquidation under the state bank examiner, he shall complete the liquidation of the affairs of such bank or trust company, and after paying the expenses thereof shall distribute the proceeds among the stockholders in proportion to the several holdings of stock, in such manner and upon such notice as may be directed by the said court. [L. '15, p. 284, § 11.]

§ 3303–12. Liquidating Agent — Bond — Transfer to Agent.—In case it is determined to appoint an agent or agents to liquidate, the stockholders shall thereupon select such agent or agents by ballot, a majority of the stock present and voting, in person or by proxy, being necessary to a choice. Such agent or agents shall file with the state bank examiner a bond to the state of Washington, in such amount and with such sureties as shall be approved by the state bank examiner, for the faithful performance of all the duties of his or their trust, and thereupon the state bank examiner shall transfer to such agent or agents all the undivided or uncollected or other assets of such bank or trust company then remaining in his hands; and upon such transfer and delivery the said state bank examiner shall

be discharged from all further liability to such bank or trust company and its creditors. [L. '15, p. 285, § 12.]

§ 3303–13. Distribution by Agent—Election of Successor.—Such agent or agents shall convert the assets coming into his or their possession into cash and shall account for and make distribution of the property of such bank or trust company as herein provided in the case of distribution by the state bank examiner, except that the expenses thereof shall be subject to the direction and control of the court.

In case of death or removal or refusal to act of any such agent or agents, the stockholders may elect a successor as hereinbefore provided, who shall have the same powers and be subject to the same liabilities and duties as the agent or agents originally elected. [L. '15, p. 285, § 13.]

§ 3303–14. Deposit of Unclaimed Money—Payment—Interest.—Dividends and unclaimed deposits remaining in the hands of the state bank examiner for six months after the order for final distribution shall be by him deposited in one or more banks or trust companies under his supervision, to the credit of the state bank examiner in his name or office, in trust for the several depositors or creditors entitled thereto. The state bank examiner may pay over the moneys so held by him to the persons respectively entitled thereto, upon being furnished satisfactory evidence of their right to the same. In case of doubt or conflicting claims, he may apply to the said court for an order authorizing and directing the payment thereof. He may apply the interest earned by the money so held by him toward defraying the expenses of the payment and distribution of such unclaimed deposits or dividends to the depositors and creditors entitled to receive the same and he shall include in his annual report to the governor a statement of the amount of interest earned by such unclaimed dividends. [L. '15, p. 285, § 14.]

§ 3303–15. Control of Examiner—Notice—Possession of Assets.—Any bank or trust company doing business under the state supervision may place its business and assets under the control of the state bank examiner to be liquidated, as herein provided, by posting a notice on its doors as follows: "This bank (trust company) is in the hands of the state bank examiner." Immediately upon posting such notice, an executive officer of such bank or trust company shall notify the state bank examiner of such action by telegraph and mail. The posting of the notice or the taking possession of any bank or trust company by the state bank examiner shall be sufficient to place all of its assets and property of whatever nature in the possession of said state bank examiner and shall operate as a bar to any attachment proceedings. [L. '15, p. 286, § 15.]

§ 3303–16. Temporary Embarrassment — Extension of Time—Resumption of Business.—If the state bank examiner shall discover, upon taking charge of a bank or trust company, as herein provided, that such bank or trust company is only temporarily embarrassed for want of available funds, and that in his opinion such bank or trust company's assets are sufficient to pay its liabilities, leaving its capital unimpaired, or if the stockholders of such bank or trust company will arrange to make good its capital, if impaired, he may permit the officers and directors of such bank or trust company to arrange with its depositors and creditors for extension of time for payment of said depositors and creditors and the resumption of business by said bank or trust company. And when the state bank examiner shall be satisfied that the capital of said bank or trust company has been made good and that it is solvent and has funds on hand with which to meet the demands made on it in the ordinary way and that it has arranged with its depositors and creditors for such extension of time as to enable said bank or trust company to realize on its assets to meet such obligations, he may at any time within ninety days after taking charge of such bank or trust company permit the same to resume business: Provided, however, that such bank or trust company shall first pay all the expenses, costs, compensation and charges of the state bank examiner and his employees, in this act provided for, incurred in so taking charge of and looking after the affairs of said bank or trust company during the time it was under his control. [L. '15, p. 286, § 16.]

§ 3303–17. Voluntary Liquidation—Consent—Notice—Publication. Any bank or trust company doing business under the provisions of this act may go into voluntary liquidation by vote of its stockholders owning two-thirds of its capital stock. Such bank or trust company shall first obtain the written consent of the state bank examiner; and he may, if he deems it advisable, before granting such request, make or cause to be made a special examination of the condition and affairs of such bank or trust company, for which examination the fees provided for by law for examinations shall be collected. Whenever a vote is taken, authorizing the voluntary liquidation of a bank or trust company, it shall be the duty of the board of directors to cause to be published in a newspaper of general circulation of the city, town or county in which such bank or trust company is located at least once a week for four consecutive weeks, notice of such fact and notifying creditors to present their claims against said bank or trust company for payment. [L. '15, p. 287, § 17.]

§ 3303–18. Transfer of Assets — Consolidation — Liquidation.—A state bank or trust company which is in good faith winding up its

business for the purpose of consolidation with some other bank or trust company may transfer its assets and liabilities to the bank or trust company with which it is in process of consolidation, upon receiving written consent of the state bank examiner and not otherwise. And any bank or trust company in the process of voluntary liquidation may transfer its depositors' liabilities to some other bank or trust company and surrender its certificate of authority to the state bank examiner, but no such transfer shall be made without first having obtained the written approval and consent of the state bank examiner, and then only upon such terms and conditions as he shall require. [L. '15, p. 288, § 18.]

§ 3303-19. Repealing Clause.—That sections 3303, 3304, 3305, 3306, 3309, 3357 and 3358 of Remington & Ballinger's Annotated Codes and Statutes of Washington be repealed. [L. '15, p. 288, § 19.]

§ 3307. Record of Fees and Funds — Quarterly Statement.—It shall be the duty of the state examiner to keep a record of all fees collected by him or his deputy, together with a record of the expense incurred in making the examinations of all banks, and pay to the state treasurer at the times and in the manner prescribed by law, all fees collected, together with all funds received by him officially from whatsoever source, and he shall file with the state treasurer, quarterly, an itemized statement showing from whom collected. [L. '07, p. 534, § 46.]

§ 3308. Examiner Shall Keep Records — Disclosures Unlawful.—The state bank examiner shall keep proper books of record of all acts, matters and things done by him under the provisions of this act, as records of his office. Neither he nor his deputies nor clerks shall disclose any fact or information obtained in the course of the business of the department, to any person other than United States or clearing-house examiners, except so far as this act makes it their duty to make public records and publish the same, and any violation of this prohibition shall subject the offender to prosecution for misdemeanor in any court of competent jurisdiction, and to punishment by fine not exceeding one thousand dollars, with imprisonment in the county jail until the same is paid; and such conviction shall subject the offender to a forfeiture of his office or employment. [L. '15, p. 127, § 4. Cf. L. '07, p. 534, § 47.]

§ 3310. Attorney General to Conduct Suits.—The attorney general of the state shall conduct all actions, suits or proceedings begun by the state examiner under the authority of this act. [L. '07, p. 534, § 49.]

§ 3311. Duties of State Officers to Devolve upon Examiner.—That all duties now required to be performed by and all responsibilities

now imposed upon the auditor of this state, under the laws regulating the business of banking shall hereafter be performed by the state examiner, and all reports and documents now on file in the state auditor's office pertaining to banks now in existence are hereby transferred to the custody of the bank examiner. That all duties now required to be performed by and all responsibilities now imposed upon the secretary of state under chapter III of this title, relating to the inspection and supervision of trust companies, shall hereafter be performed by the state examiner, and all reports and documents now in existence are hereby transferred to the custody of the bank examiner. [L. '07, p. 534, § 50.]

"Chapter III," did not include the act of 1915.

§ 3313. Trust Companies not Affected.—All acts and parts of acts regulating the organization and management of banks inconsistent with this act are hereby repealed; but nothing herein shall be held to repeal any law regulating trust companies, foreign banks and foreign bankers doing business in this state. [L. '07, p. 535, § 52.]

§ 3314. False Statement or Entry, a Felony—Penalty.—Any person or persons who shall willfully and knowingly subscribe to or make or cause to be made any false statement or false entry in the books of any bank or corporation transacting a banking business or shall knowingly subscribe to or exhibit false or fictitious papers or securities with the intent to deceive any person or persons authorized to examine into the affairs of said bank or corporation, or shall make, state or publish any false statement of the amount of the assets or liabilities of any such bank or corporation, shall be deemed guilty of a felony and upon conviction thereof shall be imprisoned in the state penitentiary not less than one year nor more than ten years. [L. '07, p. 535, § 53.]

CHAPTER II.

Banks, Incorporation, Management and Liabilities.

§ 3315. Terms Defined.—The term "banking" within the meaning of this act shall mean the negotiations for, the discounting of, promissory notes, drafts, bills of exchange and other evidence of indebtedness, receiving deposits, selling and buying exchange, coin and bullion, and loaning money on personal, real and other securities, and other kindred financial operations; and also shall be construed and held to mean the receiving of moneys on deposit, or savings account subject to withdrawal on demand or subject to withdrawal by any method within four months from the opening of such account or subject to withdrawal at any subsequent time on less than one month's notice, and shall include any mutual or co-operative savings company

or association, or a trust company, receiving money from time to time from persons, associations or corporations, to be held subject to withdrawal as aforesaid, whether received as a direct deposit or by way of payment on stock or certificates in any such mutual or co-operative association. The provisions of this act shall not be construed to apply to building and loan nor savings and loan associations organized under or transacting business conformably to the laws of this state. The term "bank" as used in this act shall be taken to mean and include every association, company or corporation (except national banks, and foreign banks not authorized to receive deposits) transacting a banking business in this state. The term "branch bank," as used in this act, shall be taken to mean an office of deposit or discount other than the bank's principal place of business. [L. '13, p. 463, § 1. Cf. L. '07, p. 519, § 6; L. '09, p. 693, § 4.]

§ 3316. Banks Subject to Act.—Any bank, branch bank, or foreign bank which shall receive money on deposit, whether on certificate or subject to check or payment on stock of co-operative savings associations, or other method of demand withdrawal, or subject to withdrawal by any method within four months from the opening of such account or subject to withdrawal at any subsequent time on less than one month's notice shall be considered as doing a banking business. And promissory notes, receipts, certificates or pass-books issued for money received on deposit or for payment on stock of co-operative associations where such promissory notes, receipts, certificates or pass-books authorize the owner or holder to withdraw such money as aforesaid shall be held to be certificates of deposit for the purposes of this act. And every such corporation, bank, branch bank or foreign bank receiving deposits as herein defined and provided shall be subject to all the provisions of this act and shall be subject to the same regulations, visitations and control. [L. '13, p. 464, § 2. Cf. L. '07, p. 519, § 7.]

"Act" applies to this and the preceding chapter.

§ 3317. Incorporation — Amount of Property Required — Capital Fully Paid—Penalty.—Any number of persons, not less than three, may become incorporated, for the purpose of conducting and carrying on a general banking business, and also to establish banks to be known as savings banks, or to establish banks having departments for both classes of business, upon the terms and conditions of, and subject to the liabilities, prescribed in this act. It shall be unlawful for any corporation to transact a banking business unless at the time of organization and commencement of such banking business, such corporation has property of cash value as follows: In cities, villages and communities having a population of less than one thousand

(1,000), ten thousand dollars ($10,000); in cities, villages and communities having a population of one thousand (1,000) and less than two thousand (2,000) inhabitants, fifteen thousand dollars ($15,000); in cities having a population of two thousand (2,000) and less than three thousand (3,000) inhabitants, twenty thousand dollars ($20,000); in cities having a population of three thousand (3,000) and less than five thousand (5,000) inhabitants, twenty-five thousand dollars ($25,000); in cities having a population of five thousand (5,000) and less than ten thousand (10,000) inhabitants, thirty thousand dollars ($30,000); in cities having a population of ten thousand (10,000) and less than twenty-five thousand (25,000) inhabitants, fifty thousand ($50,000); in cities having a population of twenty-five thousand (25,000) and less than fifty thousand (50,000) inhabitants, seventy-five thousand dollars ($75,000); and in cities having a population of more than fifty thousand (50,000) inhabitants, one hundred thousand dollars ($100,000). Such property shall be in lawful money as provided in section 3321. Provided, that the provisions of this section as to the amount of capital shall not apply to any bank or trust company organized and doing business at the time of the passage of this act: But provided further, that the capital stock of any bank or trust company transacting business in this state, organized prior to the twelfth day of June, 1907, shall be paid in full in cash within five months from the date upon which this act shall take effect. And a failure to comply with the provisions of this section shall subject any such bank or trust company to a penalty of one hundred dollars per day for each day of such failure, and such penalty may be collected by suit against such bank or trust company on the relation of the state examiner, or attorney general. [L. '07, p. 520, § 8; L. '09, p. 693, § 5.]

See, also, infra, § 3694, amount under former laws.

§ 3318. Articles of Incorporation—Contents of.—The persons incorporating shall execute articles of incorporation, which shall specify:

1. The name assumed by such bank.

2. The county and city or village where such bank is to be located and conduct its business.

3. The nature of its business, whether that of a commercial bank, savings bank or both.

4. The amount of its capital stock, which shall be divided into shares of one hundred dollars each.

5. The period for which such bank is organized, which shall not exceed fifty years.

Such articles shall be acknowledged before any officer authorized by the laws of this state to take acknowledgments. [L. '07, p. 521, § 9.]

See infra, § 3333, articles by dissolved national banks.

§ 3319. Articles of Incorporation, Where Filed.—Such articles of incorporation shall be executed in quadruplicate, one copy of which shall be recorded in the office of the county auditor, in the county in which such bank is located; one filed with the state examiner, one in the office of the secretary of state, and one retained by the corporation. Such articles, or duly authenticated copies thereof, may be used as evidence in all courts of this state, for or against such bank. [L. '07, p. 521, § 10.]

See infra, § 3709, fees for filing.

§ 3320. Corporate Powers.—Upon making and filing the articles of incorporation as hereinbefore prescribed, such bank shall become a body corporate, and as such shall have power:

1. To adopt and use a corporate seal.
2. To have succession for the term of years mentioned in its articles of incorporation.
3. To make contracts.
4. To sue and be sued, the same as a natural person.
5. To elect directors, who shall have power to appoint such officers as may be necessary or convenient, to define their powers and duties, and to dismiss them at pleasure, and shall also have general superintendence and control of the affairs of such corporation.
6. To prescribe by its stockholders by-laws not inconsistent with law regulating the manner in which its stock shall be transferred, its directors and officers elected or appointed, its stockholders convened, for general or special meetings, its property transferred, its general business conducted, and the privileges granted to it by law, exercised and enjoyed.
7. To exercise by its board of directors or duly authorized officers or agents, subject to law, all such powers as shall be necessary to carry on the business of banking, as defined and regulated by this act: Provided, that no such bank shall transact any business except such as is necessarily preliminary to its organization until it has been authorized by the state examiner to commence the business of banking. [L. '07, p. 521, § 11.]

See, also, § 3698.

§ 3321. Capital Stock — Payment.—At least fifty per cent of the capital stock of every incorporated bank shall be paid in before it shall be authorized to commence business, and the remainder of the capital of such bank shall be paid in in lawful money, in monthly

installments of at least ten per cent on the whole of the capital, payable at the end of each succeeding month from the time it shall be authorized to commence business, and the payment of each installment shall be certified to the state examiner under oath by the president, cashier, or treasurer of such bank. [L. '07, p. 522, § 12.]

§ 3322. Sale of Stock for Nonpayment.—When any stockholder, or his assignee, shall fail to pay any installment on his stock when the same is required by the preceding section to be paid, the directors of such bank may sell the stock of such delinquent stockholder at public sale, having first given the delinquent stockholder twenty days' notice, personally or by mail, at his last known address. If no bidder can be found who will pay for such stock the amount due thereon, with costs incurred, the amount previously paid shall be forfeited to the bank, and such bank stock shall be sold as the directors may order, within six months from the time of such forfeiture, and if not sold, it shall be canceled and deducted from the capital of the bank. If sold before cancellation, any surplus over the amount due on such stock to said bank, less all costs incurred thereon, with interest for the time delinquent, shall be returned to the original stockholder, his heirs or assigns. If such cancellation shall reduce the capital of the bank below the minimum required by this act, the said capital shall, within thirty days thereafter, be increased to the required amount by original subscription, in default of which, a receiver may be applied for by the state examiner, to close up the business of the bank. [L. '07, p. 522, § 13.]

§ 3323. Issuance of Certificate to do Business—Capital of Foreign and Branch Banks.—When articles of incorporation are filed with the state examiner as provided by this act, and the bank transmitting the same notifies the state examiner that at least fifty per cent of its capital stock has been paid in, and that such bank has complied with the conditions of this act, as required before the bank shall be authorized to commence business, the examiner shall examine into the condition of such bank, and if upon examination it appears that such bank is lawfully entitled to commence business, give to such bank a certificate under his hand and official seal, that it has complied with all the provisions of the law, and is duly authorized to transact business: Provided, however, that no foreign bank, or branch thereof, except foreign banks now doing business in the state of Washington, shall do a banking business in the state until he or they shall have furnished to the state examiner evidence satisfactory to him that such foreign bank, or branch thereof, has invested in such foreign bank, or branch thereof, an amount of capital equal to that required of corporations engaged in similar business, and shall

have received from such examiner a certificate authorizing him or them to do business as required in sections 3317 and 3321 for corporations: Provided further, no bank in this state, or any officer or director thereof, shall hereafter open any branch bank, or any office of deposit or discount, other than its principal place of business, and no branch bank heretofore opened shall be hereafter maintained unless the capital of the bank maintaining the branch bank shall be equal to the sum required by section 3317, and unless the capital of said bank be increased by the amount required by said section 3317 for each and every such branch, the payment of such increased capital shall be governed by the provisions in sections 3321 and 3322 and for the maintenance of any branch bank in violation of the provisions of this section every such bank and every such officer or director shall be subject to a penalty in the sum of one thousand dollars for every week during which any such branch bank shall be so maintained. And such penalty may be collected by suit against such bank, or officer or director, on relation of the state examiner, or attorney general. [L. '07, p. 523, § 14; L. '09, p. 695, § 6.]

"Act" refers to this and the preceding chapter.
See supra, § 2641, penalty for doing business without license.

§ 3324. Stock Personal Property — Banks not to Deal in Bank Stock.—The shares of stock of such incorporated bank shall be deemed personal property and shall be transferred on the books of the bank in such a manner as the by-laws thereof shall direct. No bank shall be the purchaser of its own capital stock, or accept its capital stock, or any part of it, as security for loans. No bank shall subscribe for or purchase the stock of any other banking corporation, except a federal reserve bank of which such bank shall become a member, and then only to the extent required by such federal reserve bank. [L. '15, p. 128, § 5. Cf. L. '07, p. 524, § 15; L. '09, p. 696, § 7.]

See infra, § 9134 et seq., taxation of stock.
This section supersedes § 3684, as to banking corporations.

§ 3325. Stock-book—Contents—Evidence.—A book shall be provided and kept by every bank in which shall be entered the name and residence of the stockholders thereof, the number of shares held by each, the time when such person became a stockholder, and also all transfers of stock, stating the time when made, the number of shares, and by whom transferred. In all actions, suits and proceedings, said book shall be presumptive evidence of the facts therein stated. [L. '07, p. 524, § 16.]

§ 3326. Amendment of Articles of Incorporation.—Any bank may amend its articles of incorporation, in any manner not inconsistent

with the provisions of this act, by a vote of its stockholders representing two-thirds of the capital, at a regular meeting, or a special meeting duly called for that purpose. A certificate of the fact and terms of the amendment shall be executed by a majority of the directors, and filed as required for articles of incorporation, but no increase of capital stock shall be valid, until the amount thereof shall have been subscribed and actually paid in, and no reduction of the capital stock shall be made to an amount less than is required in 3317, for capital, nor be valid, nor warrant the cancellation of stock certificates, nor diminish the personal liability of the stockholders, until such reduction has been approved by the state examiners. [L. '07, p. 524, § 17.]

See supra, § 3302, when required to reduce its capital stock.
See infra, § 3704, increase or diminution of capital stock.

§ 3327. Individual Liability of Stockholders.—The stockholders of every bank shall be individually liable, equally and ratably, and not one for another, for the benefit of the creditors of such bank, to the amount of their stock at par value thereof, in addition to the stock held by them; but persons holding stock as executors, administrators, guardians or trustees if such relation of trust shall appear in the stock certificate and on the books of the bank, or as collateral security or in pledge, shall not be personally liable as stockholders, but the assets and funds in the hands of such trustee constituting the trust, shall be liable to the same extent as the testator, intestate, ward or person interested in such funds would be if living or competent to act, and the person pledging such stock shall be deemed a stockholder, and liable under this section. Such liability may be enforced by an action at law or suit in equity by any such bank in process of liquidation, or by any receiver or other person succeeding to the legal rights of such bank. [L. '07, p. 524, § 18.]

See, also, § 3698, infra.

§ 3328. Directors — Election — Vacancies.—The affairs of every such bank shall be managed by not less than three directors, who shall be elected by the stockholders, and hold office for one year, and until their successors are elected and have qualified. A majority of the board of directors shall constitute a quorum for the transaction of business. In the first instance the directors shall be elected at a meeting held before the bank is authorized to do business by the state examiner, and afterward at the annual meeting of the stockholders to be held on the second Tuesday in January in each year. If for any cause no election is held at that time, it may be held at any adjourned meeting, or at a subsequent meeting called for that purpose, of which due notice shall be given, as may be provided in

the by-laws of such bank. At all the meetings of the stockholders, each share shall be entitled to one vote, and any stockholder may vote by proxy in writing signed by him. Every director must be the owner in his own right of at least five shares of stock. He shall take and subscribe an oath that he will faithfully and diligently perform the duties of such office, and will not knowingly violate or permit to be violated, any provisions of this act. Such oath shall be transmitted to the state examiner, and filed in his office. Vacancies in the board of directors shall be filled by the board, and directors so appointed shall hold office until the next election, and until their successors shall have been elected and qualified. [L. '07, p. 525, § 19.]

"Act" refers to this and the preceding chapter.

§ 3329. Dividends — Restrictions.—The directors of any bank transacting business in this state may declare a dividend of so much of the net profits of the bank, after providing for all expenses, interest and taxes accrued, or due from such bank, as they shall judge expedient, but before any such dividend is declared, not less than one-tenth of the net profits of the bank for the preceding half-year, or for such period as is covered by the dividend, shall be carried to a surplus, until such surplus shall amount to twenty per cent of its capital stock: Provided, that accrued and uncollected interest on the assets of the bank shall not be distributed as a part of its earnings. [L. '07, p. 525, § 20; L. '09, p. 696, § 8.]

§ 3330. May Hold Real Estate, for What Purposes.—Any bank transacting business in this state so far as not prohibited by the constitution of this state, may purchase, hold and convey real estate for the following purposes and no other:

(1) Such as shall be necessary for the convenient transaction of its business, including with its banking offices, other apartments in the same building to rent as a source of income.

(2) Such as shall be purchased by or conveyed to it in satisfaction, or on account of, debts previously contracted in the course of its business.

(3) Such as it shall purchase at sale under judgments, decrees, liens, or mortgage foreclosures, against securities held by it: Provided, that no such real estate, except that used in the transaction of its business, shall be carried as an asset on the books of the bank for a longer period than five years from the date of its purchase. [L. '13, p. 57, § 1. Cf. L. '07, p. 526, § 21.]

Cited in 60 Wash. 385.

§ 3331. Not to Receive Deposits When Insolvent—Penalty.—The owners or officers of any bank who shall fraudulently receive any deposit, knowing that such bank is insolvent, shall be deemed guilty

of a felony, and punished upon conviction thereof, by a fine not exceeding one thousand dollars, or imprisoned in the state penitentiary not exceeding ten years, or both such fine and imprisonment, at the discretion of the court. [L. '07, p. 526, § 22.]

Cited in 60 Wash. 385.

See, also, § 2640, supra.

§ 3332. State Banks Reorganized as National Banks — Assets.— Any state bank reorganized under the laws of the United States as a national bank, as soon as it shall have obtained a certificate from the comptroller of the currency authorizing it to commence business, under the United States banking laws, shall retain and hold all the assets, real and personal, which it acquired during its existence under this act, and shall hold the same subject to all existing liabilities against said bank at the time of its reorganization. [L. '07, p. 526, § 23.]

§ 3333. Dissolved National Banks may Become State Banks—Assets.—Whenever any bank existing under the laws of the United States is authorized to dissolve, and shall have taken the necessary steps to effect dissolution, it shall be lawful for a majority of the directors of such bank, upon the authority, in writing, of the owners of three-fourths of its capital stock, with the approval of the state examiner, to execute articles of incorporation as provided in this act, which articles, in addition to the requirements above, shall set forth the authority derived from the stockholders of such dissolved national bank, and upon filing the same as hereinbefore provided for the organization of banks, the same shall become a bank under the laws of this state, and thereupon all assets of such dissolved national bank shall by act of law be vested and become the property of such state bank subject to all liabilities of such national bank not liquidated under the laws of the United States before such reorganization. [L. '07, p. 527, § 24.]

§ 3334. Fraudulent Conveyances Void.—Every transfer of its property or assets made by any bank in this state, after it shall have become insolvent, within the spirit of this act, with a view to the preference of one creditor over another, or to prevent the equal distribution of its property and assets among its creditors, shall be void. [L. '07, p. 527, § 25.]

§ 3335. Fraudulent Certification of Checks, a Misdemeanor—Bank Liable.—No owner, officer, agent, clerk or employee of any bank shall certify a check unless the amount thereof actually stands to the credit of the drawer on the books of the bank, and any person who shall willfully violate this provision, shall, on conviction thereof, be deemed

guilty of a misdemeanor, and be punished by a fine not exceeding one thousand dollars. Any such check so certified by a duly authorized person shall be a good and valid obligation of the bank in the hands of an innocent holder. [L. '07, p. 527, § 26.]

§ 3336. Savings Banks—Necessity of Pass-books and Certificates of Deposit.—Any bank which shall designate its business as that of a savings bank shall have power to carry on the business of banking as prescribed and limited in this act, and may receive money on savings deposits, and such deposits shall be repaid to the depositor or his lawful representative, when required, at such time or times, and with such interest, as the regulations of the bank from time to time prescribe. A pass-book shall be issued to each savings depositor, containing the rules and regulations prescribed by the bank governing such deposits, in which shall be entered each deposit made by and each payment to such depositor. And no payment made to such depositor, and no payment or check against any such savings account, shall be made, unless accompanied by and entered in the pass-book issued therefor, except for good cause and assurance, satisfactory to the bank officers; but nothing in this section shall prevent savings banks from issuing time certificates of deposit or certificates of deposit specifically issued subject to the rules and regulations governing savings deposits. [L. '07, p. 527, § 27.]

§ 3337. Separate Books for Commercial and Savings Accounts.—Any bank combining the business of a commercial bank and a savings bank shall keep with the respective depositors separate books of account for each kind of business. [L. '07, p. 528, § 28.]

§ 3338. Deposits by Persons Under Disability—Payment.—Where any deposit is made in any bank in his or her own name by any minor, married woman, or other person under disability such bank may pay such money on a check or order of such person, the same as in other cases, and such payments shall be in all respects valid in law. [L. '07, p. 528, § 29.]

§ 3339. Use of Words "Bank," etc., Prohibited—Penalty.—No person or persons, association or body corporate, except banks, or trust companies, incorporated under the laws of the United States, or the laws of the state of Washington, and existing foreign banks now doing business in the state of Washington, shall advertise or put forth a sign having thereon any of the following words: "Bank," "Banking Company," "Trust," or any other artificial or corporate name, or words indicating that such person, persons, association or body corporate is a bank, trust company, or savings bank, or shall in any way solicit or receive deposits as an incorporated bank. Every person, association, or body corporate, violating the provisions of this

act, shall be fined not more than one thousand dollars ($1,000) per day for each day of such violation. From and after the first day of January, 1915, no person, persons, copartnership, association, or body corporate except banks or trust companies incorporated under the laws of the United States or the laws of the state of Washington and existing foreign banks now doing business in the state of Washington, or mutual or co-operative savings companies or associations doing a banking business as defined in section 3315 of this act, shall transact a banking business in this state. [L. '13, p. 465, § 3. Cf. L. '07, p. 528, § 30.]

See infra, § 3345–50, this section applicable to mutual savings banks.

§ 3339½. Private Banks to Incorporate—Stock.—All firms or individuals who on January 1, 1913, were conducting private banks and receiving deposits as such and who desire to do a banking business on and after January 1, 1915, shall prior to that time incorporate under the laws of this state applicable thereto, and the capital stock of such corporation shall be in such a sum as is required by existing law, all of which shall be subscribed and at least ten thousand dollars thereof paid in in cash, and the balance of said capital stock must be paid in at such time and in such amounts as shall be required by the state bank examiner. [L. '13, p. 466, § 4.]

§ 3340. Deception as to Incorporation of Bank.—Any person or persons who shall put up, or cause to be put up, or exhibit, any sign or advertisement, purporting thereby to be an incorporated bank, or shall do business under a corporate name when they are not such, shall, on conviction thereof, be adjudged guilty of a misdemeanor, and punished by a fine not exceeding two hundred dollars. [L. '13, p. 466, § 5. Cf. L. '86, p. 85, § 3; L. '91, p. 130, § 36; 2 H. P. C., § 245.]

See infra, § 3345–50, this section applicable to mutual savings banks.
See supra, § 2642, false report by corporation.

§ 3340–1. Validity.—If any section, subdivision, sentence or clause of this act, for any reason, be held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. [L. '13, p. 466, § 6.]

"Act," refers to §§ 3315, 3316, 3339—3340–1.

§ 3341. Prior Investments Valid—Past Transactions not Affected. Nothing in this act shall be construed to affect the legality of investments heretofore made, or of transactions heretofore had, pursuant to any provisions in force when such investments were made or transactions had. [L. '07, p. 529, § 31.]

"Act" refers to the preceding and this chapter, except a few sections herein.

§ 3342. Loans to Officers—Approval—Penalty.—No officer or employee of any corporation transacting a banking business in this state shall be permitted to loan to himself any of the funds of the bank upon his own note or obligation, without first having obtained the approval of a majority of the board of directors of the bank, and the approval, if obtained, shall be made a part of its records. And if the directors of any bank shall knowingly permit any of its officers, directors, or employees of such bank to borrow its funds in an excessive and dishonest manner, every director who participated in and assented to the same, shall be held liable in his personal and individual capacity for all damages which the corporation, its shareholders, or any other person shall have sustained in consequence of such violation. [L. '07, p. 529, § 32.]

§ 3343. Reserve Fund—Where Kept.—Every bank and trust company doing business under this act, shall have on hand at all times in available funds, not less than fifteen per cent (15%) of its total deposits; such sums may consist of balances due it from good, solvent banks located at commercial centers and at such other points as the state bank examiner may approve, and actual cash or checks on solvent banks located in the same city. [L. '15, p. 128, § 6. Cf. L. '07, p. 529, § 33.]

§ 3344. Unclaimed Deposits in Savings Banks—Annual Statement. The cashier or secretary of every savings bank, [savings] and loan society, and every institution in which deposits of money are made, shall, within fifteen days after the first day of December, in the year one thousand nine hundred and five, and within fifteen days of the first day of December, of each and every second succeeding year thereafter, return to the secretary of state of the state of Washington a sworn statement showing the amount standing to his credit, the last known place of residence or postoffice address, and the fact of death if known to said cashier or secretary of every depositor who shall not have made a deposit therein, or withdrawn therefrom any part of his deposit, or any part of the interest thereon, for the period of more than ten years next preceding; and the cashiers and secretaries of such savings banks, savings and loan societies and institutions for deposit of savings shall give notice of these deposits in one or more newspapers published in or nearest to the city, county or town where such banks are situated at least once a week for four successive weeks, the cost of such publications to be paid pro rata out of said unclaimed deposits: Provided however, that this section shall not apply to or affect the deposit made by or in the name of any person known to the said cashier or secretary to be living. The secretary of state shall annually turn over all reports made by him

to the attorney general for proceedings for forfeiture, if he shall be so advised. [L. '05, p. 244, § 1.]

§ 3345. Penalty for Failure to Report.—Any cashier or secretary of any of the banking institutions mentioned in section 3344 neglecting or refusing to make the sworn statement required by said section 3344 shall be guilty of a misdemeanor and on conviction thereof shall be fined in any sum not less than fifty dollars nor more than one thousand dollars or confined in the county jail not less than ten days nor more than ninety days, or both such fine and imprisonment. [L. '05, p. 245, § 2.]

CHAPTER II–A.

Mutual Savings Banks.

§ 3345–1. Authority to Organize — Incorporators — Certificate.—When authorized by the state bank examiner, as hereinafter provided by this act, not less than nine or more than thirty persons may form a corporation to be known as a "Mutual Savings Bank." Such persons must be citizens of the United States; at least four-fifths of them must be residents of this state, and at least two-thirds of them must be residents of the county where the bank is to be located and its business transacted, they shall subscribe and acknowledge an incorporation certificate in triplicate which shall specifically state

(1) The name by which the savings bank is to be known, which name shall include the words "mutual savings bank";

(2) The place where the bank is to be located, and its business transacted, naming the city or town and county;

(3) The name, occupation, residence and postoffice address of each incorporator;

(4) The sums which each incorporator will contribute in cash to the initial guaranty fund, and to the expense fund respectively, as provided in sections 3345–7 and 3345–8.

(5) A declaration that each incorporator will accept the responsibilities and faithfully discharge the duties of a trustee of the savings bank, and is free from all the disqualifications specified in section 3345–28. [L. '15, p. 549, § 1. Cf. L. '05, p. 245, § 2.]

§ 3345–2. Notice of Intention.—At the time of executing the incorporation certificate, the proposed incorporators shall sign a notice of intention to organize the mutual savings bank, which shall specify their names, the name of the proposed corporation, and its location as set forth in the incorporation certificate. The original of such notice shall be filed in the office of the state examiner within sixty days after the date of its execution, and a copy thereof shall be published at least once a week for four successive weeks in a newspaper designated by the state bank examiner, the publication to be

commenced within thirty days after such designation. At least fifteen days before the incorporation certificate is submitted to the examiner for examination, as provided in the section next following, a copy of such notice shall be served upon each savings bank doing business in the city or town named in the incorporation certificate, by mailing such copy (postage prepaid) to such bank. [L. 15, p. 550, § 2.]

§ 3345–3. Submission of Certificate—Proof of Notice.—After the lapse of at least twenty-eight days from the date of the first due publication of the notice of intention to incorporate, and within ten days after the date of the last publication thereof, the incorporation certificate executed in triplicate shall be submitted for examination to the state examiner at his office in Olympia, with affidavits showing due publication and service of the notice of intention to organize prescribed in section 3345–2. [L. '15, p. 550, § 3.]

§ 3345–4. Examination—Approval—Appeal—Filing Certificates.—When any such certificate shall have been filed for examination the state examiner shall thereupon ascertain from the best source of information at his command, and by such investigation as he may deem necessary, whether the character, responsibility and general fitness of the person or persons named in such certificate are such as to command confidence and warrant belief that the business of the proposed bank will be honestly and efficiently conducted in accordance with the intent and purpose of this act, and whether the public convenience and advantage will be promoted by allowing such proposed bank to be incorporated and engage in business, and whether greater convenience and access to a savings bank would be afforded by any considerable number of depositors by opening a mutual savings bank in the place designated, whether the population in the neighborhood of such place, and in the surrounding country, affords a reasonable promise of adequate support for the proposed bank, and whether the contributions to the initial guaranty fund and expense fund have been paid in cash. After the state examiner shall have satisfied himself by such investigation whether it is expedient and desirable to permit such proposed bank to be incorporated and engage in business, he shall within sixty days after the date of the filing of such certificate for examination indorse upon each of the triplicates thereof over his official signature the word "Approved" or the word "Refused," with the date of such indorsement. In case of refusal he shall forthwith return one of the triplicates so indorsed to the proposed incorporators from whom such certificate was received. From the state examiner's refusal to issue a certificate of authorization, the applicants or a majority of them, may within thirty days from the

date of the filing of the certificate of refusal with the secretary of state, appeal to a board of appeal composed of the governor, the attorney general and the state examiner, by filing in the office of the state examiner a notice that they appeal to such board from his refusal. The procedure upon the appeal shall be such as the board may prescribe, and its determination shall be certified, filed and recorded in the same manner as the state examiner's, and shall be final. In case of approval, he shall forthwith give notice thereof to the proposed incorporators, and file one of the triplicate certificates in his own office, shall transmit another triplicate to the county auditor of the county in which such bank is to be located and shall transmit the third triplicate to the secretary of state. Upon receipt from the proposed incorporators of the same fees as are required for filing and recording other incorporation certificates, the county auditor and the secretary of state shall file said certificate in their respective offices, and the secretary of state shall record the same. Upon the filing of said incorporation certificate in triplicate approved as aforesaid in the offices of the state bank examiner, the secretary of state and county auditor as hereinbefore directed, the persons named therein and their successors shall thereupon become and be a corporation, which corporation shall have the powers and be subject to the duties and obligations prescribed in this act, and its corporate existence shall continue for the period of fifty years from the date of the filing of such certificates, unless sooner terminated pursuant to law, but such corporation shall not receive deposits or engage in business until authorized so to do by the state examiner as provided in the next section following. [L. '15, p. 550, § 4.]

§ 3345–5. Authorization Certificates — Issuance and Filing.—Before any mutual savings bank shall be authorized to do any business the state examiner shall be satisfied that such corporation has in good faith complied with all the requirements of law and fulfilled all the conditions precedent to commencing business imposed by this act. If satisfied that such corporation has in good faith complied with all the requirements of law, and fulfilled all the conditions precedent to commencing business imposed by this act, the state examiner shall within six months after the date upon which such proposed organization certificate was filed with him for examination, but in no case after the expiration of that period, issue under his hand and official seal in quadruplicate an authorization certificate to such corporation. Such authorization certificate shall state that the corporation therein named has complied with all the requirements of law, that it is authorized to transact at the place designated in its certificate of incorporation, the business of a mutual savings bank. One of the quadruplicate authorization certificates shall be transmitted by the

state examiner to the corporation therein named, and the other three authorization certificates shall be filed by the state examiner in the same public offices where the certificate of incorporation is filed, and shall be attached to said incorporation certificate. [L. '15, p. 552, § 5.]

§ 3345–6. Reception of Deposits — Conditions Precedent.—Before such corporation shall be authorized to receive deposits or transact business other than the completion of its organization, the state examiner shall be satisfied that:

(1) The incorporators shall have made the deposit of the initial guaranty fund required by this act.

(2) That the incorporators have made the deposit of the expense fund required by section 3345–8, and if the state examiner shall so require, shall have entered into the agreement or undertaking with the state examiner, and shall have filed the same and the security therefor as prescribed in said section.

(3) That said corporation has transmitted to the state examiner the name, residence and postoffice address of each officer of the corporation.

(4) That its certificate of incorporation in triplicate has been filed in the respective public offices designated in this act. [L. '15, p. 553, § 6.]

§ 3345–7. Guaranty Fund.—Before any mutual savings bank shall be authorized to do business, its incorporators shall create a guaranty fund for the protection of its depositors against loss on its investments whether arising from depreciation in the market value of its securities or otherwise.

(1) Such guaranty fund shall consist of payments in cash made by the original incorporators and of all sums credited thereto from the earnings of the savings bank as hereinafter required.

(2) The incorporators shall deposit to the credit of such savings bank in cash as an initial guaranty fund at least five thousand dollars.

(3) Prior to the liquidation of any such savings bank such guaranty fund shall not be in any manner encroached upon, except for losses and the repayment of contributions made by incorporators or trustees as hereinafter provided, until such fund together with undivided profits exceeds twenty-five per centum of the amount due depositors.

(4) The amounts contributed to such guaranty fund by the incorporators or trustees shall not constitute a liability of the savings bank, except as hereinafter provided, and any loss sustained by the savings bank in excess of that portion of the guaranty fund created from earnings may be charged against such contributions pro rata. [L. '15, p. 553, § 7.]

§ 3345–8. Expense Fund — Security.—Before any mutual savings bank shall be authorized to do business, its incorporators shall create an expense fund from which the expense of organizing such savings bank and its operating expenses may be paid, until such time as its earnings are sufficient to pay its operating expenses in addition to such dividends as may be declared and credited to its depositors from its earnings. The incorporators shall deposit to the credit of such savings bank in cash as an expense fund the sum of five thousand dollars. They shall also enter into such an agreement or undertaking with the state examiner as trustee for the depositors with the savings bank as he may require to make such further contributions in cash to the expense fund of such savings bank as may be necessary to pay its operating expenses until such time as it can pay them from its earnings, in addition to such dividends as may be declared and credited to its depositors. Such agreement or undertaking shall fix the maximum liability assumed thereby which shall be a reasonable amount approved by the state examiner and the same shall be secured to his satisfaction, which security in his discretion may be by a surety bond executed by a domestic or foreign corporation authorized to transact within this state the business of surety. The agreement or undertaking and security shall be filed in the office of the state examiner. Such agreement or undertaking and such security need not be made or furnished unless the state examiner shall require the same. The amounts contributed to the expense fund of said savings bank by the incorporators or trustees shall not constitute a liability of such savings bank except as hereinafter provided. [L. '15, p. 554, § 8.]

§ 3345–9. Repayment of Contributions.—Contributions made by the incorporators or trustees to the expense fund may be repaid pro rata to the contributors from that portion of the guaranty fund created from earnings whenever such payments will not reduce the guaranty fund below five per centum of the total amount due depositors.

(1) In case of the liquidation of the savings bank before such contributions to the expense fund have been repaid, any contributions to the expense fund remaining unexpended after the payment of the expenses of liquidation may be repaid to the contributors pro rata.

(2) Whenever the contributions of the incorporators or trustees to the expense fund of such savings bank have been returned to them, the contributions made to the guaranty fund by incorporators or trustees may be returned to them pro rata from that portion of the guaranty fund created from the earnings of the savings bank; Provided, that such repayments will not reduce the earned portion of the guaranty fund below five per centum of the amount due deposi-

tors. In case of liquidation of the savings bank before such contributions to the guaranty fund have been repaid, any portion of such contributions not needed for the payment of the expenses of liquidation, and the payment of depositors in full, and the repayment of contributions to the expense fund, may be repaid to the contributors pro rata. [L. '15, p. 554, § 9.]

§ 3345–10. Powers of Bank.—Every mutual savings bank incorporated under this act shall have, subject to the restrictions and limitations contained in this act, the following powers:

(1) To receive deposits of money, to invest the same in the property and securities prescribed in this act, to declare dividends in the manner prescribed in this act, and to exercise by its board of trustees or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of a savings bank.

(2) To issue transferable certificates showing the amounts contributed by any incorporator, or trustee, to the guaranty fund of such bank, or for the purpose of paying its expenses. Every such certificate shall show that it does not constitute a liability of such savings bank, except as otherwise provided in this act.

(3) To purchase, hold and convey real property as prescribed in section 3345–11.

(4) To pay depositors as hereinafter provided, and when requested by them, by drafts upon deposits to the credit of the savings bank in any city in the United States, and to charge current rates of exchange for such drafts.

(5) To borrow money in an emergency for the purpose of repaying depositors, and to pledge or hypothecate securities as collateral for loans so obtained, under the conditions prescribed in this act.

(6) To collect or protest promissory notes or bills of exchange owned by such bank or held by it as collateral, and remit the proceeds of the collections by drafts upon deposits to the creditor of the savings bank in any city in the United States, and to charge the usual rates or fees for such collection and remittance for such protest.

(7) To sell gold or silver received in payment of interest or principal of obligations owned by the savings bank, or from depositors in the ordinary course of business.

(8) To elect or appoint in such manner as it may determine all necessary or proper officers, agents, boards and committees, to fix their compensation, subject to the provisions of this act, and to define their powers and duties, and to remove them at will.

(9) To make and amend by-laws consistent with law for the management of its property and the conduct of its business.

(10) To wind up and liquidate its business in accordance with this act.

(11) To adopt and use a common seal and to alter the same at pleasure.

(12) To do all other acts authorized by this act. [L. '15, p. 555, § 10.]

§ 3345–11. Investment of Moneys.—A mutual savings bank may invest the moneys deposited therein, the sums credited to the guaranty fund thereof, and the income derived therefrom in the following property and securities, and no others, and subject to the following restrictions:

First—Public Funds.

(a) The bonds or interest bearing notes or obligations of the United States or those for which the faith of the United States is pledged to provide for the payment of the interest and principal, including bonds of the District of Columbia.

(b) The bonds or interest bearing obligations of this state issued pursuant to the authority of any law of this state.

(c) The bonds or interest bearing obligations of any other state of the United States upon which there is no default, and upon which there has been no default for more than ninety days: Provided, that within ten years immediately preceding the investment such state has not been in default for more than ninety days in the payment of any part of principal or interest of any debt duly authorized by the legislature of such state to be contracted by such state since January 1st, 1878.

(d) The valid bonds of any city, town, county, school district or port district in the state of Washington issued pursuant to law, and for the payment of which the faith and credit of such municipality, county or district is pledged, or valid warrants of such municipality, county or district drawing interest, and for which payment such municipality, county or district is liable.

(e) Bonds of any incorporated city situated in any other state of the United States: Provided, such city has a population as shown by the federal census next preceding the investment, of not less than forty-five thousand inhabitants, and was incorporated as a city at least twenty-five years prior to the making of the investment, and has not since January 1st, 1878, defaulted for more than ninety days in the payment of any part of principal or interest of any bond, note or other indebtedness, or effected any compromise of any kind with the holders thereof. If at any time the indebtedness of any such city, together with the indebtedness of any district (other than local

improvement district) or other municipal corporation or subdivision, except a county, which is wholly or in part included within the bounds or limits of said city, less its water debt and sinking fund, shall exceed seven per centum of the valuation of such city for purposes of taxation, its bonds shall thereafter, and until such indebtedness shall be reduced to seven per centum of such valuation, cease to be an authorized investment of the moneys of mutual savings banks.

(f) Bonds of any commercial waterway district in this state: Provided, the total obligations of such district by bonds, warrants or otherwise do not exceed ten per cent of the assessed valuation of the lands and improvements within such district: And provided further, that this authorization does not extend to the thirty per cent in amount of such bond issue last callable for payment.

(g) Bonds of any local improvement district of any city or town in this state, excepting as to any given issue the twenty-five per cent thereof in amount that will be last called for payment: Provided, that before any such bonds be purchased or taken as security the property of the district shall be examined and appraised by at least two trustees who shall report in writing their findings and recommendations; and no bonds shall be taken unless such report be favorable, nor in any event if the total assessment securing such issue exceeds fifty per cent of the value of the assessed property, exclusive of improvements, at the time the improvement was ordered, according to the valuation last placed upon it for general taxation: And provided further, that no bonds shall be taken when the improvement consists of grading only. Before investing in any such bonds, the bank shall carefully inquire into the validity thereof.

Second: The Following Bonds of Railroad Corporations:

(a) The mortgaged bonds of any railroad corporation incorporated under the laws of the United States or any of the states thereof which actually owns in fee not less than five hundred miles standard gauge railway, exclusive of sidings, within the United States: Provided, that at no time within five years next preceding the date of any such investment such railroad corporation shall have failed regularly and punctually to pay the matured principal and interest of all its mortgaged indebtedness, and in addition thereto regularly and punctually to have paid in dividends to its stockholders during each of said five years, an amount at least equal to four per centum upon all its outstanding capital stock: And provided further, that during said five years the gross earnings in each year from the operations of said company, including therein the gross earnings of all railroads leased and operated, or controlled and operated by said company, and also including in said earnings the amount received directly or indirectly by said company from the sale of coal from mines owned or

controlled by it, shall not have been less in amount than five times the amount necessary to pay the interest payable during that year upon its entire outstanding indebtedness, and the rentals for said year of all leased lines: And provided further, that all bonds authorized for investment by this paragraph shall be secured by a mortgage which is at the time of making such investment, or was at the date of the execution of said mortgage (one) a first mortgage upon not less than seventy-five per centum of the railway owned in fee by the company issuing such bonds, exclusive of sidings at the date of such mortgage, or (two) a refunding mortgage issued to retire all prior lien mortgage debts of such company outstanding at the time of such investment and covering at least seventy-five per centum of the railway owned in fee by such company at the date of such mortgage. But no one of the bonds so secured shall be a legal investment in case the mortgage securing the same shall authorize a total issue of bonds which, together with all outstanding prior debts of such company, after deducting therefrom in case of a refunding mortgage the bonds reserved under the provisions of such mortgage to retire prior debts at maturity, shall exceed three times the outstanding capital stock of such company at the time of making such investment. And no mortgage is to be regarded as a refunding mortgage under the provisions of this paragraph unless the bonds which it secures mature at a later date than any bond which it is given to refund, nor unless it covers a mileage at least twenty-five per centum greater than is covered by any one of the prior mortgages so to be refunded.

(b) Any railway mortgage bonds which would be a legal investment under the provisions of paragraph (a) of this subdivision, except for the fact that the railroad corporation issuing such bonds actually owns in fee less than five hundred miles of road: Provided, that during five years next preceding the date of any such investment the gross earnings in each year from the operations of said corporation, including the gross earnings of all lines leased and operated or controlled and operated by it, shall not have been less than ten million dollars.

(c) The mortgage bonds of a railroad corporation described in the foregoing paragraphs (a) or (b) or the mortgage bonds of a railroad owned by such corporation assumed or guaranteed by it by indorsement on such bonds, provided such bonds are prior to and are to be refunded by a general mortgage of such corporation, the bonds secured by which are made a legal investment under the provisions of said paragraph (a) or (b): And provided further, that said general mortgage covers all the real property upon which the mortgage securing such underlying bonds is a lien.

Bonds which have been or shall become legal investments for mutual savings banks under any of the provisions of this section shall

not be rendered illegal as investments though the property upon which they are secured has been or shall be conveyed to another corporation, if the consolidated or purchasing corporation shall assume the payment of such bonds, and shall continue to pay regularly interest or dividends or both upon the securities issued against, or in exchange for or to acquire the stock of the company consolidated to an amount at least equal to four per centum per annum upon the capital stock (outstanding at the time of such consolidation or purchase) of the corporation which has issued or assumed such bonds.

Not more than twenty-five per centum of the assets of any savings bank shall be loaned or invested in railroad bonds, and not more than five per cent of the assets of any savings bank shall be invested in the bonds of any one railroad corporation. In determining the amount of the assets of any savings bank under the provisions of this subdivision its securities shall be estimated in the manner prescribed by section 3345–26.

Street railroad corporations shall not be considered railroad corporations within the meaning of this act.

Third—Loans on Personal Security.

Promissory notes payable to the order of the savings bank upon demand, secured by the pledge or assignment of any of the bonds, warrants or interest bearing obligations hereinbefore in this section mentioned, or secured by pledge or assignment of one or more real estate mortgages of the class described in subdivision fourth of this section, but no such loan shall exceed ninety per centum of the cash market value of such securities so pledged. Should any of the securities so held in pledge depreciate in value after the making of such loan, the savings bank shall require an immediate payment of such loan, or of a part thereof, or additional security therefor, so that the amount loaned thereon shall at no time exceed ninety per cent of the market value of the securities so pledged for such loan.

Fourth—Real Estate Mortgage Loans.

Investments may be made in loans secured by first mortgage on real estate subject to the following restrictions:

In all cases of loans upon real property a note or bond secured by a mortgage on the real estate upon which the loan is made, together with a complete abstract of title for such real estate signed by the person or corporation furnishing such abstract of title, (which abstract shall be examined by a competent attorney at law, selected by the bank, and his opinion furnished approving the title and showing that the mortgage is a first lien) or a policy of title insurance of a reliable title insurance company authorized to insure titles within this state shall be furnished to the savings bank by the borrower.

The real estate subject to such first mortgage must be improved to such extent that the net annual income thereof, or reasonable annual rental value thereof in the condition existing at the time of making the loan, is sufficient to pay the annual interest accruing on such loan in addition to taxes and insurance, and all accruing charges and expenses. No loan on real estate shall be for an amount greater than fifty per centum of the value of such real estate including improvements. The mortgage shall contain provisions requiring the mortgagor to maintain insurance on the buildings on the mortgaged premises to such reasonable amount as shall be stipulated in the mortgage, the policy to be payable in case of loss to the savings bank, and to be deposited with it. A loan may be made on real estate which is to be improved by a building or buildings to be constructed with the proceeds of such loan, if it is arranged that such proceeds will be used for that purpose and that when so used the property will be improved to the extent required by this section.

Not more than seventy-five per centum of the assets of any savings bank shall be invested in mortgage loans.

No mortgage loan or renewal or extension thereof shall be made except upon written application showing the date, name of applicant, amount of loan requested, and the security offered, nor except upon the written report of at least two members of the board of investment of the bank certifying on such application according to their best judgment the value of the property to be mortgaged and recommending the loan, and the application and written report thereon shall be filed and preserved with the savings bank records. Every mortgage and every assignment of a mortgage taken or held by a savings bank shall be taken and held in its own name, and shall immediately be recorded in the office of the county auditor of the county in which the mortgaged property is located.

Fifth—Real Estate as Follows:

(a) A tract of land whereon there is or may be erected a building or buildings suitable for the convenient transaction of the business of the savings bank, from portions of which not required for its own use a revenue may be derived. The investment in such tract of land to be subject to the conditions prescribed in section 3345–12.

(b) Such as shall be conveyed to such savings bank in satisfaction of debts previously contracted in the course of its business.

(c) Such as it shall purchase at sales under judgments, decrees or mortgages held by it. [L. '15, p. 556, § 11.]

§ 3345–12. Bank Building—Real Estate.—The cost of the land and building or buildings for the transaction of the business of a savings bank shall in no case exceed twenty-five per centum of the guaranty fund of such savings bank, except with the approval of the state

examiner; and before the purchase of such property is made, or the erection of a building or buildings is commenced, the estimate of the cost thereof and completion of the building or buildings shall be submitted to and approved by the state examiner.

All real estate purchased by any such bank, or taken by it in satisfaction of debts due it, shall be conveyed to it directly by name, and the conveyance shall be immediately recorded in the office of the proper recording officer of the county in which such real estate is located.

Every parcel of real estate purchased or acquired by any such bank shall be sold by it within five years from the date on which it shall have been acquired (the time of acquisition in the case of real estate subject to redemption being understood to be the date on which the right of redemption expires) unless

(1) There shall be a building thereon occupied by the saving bank as its offices, or

(2) The state examiner on application of the board of trustees shall have extended the time within which such sale shall be made. [L. '15, p. 563, § 12.]

§ 3345–13. Merchandising—Exchange—Borrowing—Certificates of Deposit.—(1) Such bank shall not purchase, deal or trade in any goods, wares, merchandise or commodities whatsoever except such personal property as may be necessary for the transaction of its authorized business.

(2) Such bank shall not, nor shall any officer thereof in his attendance upon the business of such bank, in any manner buy or sell exchange on other banks or bankers or buy or sell gold or silver except as in this act expressly authorized.

(3) Such banks shall not

(1) Borrow money or pledge or hypothecate any of its securities as collateral for the repayment of money borrowed except with the written approval of the state examiner, and in pursuance of a resolution adopted by a vote of a majority of its board of trustees duly entered upon their minutes whereon shall be recorded by ayes and noes the vote of each trustee, a certified copy of such minutes being filed with the state examiner;

(2) Make or issue any certificate of deposit payable either on demand or at a fixed day. [L. '15, p. 564, § 13.]

§ 3345–14. Depositaries.—No such bank shall deposit any of its funds with any other moneyed corporation unless the latter has been designated as a depositary for the saving bank's funds by vote of a majority of the trustees of the savings bank, exclusive of any trustee who is an officer, director or trustee of the depositary so designated. [L. '15, p. 564, § 14.]

§ 3345–15. Officing With Other Banks—Place of Business.—(1) A savings bank shall not do business or be located in the same room with, or in a room connecting with any other bank, trust company or national banking association.

(2) No savings bank or any officer or director thereof shall receive deposits or transact any of its usual business at any place other than its principal place of business. [L. '15, p. 564, § 15.]

§ 3345–16. Wrongful Entry of Assets—Bookkeeping.—(1) No bank shall by any system of accounting, or any device of bookkeeping, directly or indirectly, enter any of its assets upon its books in the name of any other individual, partnership, unincorporated association, or corporation, or under any title or designation that is not in accordance with the actual facts.

(2) The bonds, notes, mortgages or other interest bearing obligations purchased or acquired by a savings bank, shall not be entered on its books at more than the actual cost thereof, and shall not thereafter be carried upon its books for a longer period than until the next declaration of dividends, or in any event for more than one year, at a valuation exceeding their present cost as determined by amortization, that is, by deducting from the cost of any such security purchased for a sum in excess of the amount payable thereon at maturity and charging to "profit and loss" a sufficient sum to bring it to par at maturity, or adding to the cost of any such security purchased at less than the amount payable thereon at maturity and crediting to "profit and loss" a sufficient sum to bring it to par at maturity.

(3) No such bank shall enter, or at any time carry on its books the real estate and the building or buildings thereon used by it as its place of business at a valuation exceeding their actual cost to such bank.

(4) Every such bank shall conform its methods of keeping its books and records to such orders in respect thereof as shall have been made and promulgated by the state examiner. Any officer, agent, or employee of any savings bank who refuses or neglects to obey any such order shall be punished as hereinafter provided. [L. '15, p. 564, § 16.]

§ 3345–17. Limit on Deposits — Return. —(1) The aggregate amount of deposits to the credit of any individual at any time, including in such aggregate all deposits credited to him as trustee or beneficiary of any trust, and all deposits credited to him and another or others in either joint or several form, shall not exceed three thousand dollars, exclusive of dividends. Additional accounts may, however, be maintained in the name of parent as trustee for a dependent or minor child, and in the name of a child as trustee for a

dependent parent: Provided, however, that not more than two hundred and fifty dollars shall be deposited to any such additional account during any six months' period.

(2) The aggregate amounts of deposits to the credit of any society or corporation at any time shall not exceed five thousand dollars, exclusive of dividends, unless such deposit has been made pursuant to order of a court of competent jurisdiction, and a certified copy of the order filed with the bank.

(3) Every such bank may further limit the aggregate amount which an individual, or any corporation or society, may deposit to such sum as such bank may deem expedient to receive; and may in its discretion refuse to receive a deposit, or may at any time return all or any part of any deposit. [L. '15, p. 565, § 17.]

§ 3345–18. Payment of Deposits and Dividends — Notice — Pass-books.—The sums deposited with any such bank, together with any dividends credited thereto, shall be repaid to the depositors thereof respectively, or to their legal representatives, after demand in such manner, and at such times, and under such regulations, as the board of trustees shall prescribe, subject to the provisions of this and the next following section. Such regulations shall be posted in a conspicuous place in the room where the business of such savings bank shall be transacted, and shall be printed in the pass-books or other evidence of deposit furnished by it, and shall be evidence between such bank and the depositors holding the same of the terms upon which the deposits therein acknowledged are made.

(1) Such bank may at any time by a resolution of its board of trustees require a notice of not more than six months before repaying deposits, in which event no deposit shall be due or payable until the required notice of intention to withdraw the same shall have been personally given by the depositor: Provided, that such bank at its option may pay any deposit or deposits before the expiration of such notice. But no bank shall agree with its depositors or any of them in advance to waive the requirement of notice as herein provided.

(2) Except as provided in subdivision (3) of this section the savings bank shall not pay any dividend, or deposit, or portion thereof, or any check drawn upon it by a depositor unless the pass-book of the depositor be produced, and the proper entry be made therein at the time of the payment.

(3) The board of trustees of any such bank may by its by-laws provide for making payments in cases of loss of pass-book, or other exceptional cases where the pass-books cannot be produced without loss or serious inconvenience to depositors, the right to make such payments to cease when so directed by the state examiner upon his being satisfied that such right is being improperly exercised by any

such bank; but payments may be made at any time upon the judgment or order of a court.

(4) If any person shall die leaving in any such bank an account on which the balance due him shall not exceed two hundred and fifty dollars and no executor or administrator of his estate shall be appointed, such bank may in its discretion pay the balance of his acount to his widow (or if the decedent was a married woman, then to her husband), next of kin, funeral director or other creditor who may appear to be entitled thereto. As a condition of such payment such bank may require proof by affidavit as to the parties in interest, the filing of proper waivers, the execution of a bond of indemnity with surety or sureties by the person to whom the payment is to be made, and a proper receipt and acquittance for such payment. For any such payment pursuant to this section such bank shall not be liable to the decedent's executor or administrator thereafter appointed, unless the payment shall have been made within one year after the decedent's death, and an action to recover the amount shall have been commenced within one year after the date of payment. [L. '15, p. 566, § 18.]

§ 3345–19. Deposits of Minors—Joint Deposits—Payment.—(1) When any deposit shall be made by or in the name of any minor, the same shall be held for the exclusive right and benefit of such minor, and free from the control or lien of all other persons, except creditors, and shall be paid, together with dividends thereon, to the person in whose name the deposit shall have been made, and his receipt or acquaintance shall be a valid discharge.

(2) After any deposit shall be made by any person in the names of such depositor and another person and in form to be paid to either or the survivor of them, such deposit and any additions thereto made by either of such persons after the making thereof, shall become the property of such persons as joint tenants, and the same, together with all dividends thereon, shall be held for the exclusive use of such persons and may be paid to either during the lifetime of both or to the survivor after the death of one of them, and such payment and the receipt or acquittance of the one to whom such payment is made shall be a valid and sufficient release and discharge to such savings bank for all payments made on account of such deposit prior to the receipt by such savings bank of notice in writing not to pay such deposit in accordance with the terms thereof. The making of the deposit in such form shall, in the absence of fraud or undue influence, be conclusive evidence, in any action or proceeding to which either such savings bank or the surviving depositor is a party, of the intention of both depositors to vest title to such deposit and the additions thereto in such survivor. [L. '15, p. 567, § 19.]

§ 3345–20. Reserve Fund—Deposit of Reserves.—(1) The trustees of every such bank shall as soon as practicable invest the moneys deposited with them in the securities prescribed in section 3345–11, except as hereinafter provided. For the purpose of paying withdrawals in excess of receipts, and meeting accruing expenses, or for the purpose of awaiting a more favorable opportunity for judicious investment, any such bank may keep on hand, or on deposit in any bank or trust company in this state organized under any law of this state, or of the United States, an available fund not exceeding twenty per centum of the aggregate amount credited to its depositors, but the sum deposited by any such savings bank in any one bank or trust company shall not exceed twenty-five per centum of the paid up capital and surplus of the bank or trust company in which the deposit is made, and no more than five per centum of the aggregate amount credited to the depositors of any such savings bank shall be deposited in a bank or trust company of which a trustee of such savings bank is a director. [L. '15, p. 568, § 20.]

§ 3345–21. Guaranty Fund—Purpose.—The contributions of the incorporators or trustees of any such savings bank under the provisions of section 3345–7, and the sums credited thereto from its net earnings under the provisions of section 3345–24 shall constitute a guaranty fund for the security of its depositors, and shall be held to meet any contingency or loss in its business from depreciation of its securities or otherwise, and for no other purpose except as provided in section 3345–9, hereof, and subdivision 5 of section 3345–25. [L. '15, p. 569, § 21.]

§ 3345–22. Determination of Amount.—(1) To determine the amount of the guaranty fund of a savings bank its total liabilities due and accrued, its undivided profits and its net earnings since the last declaration of dividends shall be subtracted from its total assets. The value of its assets for the purpose of this calculation shall be stated as follows:

(a) Its interest bearing bonds, or other obligations shall not be valued above the estimated market value thereof as last determined by the state examiner.

(b) The value of its real estate shall not in any event be estimated above cost, and if such real estate has been acquired by foreclosure, judgment or decree the value of such real estate so acquired shall not be estimated above its actual cash value as determined by written appraisal signed by at least three trustees of such savings bank and filed with it.

(c) Such assets shall be excluded as have been disallowed by the state examiner or the trustees of such bank and also any debts owing to it which shall have remained due without prosecution and upon

which no interest shall have been paid for more than one year, or on which a judgment has been recovered which shall have remained unsatisfied for more than two years, unless the state examiner upon application by such savings bank have fixed a valuation at which such debts may be carried as an asset, or unless such debts are secured by first mortgage upon real estate, in which latter case they may be carried at the actual cash value of such real estate as determined by written appraisal signed by at least three trustees of such savings bank and filed with it.

(2) The amount of the guaranty fund of a savings bank at the close of any dividend period may be determined by adding to the guaranty fund at the beginning of such period any appreciation in the estimated market value of its securities resulting from a revaluation thereof by the state examiner, the sums recovered on items previously charged to it and any amounts allowed by the state examiner on account of assets previously disallowed and charged to it, and deducting therefrom all losses sustained by the savings bank during such period. In the computation of losses all items shall be included which shall have been disallowed by its board of trustees or by the state examiner, together with any depreciation in the value of its securities below their estimated market value as last fixed by the state examiner, and all debts owing to it upon which no interest shall have been paid for one year or on which a judgment has been recovered which shall have remained unsatisfied for two years, unless the state examiner upon the application of the savings bank shall have fixed a value at which such debts may be allowed or unless such debts are secured by first mortgage upon real estate, in either of which events only the amounts by which such debts exceed the value allowed by the state examiner or the cash value of the real estate securing them as determined by written appraisal signed by at least three trustees of such savings bank and filed with it, need be so deducted. [L. '15, p. 569, § 22.]

§ 3345–23. Earnings—Determination.—(1) Gross Earnings. To determine the amount of gross earnings of a savings bank during any dividend period the following items may be included:

(a) All earnings actually received during such period, less interest accrued and unpaid included in the last previous calculation of earnings;

(b) Interest accrued and unpaid upon debts owing to it secured by collateral as authorized by this article, upon which there has been no default for more than one year, and upon corporate bonds, or other interest bearing obligations owned by it upon which there is no default.

(c) The sums added to the cost of securities purchased for less than par as a result of amortization.

(d) Any profits actually received during such period from the sale of securities, real estate or other property owned by it.

(2) Net Earnings. To determine the amount of its net earnings for such dividend period the following items shall be deducted from gross earnings:

(a) All expenses paid or incurred, both ordinary and extraordinary, in the transaction of its business, the collection of its debts and the management of its affairs, less expenses incurred and interest accrued upon its debts deducted at the last previous calculation of net earnings for dividend purposes;

(b) Interest paid or accrued and unpaid upon debts owing by it;

(c) The amounts deducted through amortization from the cost of bonds or other interest bearing obligations purchased above par in order to bring them to par at maturity;

(d) Any losses that may have been sustained by it in excess of its guaranty fund and undivided profits.

The balance thus obtained shall constitute the net earnings of such savings bank for such period. [L. '15, p. 570, § 23.]

§ 3345–24. Deficit in Guaranty Fund—Replacement—Dividends.—If at the close of any dividend period the guaranty fund of any savings bank be less than ten per centum of the amount due to depositors there shall be deducted from its net earnings for such period and credited to its guaranty fund not less than five per centum and not more than ten per centum of its net earnings during the calendar year next preceding, or so much of such percentages as will not compel it to reduce its dividends to depositors below the rate of three and one-half per centum per annum. The amount of net earnings remaining after such deduction for the guaranty fund and its undivided profits shall be available for the declaration of dividends for such period. While the trustees of such a savings bank are paying its expenses or any portion thereof the amounts to be credited to its guaranty fund shall be computed at the same percentage upon the total dividends credited to its depositors instead of upon its net earnings. If the guaranty fund accumulated from earnings shall equal or exceed ten per centum of the amount due to depositors, the minimum dividend shall be four per centum: Provided, that the net earnings for such period are sufficient therefor. [L. '15, p. 571, § 24.]

§ 3345–25. Dividends—Rate—Declaration—Liability.—(1) Every savings bank shall regulate the rate of dividend not to exceed six per centum per annum upon the deposits therewith, in such manner that depositors shall receive as nearly as may be all the earnings

of the savings bank after transferring the amount required by section 3345–24, hereof, and such further amounts as its trustees may deem it expedient and for the security of the depositors to transfer to the guaranty fund which to the amount of ten per centum of the amount due its depositors the trustees shall gradually accumulate and hold. Such trustees may also deduct from its net earnings, and carry as undivided profits for the purpose of maintaining its rate of dividends, such additional sums as they may deem wise.

(2) Every savings bank may classify its depositors according to the character, amount or duration of their dealings with the savings bank, and may regulate the dividends in such manner that each depositor shall receive the same ratable portion of dividends as all others of his class.

(3) Unimpaired contributions to the initial guaranty fund and to the expense fund, made by the incorporators or trustees of such savings bank, shall be entitled to have dividends apportioned thereon, which may be credited and paid to such incorporators or trustees. Whenever the guaranty fund of any such savings bank is sufficiently large to permit the return of such contributions, the contributors may receive dividends thereon not theretofore credited or paid at the same rate paid to depositors.

(4) A savings bank shall not

(a) Declare, credit or pay any dividend on any deposit except as authorized by a vote of a majority of the board of trustees duly entered upon their minutes, whereon shall be recorded the ayes and nays upon each vote.

(b) Pay any dividend other than the regular quarterly or semi-annual dividend, or the extra dividend prescribed in subdivision 6 of this section.

(c) Declare, credit or pay dividends on any deposit for a longer period than the same has been deposited: Provided, however, that deposits made not later than the tenth business day of the month commencing any semi-annual dividend period or the third business day of any month, or withdrawn upon one of the last three business days of the month ending any quarterly or semi-annual dividend period, may have dividends declared upon them for the whole of the period or month when they were so deposited or withdrawn: And provided further, that, if the by-laws so provide, accounts closed between dividend periods may be credited with dividends at the rate of the last dividend, computing from the 1st dividend period to the date when closed.

(5) Whenever any dividend shall, except as provided in subdivision 6 of this section, be declared and credited in excess of profits earned and appearing to the credit of the savings bank since the last declaration of dividends, after making the deduction for expenses,

for amortization and for the guaranty fund as provided in sections 3345–16, 3345–24 and 3345–25, hereof, the trustees voting for such dividend shall be jointly and severally liable to such savings bank for the amount of such excess so declared and credited.

(6) The trustees of any savings bank whose undivided profits and guaranty fund, determined in the manner prescribed in section 3345–23, hereof, amount to more than twenty-five per centum of the amount due its depositors, shall at least once in three years divide equitably the accumulation beyond such twenty-five per centum as an extra dividend to depositors in excess of the regular dividend authorized. A notice posted conspicuously in a savings bank of a change in the rate of dividends shall be equivalent to a personal notice. [L. '15, p. 572, § 25.]

§ 3345–26. Surplus, How Determined.—In determining the per centum of par value surplus held by any savings bank, its interest bearing bonds shall not be estimated above their par value or above their market value if below par. Its bonds, notes and mortgages on which there are no arrears of interest for a longer period than six months shall be estimated at their face, and its real property at not above cost. But the value of such bonds, notes and mortgages, as are in arrears of interest for six months or more, and of all other investments not herein enumerated, shall be estimated according to the valuation placed thereon by the state examiner as provided in section 3345–22 hereof. [L. '15, p. 574, § 26.]

§ 3345–27. Misleading Advertisement of Surplus or Guaranty.—No savings bank shall put forth any sign or notice or publish or circulate any advertisement or advertising literature upon which or in which it shall be stated that such savings bank has a surplus or guaranty fund in excess of its market value surplus or guaranty fund as determined under the provisions of this act, unless the nature of the same be clearly made to appear. [L. '15, p. 574, § 27.]

§ 3345–28. Trustees—Qualifications.—(1) There shall be a board of trustees who shall have the entire management and control of the affairs of the savings bank. The persons named in the certificate of authorization shall be the first trustees. The board shall consist of not less than nine members nor more than thirty members.

(2) A person shall not be a trustee of a savings bank, if he

(a) Is not a resident of this state;

(b) Has been adjudicated a bankrupt or has taken the benefit of any insolvency law, or has made a general assignment for the benefit of creditors;

(c) Has suffered a judgment recovered against him for a sum of money to remain unsatisfied of record or unsecured on appeal for a period of more than three months;

(d) Is a trustee, officer, clerk or other employee of any other savings bank.

(3) Nor shall a person be a trustee of a savings bank solely by reason of his holding public office. [L. '15, p. 574, § 28.]

§ 3345–29. Oath of Trustee—Declarations of Incumbency.—(1) Each trustee, whether named in the certificate of authorization or elected to fill a vacancy, shall, when such certificate of authorization has been issued, or when notified of such election, take an oath that he will, so far as it devolves on him, diligently and honestly administer the affairs of the savings bank, and will not knowingly violate, or willingly permit to be violated any of the provisions of law applicable to such savings bank. Such oath shall be subscribed by the trustee making it and certified by the officer before whom it is taken, and shall be immediately transmitted to the state examiner and filed and preserved in his office.

(2) Prior to the first day of March in each year, every trustee of every savings bank shall subscribe a declaration to the effect that he is, at the date thereof, a trustee of the savings bank, and that he has not resigned, become ineligible, or in any other manner vacated his office as such trustee. Such declaration shall be acknowledged in like manner as a deed to be entitled to record and shall be transmitted to the state examiner and filed in his office prior to the tenth day of March in each year. [L. '15, p. 575, § 29.]

§ 3345–30. Officers.—The board of trustees shall elect from their number or otherwise, a president and two vice-presidents and such other officers as they deem fit. [L. '15, p. 575, § 30.]

§ 3345–31. Quorum—Meetings—Statements.—(1) A quorum at any regular or special or adjourned meeting of the board of trustees shall consist of not less than five of whom the president shall be one, except when he is prevented from attending by sickness or other unavoidable detention, when he may be represented in forming a quorum by the first vice-president, or in case of his absence for like cause, by the second vice-president; but less than a quorum shall have power to adjourn from time to time until the next regular meeting.

Regular meetings of the board of trustees shall be held at least once a month.

(2) The board of trustees shall by resolution duly recorded in the minutes, designate an officer or officers whose duty it shall be to prepare and submit to each trustee at each regular meeting of the board, or to an executive committee of not less than five members of such board, a written statement of all the purchases and sale of securities, and of every loan, made since the last regular meeting of the board,

describing the collateral to such indebtedness as of the date of meeting at which such statement is submitted; but such officer or officers may omit from such statement loans of less than one thousand dollars, except as hereinafter provided. Such statement shall also contain a list giving the aggregate of loans to each individual partnership, unincorporated association or corporation whose liability to the savings bank has been increased one thousand dollars or more since the last regular meeting of the board, together with a description of the collateral to such indebtedness held by the savings bank at the date of the meeting at which such statement is submitted. A copy of such statement, together with a list of the trustees present at such meeting, verified by the affidavit of the officer or officers charged with the duty of preparing and submitting such statement shall be filed with the records of the savings bank within one day after such meeting, and shall be presumptive evidence of the matters therein stated. [L. '15, p. 575, § 31.]

§ 3345–32. Compensation of Trustees.—(1) A trustee of a savings bank shall not directly or indirectly receive any pay or emolument for his attendance at meetings of the board, or for any other services as trustee, except as provided in this section.

(2) Trustees acting as officers of the savings bank, whose duties require and receive their regular and faithful attendance at the institution, and the trustees appointed as a committee to examine the vouchers and assets pursuant to section 3345–38, to perform the duties required by subdivision 2, of section 3345–31, or to render other special services as members of committees provided for in the by-laws, may receive such compensation as in the opinion of a majority of the board of trustees shall be just and reasonable; but such majority shall be exclusive of any trustee to whom such compensation shall be voted.

(3) An attorney for a savings bank, although he be a trustee thereof, may receive a reasonable compensation for his professional services, including examinations and certificates of title to real property on which mortgage loans are made by the savings bank; or if the savings bank requires the borrowers to pay all expenses of searches, examinations and certificates of title, including the drawing, perfecting and recording of papers, such attorney may collect of the borrower and retain for his own use and the usual fees for such services, excepting any commissions as broker or on account of placing or accepting such mortgage loans.

(4) If an officer or attorney of a savings bank shall receive, on any loan made by the savings bank, any commission which he is not authorized by this section to retain for his own use, he shall immediately pay the same over to the savings bank. [L. '15, p. 576, § 32.]

§ 3345–33. Changing Number of Trustees.—The board of trustees of every savings bank may, by resolution incorporated in its by-laws, increase or reduce the number of trustees named in the original charter or certificate of authorization.

(1) The number may be increased to a number designated in the resolutions and not exceeding thirty: Provided, that reasons therefor are shown to the satisfaction of the state examiner and his written consent thereto is first obtained.

(2) The number may be reduced to a number designated in the resolution but not more than thirty or less than nine. The reduction shall be effected by omissions to fill vacancies occurring in the board. [L. '15, p. 577, § 33.]

§ 3345–34. Restrictions on Trustees.—(1) A trustee of a savings bank shall not

(a) Have any interest, direct or indirect, in the gains or profits of the savings bank, except to receive dividends upon the amounts contributed by him to the guaranty fund and the expense fund of the savings bank as provided in sections 3345–7 and 3345–8.

(b) Become a member of the board of directors of a bank, trust company or national banking association of which board enough other trustees of the savings bank are members to constitute with him a majority of the board of trustees.

(2) Neither a trustee nor an officer of a savings bank shall

(a) For himself or as agent or partner of another, directly or indirectly use any of the funds or deposits held by the savings bank, except to make such current and necessary payments as are authorized by the board of trustees.

(b) Receive directly or indirectly and retain for his own use any commission on or benefit from any loan made by the savings bank, or any pay or emolument for services rendered to any borrower from the savings bank in connection with such loan, except as authorized by section 3345–32.

(c) Become an indorser, surety or guarantor, or in any manner an obligor, for any loan made by the savings bank.

(d) For himself or as agent or partner of another, directly or indirectly borrow any of the funds or deposits held by the savings bank, or become the owner of real property upon which the savings bank holds a mortgage. A loan to or a purchase by a corporation in which he is a stockholder to the amount of fifteen per centum of the total outstanding stock, or in which he and other trustees of the savings bank hold stock to the amount of twenty-five per centum of the total outstanding stock, shall be deemed a loan to or a purchase by such trustee within the meaning of this section; except when the loan to or purchase by such corporation shall have occurred with-

out his knowledge or against his protest. A deposit in a bank shall not be deemed a loan within the meaning of this section. [L. '15, p. 577, § 34.]

§ 3345–35. Removal of Trustee—Proceedings.—(1) Whenever, in the judgment of three-fourths of the trustees, the conduct and habits of a trustee of any savings bank are of such character as to be injurious to such savings bank, or he has been guilty of acts that are detrimental or hostile to the interests of such savings bank, he may be removed from office, at any regular meeting of the trustees, by the affirmative vote of three-fourths of the total number thereof: Provided, however, that a written copy of the charges made against him shall have been served upon him personally at least two weeks before such meeting, that the vote of such trustees by ayes and nays shall be entered in the record of the minutes of such meeting, and that such removal shall receive the written approval of the state examiner, which shall be attached to the minutes of such meeting and form a part of the record.

(2) The office of a trustee of a savings bank shall immediately become vacant whenever he

(a) Shall fail to comply with any of the provisions of section 3345–29, relating to his official oath and declaration;

(b) Shall become disqualified for any of the reasons specified in subdivision 2 of section 3345–28;

(c) Shall have failed to attend the regular meetings of the board of trustees, or to perform any of his duties as trustee, for a period of six successive months, unless excused by the board of [for] such failure;

(d) Shall violate any of the provisions of section 3345–34 hereof imposing restrictions upon trustees and officers, except paragraph (c) of subdivision two hereof.

(3) A trustee who has forfeited or vacated his office shall not be eligible to re-election, except when the forfeiture or vacancy occurred solely by reason of his

(a) Failure to comply with the provisions of section 3345–29, relating to his official oath and declaration; or

(b) Neglect of his official duties as prescribed in paragraph (c) of subdivision two of this section; or

(c) Disqualification through becoming a nonresident, or becoming a trustee, officer, clerk or other employee of another savings bank, or becoming a director of a bank, trust company or national banking association under the circumstances specified in paragraph (b) of subdivision one of section 3345–34, and such disqualification shall have been removed. [L. '15, p. 578, § 35.]

§ 3345–36. Filling Vacancies.—A vacancy in the board of trustees shall be filled by the board as soon as practicable, at a regular meeting thereof. [L. '15, p. 580, § 36.]

§ 3345–37. Surety Bonds of Officers and Employees.—The trustees of every savings bank shall have power to require from the officers, clerks and agents thereof such security for their fidelity and the faithful performance of their duties as the trustees shall deem necessary. Such security may be accepted from any company authorized to furnish fidelity bonds and doing business under the laws of this state, and the premiums therefor may be paid as a necessary expense of said savings bank. [L. '15, p. 580, § 37.]

§ 3345–38. Semi-annual Examination of Books and Assets.—The trustees of every savings bank, by a committee of not less than three of their number, on or before the first days of January and July in each year, shall thoroughly examine the books, vouchers and assets of such savings bank, and its affairs generally. The statement or schedule of assets and liabilities reported to the state examiner for the first of January and July in each year, as provided in the section next following, shall be based upon such examinations, and shall be verified by the oath of a majority of the trustees making it; and the trustees of any savings bank may require such examination at such other times as they shall prescribe. The trustees shall, as often as once in each six months during each year, cause to be taken an accurate balance of their depositors' ledgers, and in their semi-annual report to the state examiner they shall state the fact that such balance has been taken, and the discrepancies, if any, existing between the amount due depositors, as shown by such balance, and the amount so due as shown by the general ledger. [L. '15, p. 580, § 38.]

§ 3345–39. Reports to Bank Examiner.—(1) Semi-annual report. On or before the first day of February and the first day of August in each year every savings bank shall make written report to the state examiner which report shall be in the form prescribed by the state examiner and shall contain a statement of its condition on the morning of the first day of January and of the first day of July in the said year, respectively.

(2) Contents of report. Every such report shall state the amount loaned upon note or bond and mortgage, and a list of all notes, bonds and mortgages upon which money has been loaned that have not been previously reported, which list shall show the location of the mortgaged premises. It shall contain a list of all notes, bonds and mortgages previously reported that since have been paid wholly or in part or have been foreclosed and the amounts of such payments and the proceeds of such foreclosures. It shall state the original cost,

date of purchase, date of maturity, stated rate of interest, the present cost after amortization, par value, and estimated market value, of all bond or warrant investments, designating each particular kind of bond or warrant; the amounts loaned upon promissory notes, upon the pledge of the different classes of securities authorized by this act, with a statement of the amount of the securities held as collateral for such loans; the amount invested in real estate, giving the cost of the same, and, in the case of real estate purchased at judicial sale or taken in satisfaction of debts due the savings bank, the actual cash value thereof as appraised by its trustees; the amount of cash on hand, and on deposit in banks or trust companies, and the amount deposited in each.

The present cost of bond investments shall be determined by amortization as provided in section 3345–16 hereof. The estimated market value of the bond investments shall be determined according to current values, subject to correction by the state examiner.

Such report shall state all the liabilities of the savings bank, the amount due to depositors, which shall include any dividend to be credited to them for the six months ending on the day as to which such report is made, and all other debts and claims against the savings bank,which are or may be a charge upon its assets.

Such report shall state the amount deposited and the amount withdrawn during the twelve months immediately preceding; the whole amount of profits or interest received or earned and the whole amount of dividends credited to depositors, together with the amount of each dividend and the rate at which it was declared, the number of accounts opened or reopened, the number closed during the preceding six months, the number of open accounts at the end of the period for which said report is made, and such other information as may be required by the state examiner.

(3) Verification. Every such report shall be verified by the oaths of the two principal officers in charge of the affairs of the savings bank at the time of such verification, which shall state that the report is true and correct in all respects to the best of the knowledge and belief of the persons verifying it, and that the usual business of the savings bank has been transacted at the location required by this act and not elsewhere.

(4) Special reports. Every savings bank shall also make such other special reports to the state examiner as he may from time to time require, which shall be in such form and filed at such date as may be prescribed by the state examiner and shall, if required by him, be verified in such manner as he may prescribe.

(5) Penalty. If any such savings bank shall fail to make any report mentioned by this section, on or before the day designated for the making thereof, or shall fail to include therein any matter required

by the state examiner to be stated, such savings bank shall forfeit to the state the sum of one hundred dollars for every day that such report shall be delayed or withheld, and for every day that it shall fail to report any such omitted matter, unless the time therefor shall have been extended by the state examiner, which extension he may grant, by a written order only, for not exceeding twenty days. [L. '15, p. 580, § 39.]

§ 3345–40. Official Communications from Bank Examiner.—Each official communication directed by the state examiner or one of his deputies to such savings bank or to any officer thereof, relating to an investigation or examination conducted by the banking department or containing suggestions or recommendations as to the conduct of the business of the savings bank, shall be submitted by the officer receiving it to the board of trustees at the next meeting of such board, and duly noted in the minutes of the meetings of such board. [L. '15, p. 582, § 40.]

§ 3345–41. Forfeiture for Delay in Organization — Extension. — Every corporation authorized by this act which shall not organize and commence business within one year after the certificate of authorization has been issued, shall forfeit its rights and privileges as a corporation, which fact the state examiner shall certify to the county auditor in whose office the certificate was filed, and to the secretary of state, and the certificate of forfeiture shall be filed in the office of the county auditor and filed and recorded in the office of the secretary of state in the same manner as the certificate of authorization: Provided, that the state examiner may for satisfactory cause to him shown by an order under his hand and official seal extend for not more than one year the time within which such organization may be effected, and business commenced, such order to be transmitted to the offices of such county auditor and the secretary of state and filed and recorded therein. [L. '15, p. 583, § 41.]

§ 3345–42. Excess Deposits—Notice.—The secretary of every such bank shall at least once each year send notice by mail to each depositor who has to his credit a sum in excess of the maximum deposit permitted by section 3345–17, stating the amount of such excess, and notifying the depositor that such excess will not participate in dividends, and requiring him to reduce the amount of such deposit, so that the same shall not exceed the maximum. [L. '15, p. 583, § 42.]

§ 3345–43. Calling Deposit-books.—Within two years after organization, and each third year thereafter, every such bank shall call in the books of deposit for verification under rules to be prescribed in its by-laws. [L. '15, p. 583, § 43.]

§ 3345–44. Expenditure for Management and Operation.—No such bank shall in the course of any fiscal year (which fiscal year shall be deemed to expire on the last day of December in each year) pay or become liable to pay either directly or indirectly for expenses of management and operation more than two and one-half per centum of its average assets during such year. [L. '15, p. 583, § 44.]

§ 3345–45. Dissolution and Liquidation.—If the trustees of any solvent mutual savings bank shall deem it necessary or expedient to close the business of such bank, they may, by affirmative vote of not less than two-thirds of the whole number of trustees, at a meeting called for that purpose, of which one month's notice has been given, either personally or by mailing such notice to the postoffice address of each trustee, declare by resolution their determination to close such business and pay the moneys due depositors and creditors and to surrender the corporate franchise. Subject to the approval and under the direction of the state examiner, such savings bank may adopt any lawful plan for closing up its affairs, as nearly as may be in accordance with the original plan and objects. [L. '15, p. 584, § 45.]

§ 3345–46. Unpaid Depositors and Creditors—Transfer of Balances—Dissolution.—When the trustees, acting under the provisions of the preceding section, shall have paid the sums due respectively to all creditors and depositors, who, after such notice as the state examiner shall prescribe, claim the money due and their deposits, the trustees shall make a transcript or statement from the books in the bank of the names of all depositors and creditors who have not claimed or have not received the balance of the credit due them, and of the sums due them, respectively, and shall file such transcript with the state examiner and pay over and transfer all such unclaimed and unpaid deposits, credits and moneys to the state examiner. The trustees shall then report their proceedings duly verified, to the superior court of the county wherein the bank is located, and upon such report and the petition of the trustees, and after notice to the attorney general and the state examiner, and such other notice as the court may deem necessary, the court shall adjudge the franchise surrendered and the existence of the corporation terminated, certified copies of which judgment shall be filed in the offices of the secretary of state, state examiner and auditor of the county wherein the bank is located where the same shall be filed, and in the office of the secretary of state recorded.

Nothing herein contained shall prevent the superior court from appointing a receiver of any such corporation for any cause authorizing the appointment of such receiver under the laws of the state. [L.'15, p. 584, § 46.]

§ 3345–47. Certified Copies as Evidence.—Copies from the records, books and accounts of a mutual savings bank shall be competent evidence in all cases, equal with originals thereof, if there is annexed to such copies an affidavit taken before a notary public or clerk of a court under seal, stating that the affiant is the officer of the bank having charge of the original records, and that the copy is true and correct and is full so far as the same relates to the subject matter therein mentioned. [L. '15, p. 585, § 47.]

§ 3345–48. Changing Place of Business—Approval.—Any savings bank may make a written application to the state examiner for leave to change its place of business to another place in the same county. The application shall state the reasons for such proposed change, and shall be signed and acknowledged by a majority of its board of trustees. If the proposed place of business is within the limits of the town or city in which the present place of business of the savings bank is located, such change may be made upon the written approval of the examiner; if beyond such limits, notice of intention to make such application, signed by two principal officers of the savings bank, shall be published once a week for two successive weeks immediately preceding such application in a daily newspaper published in the city of Olympia and shall be published in like manner in a newspaper to be designated by the state examiner, published in the county in which the present place of business of such savings bank is located. If the state examiner shall grant his certificate authorizing the change of location, which in his discretion he may do, the savings bank shall cause such certificate to be published once in each week for two successive weeks in the newspapers in which the notice of application was published. When the requirements of this section shall have been fully complied with, the savings bank may, upon or after the day specified in the certificate, remove its property and effects to the location designated therein, and thereafter its principal place of business shall be the location so specified; and it shall have all the rights and powers in such new location which it possessed at its former location. [L. '15, p. 585, § 48.]

§ 3345–49. Definitions.—The use of the term "savings bank" in this act refers to mutual savings banks only.

The use of the words "mutual savings" as part of a name under which business of any kind is or may be transacted by any person, firm or corporation, except such as are organized and in actual operation at the time of the passage of this act, or may be hereafter organized and operated under the requirements of this act, is hereby prohibited. [L. '15, p. 586, § 49.]

§ 3345–50. Schedule of Existing Laws Applicable.—The provisions of sections 2640, 2641, 2642, 2810, 2811, 3300, 3301, 3303, 3304, 3305,

3306, 3314, 3331, 3339, and 3340 of Remington & Ballinger's Annotated Codes and Statutes of Washington, shall apply to the corporations authorized under this act. [L. '15, p. 586, § 50.]

Sections "2810, 2811," of Rem. & Bal. Code, relating to larceny of bank deposits, were repealed by § 2304, supra.

§ 3345-51. Penalty.—Any person who shall do anything forbidden by this act for which a penalty is not provided in this act, or in some other law of the state, shall be guilty of a gross misdemeanor and be punished accordingly. [L. '15, p. 586, § 51.]

§ 3345-52. Scope of Act Cumulative.—This act shall not be construed as amending or repealing any other law of the state authorizing the incorporation of banks or regulating the same, but shall be deemed to be additional legislation for the sole purpose of authorizing the incorporation and operation of mutual savings banks as herein prescribed. Savings banks incorporated on the stock plan and other stock banks having savings departments as authorized by sections 3336 and 3337 of Remington & Ballinger's Annotated Codes and Statutes of Washington, or by any other law of the state heretofore or hereafter enacted, shall not be in any manner affected by the provisions of this act, or any amendment thereto. [L. '15, p. 586, § 52.]

CHAPTER III.

Trust Companies, Incorporation, Powers and Duties.

§ 3346. Formation—Name—Capital, Subscription and Payment of —Shares.—Seven or more persons of full age may become a trust company on the terms and conditions and subject to the liabilities prescribed in this act; the name of every company formed under this act shall contain the word "trust," but shall not be that of any other existing corporation of this state; the capital stock of such trust company hereafter organized shall not be less than one hundred thousand dollars: Provided, that in cities having less than twenty-five thousand inhabitants such companies may be organized with fifty thousand dollars capital, and shall be divided into shares of one hundred dollars each, all of which shall be paid in cash before any trust company shall be authorized to transact any business, and such payment shall be certified to the bank examiner under oath by the president and treasurer or secretary of the trust company; hereafter no corporation shall be organized for the purpose of carrying on a trust company business in the state of Washington except under this act, and no company hereafter organized under any other act shall use the word "trust" as a part of its name: Provided, that national banks, having a paid-up capital of fifty thousand dollars or more when authorized or permitted so to do by or under any act of the

congress of the United States, may exercise any of the powers conferred upon trust companies organized under this act: And provided further, that any state bank organized under the laws of the state of Washington, having a paid up capital of fifty thousand ($50,000) dollars or more may exercise any of the powers conferred upon trust companies organized under this act by first obtaining permission from the state bank examiner: And provided further, that this act and chapter shall not apply to any foreign corporation engaged in the business of loaning money on mortgage security which does not accept deposits or receive from citizens of the state of Washington property or money in trust or on deposit or for investment. In case any foreign corporation whose name contains the word "trust," or whose articles of incorporation empower it to do a trust business, desires to engage in business of loaning money on mortgage security in this state, it shall file, in addition to its articles of incorporation or association, a resolution of its governing board, duly attested by its president and secretary, expressly stating that it will not receive deposits in the state of Washington or accept from citizens and residents of the state of Washington property and money, or either, in trust for investment. [L. '15, p. 131, § 1; L. '11, p. 499, § 1; L. '03, p. 367, § 1.]

Cited in 57 Wash. 634.

"Act" in this section refers to this chapter.

"Bank examiner" substituted for "secretary of state" in this chapter, pursuant to § 3311, supra.

See supra, chapter II, this Title, for trust companies doing a banking business.

See supra, § 3313, trust companies not affected by the banking law.

§ 3347. Certificate of Organization—What to Show.—Such persons shall under their hands and seals execute and acknowledge an organization certificate in triplicate, which shall specifically state:

(1) The name by which the corporation shall be known.

(2) The place where its business is to be transacted.

(3) The amount of its capital stock, and the number of shares into which the same is to be divided.

(4) The name, residence and postoffice address of each member of the corporation.

(5) The term of its existence, not exceeding fifty years. [L. '03, p. 368, § 2.]

§ 3348. Same, Filing of — License. — The certificate of incorporation shall be acknowledged as required for deeds of real estate, and shall be recorded in a book kept for that purpose in the office of the county auditor where the principal place of business of such trust company in this state is to be established, and with the secretary of state: Provided, however, that before the corporation shall be author-

ized to transact business in this state other than such as relates to its formation and organization, the bank examiner shall examine or cause to be examined, in order to ascertain whether the requisite capital of such corporation has been fully paid in cash, and if it appears from such examination that such capital stock has not been fully paid in cash, a certificate of authorization shall not be granted and no such corporation shall commence business until such certificate of authorization has been granted; but when it shall appear to the bank examiner that the entire capital stock has been paid in, and that such trust company is lawfully entitled to commence business he shall give to such company a certificate under his hand and seal that such company is duly and legally organized under this act as a trust company, and authorized to transact business as such trust company in this state; the trust company shall cause such certificate of authority of the bank examiner, issued in pursuance of this chapter, to be published once a week for at least four successive weeks next after the issuance thereof, in a newspaper of general circulation in the place where said trust company is established, and shall file proof of such publication with the bank examiner. [L. '03, p. 368, § 3.]

Quaere: Whether the articles are to be filed with the secretary of state or the bank examiner?

"Secretary of state" in this section, changed to "bank examiner," except in the first instance, upon the authority of § 3311, supra.

§ 3349. Corporate Powers.—As soon as the certificate of authority is issued by the bank examiner as provided in the preceding section, the persons named in the articles of incorporation and their successors shall thereupon and thereby become a corporation and shall have power:

(1) To act as the fiscal or transfer agent of any state, municipality, body politic or corporation, and in such capacity to receive and disburse money.

(2) To transfer, register and countersign certificates of stock, bonds, or other evidences of indebtedness, and to act as agent of any corporation, foreign or domestic, for any purpose now or hereafter required by statute or otherwise.

(3) To receive deposits of trust moneys, securities and other personal property from any person or corporation, and to loan money on real or personal securities, and to discount and negotiate promissory notes, drafts, bills of exchange and other evidences of debt; and to buy, sell and exchange coin and bullion.

(4) To lease, hold, purchase and convey any and all real property necessary for and convenient in the transaction of its business, or which the purposes of the corporation may require, or which it shall acquire in satisfaction or partial satisfaction of debts due the corporation under sales, judgments or mortgages, or in settlement or

partial settlement of debts due the corporation from any of its debtors.

(5) To act as trustee under any mortgage or bond issued by any municipality, body politic or corporation, and to accept and execute any other municipality or corporate trust not inconsistent with the laws of this state.

(6) To accept trusts from, and execute trusts for, married women, in respect to their separate property, and to be their agent in the management of such property, or to transact any business in relation thereto.

(7) To act under the order, or appointment of any court of record as guardian, receiver or trustee of the estate of any minor, and as depository of any moneys paid into court, whether for the benefit of such minor or other person, corporation or party.

(8) To take, accept and execute any and all such legal trusts, duties, and powers in regard to the holding, management and disposition of any estate, real or personal, and the rents and profits thereof. or the sale thereof, as may be granted or confided to it by any court of record, or by any person, corporation, municipal or other authority, and it shall be accountable to [all] parties in interest for the faithful discharge of every such trust, duty or power which it may so accept.

(9) To take, accept and execute any and all such trusts and powers of whatever nature or description as may be conferred upon or intrusted or committed to it by any person or persons or by any body politic, corporation or other authority, by grant, assignment, transfer, devise, bequest or otherwise, or which may be intrusted or committed or transferred to it or vested in it by order of any court of record, and to receive, take and hold any property or estate, real or personal, which may be the subject of any such trust.

(10) To purchase, invest in and sell stocks, promissory notes, bills of exchange, bonds, debentures and mortgages, and other securities; and when moneys are borrowed or received on deposit, or for investment, the bonds or obligations of the company may be given therefor, but it shall have no right to issue bills to circulate as money.

(11) To be appointed and accept the appointment of assignee or trustee, under any assignment for the benefit of creditors of any debtor, made pursuant to any statute or otherwise.

(12) To act under the order or appointment of any court of record or otherwise as receiver or trustee of the estate or property of any person, firm, association or corporation.

(13) To be appointed and to accept the appointment of executor of, or trustee under, the last will and testament, or administrator with or without the will annexed, of the estate of any deceased per-

son, and to be appointed and to act as guardian of the estates of lunatics, idiots, persons of unsound mind and habitual drunkards: Provided, however, the power hereby granted to trust companies to act as guardian or administrator, with or without the will annexed, shall not be construed to deprive parties of the prior right to have issued to them letters of guardianship, or of administration, as such right now exists under the law of this state; and, be it further provided, that no trust company or other corporation, organized under this chapter which advertises that it will furnish legal advice, construct and prepare wills or do other legal work for its customers shall be permitted to act in the capacity as executor, trustee, assignee, or otherwise serve in any fiduciary capacity; and such trust company or other corporation whose officers or agents shall solicit legal business for and on behalf of such trust company or corporation shall be disqualified from acting as trustee, assignee or from serving in any fiduciary capacity and shall be ineligible for appointment as such in any of the courts of this state.

(14) To exercise the powers conferred on and to carry on the business of a safe deposit company.

(15) To collect coupons on, or interest upon, all manner of securities when authorized so to do by the parties depositing the same.

(16) To receive and manage any sinking fund of any corporation, upon such terms as may be agreed upon between such corporation and those dealing with it.

(17) Generally to execute trusts of every description not inconsistent with the laws of this state or of the United States.

(18) To receive money on deposit to be subject to check or to be repaid in such manner and on such terms, and with or without interest, as may be agreed upon by the depositor and the said trust company.

(19) To make and certify abstracts of title to real property and to insure any person or corporation claiming to own or to have any interest in any real property or encumbrance thereon by mortgage, lease, lien, contract or otherwise against loss by reason of liens, encumbrances or imperfections of title, or any adverse claim of title: Provided, however, that no company organized under this chapter shall be subject to any other insurance law of the state of Washington: Provided, further, that no trust company engaged in the business of banking shall be permitted to do any of the acts mentioned in this subdivision. [L. '13, p. 640, § 1. Cf. L. '03, p. 369, § 4; L. '07, p. 234, § 1.]

§ 3350. Management—Directors.—The affairs of every such corporation shall be managed and its corporate powers exercised by a board of directors of such number, not less than seven nor more than thirty,

as from time to time may be prescribed in its by-laws. No person can be a director who is not the holder of at least ten shares of the capital stock of the corporation. The persons named in the articles of incorporation shall constitute the first board of directors, and may add to their number not exceeding the limit of thirty, and shall severally continue until others are elected to fill their respective places. Within six months from the time when such corporation shall commence business, the first board of directors shall classify themselves by lot into three equal classes, as nearly as may be. The term of office of the first class shall expire on the third Wednesday of January next following such classification; the term of office of the second class shall expire one year thereafter; and the term of office of the third class shall expire two years thereafter. At or before the expiration of the term of the first class, and annually thereafter, a number of directors shall be elected equal to the number of directors whose term will then expire, who shall hold office for three years, or until their successors are elected and qualified. Such elections shall be held at the office of the corporation and at such time and upon such public notice, not less than ten days, by advertisement in at least one newspaper as shall be prescribed in the by-laws. In case of failure to elect any director on the day named, the directors whose term of office does not that year expire may proceed to elect a number of directors equal to the number in the class whose term that year expires, or such number as may have failed of re-election. The persons so elected, together with the directors, whose term of office shall not that year expire, shall constitute the board of directors until another election shall be held according to law. Vacancies occurring in the intervals of election shall be filled by the board. Each director when appointed or elected shall take an oath that he will, so far as the duty devolves upon him, diligently and honestly administer the affairs of such corporation, and will not knowingly violate, or willingly permit to be violated, any of the provisions of law applicable to such corporation, and that he is the owner in good faith and in his own right of the number of shares of stock required by this section, subscribed by him or standing in his name on the books of the corporation, and that the same is fully paid, is not hypothecated or in any way pledged as security for any loan or debt. Such oath shall be subscribed by the director making it, and certified by the officer before whom it is taken and shall be immediately transmitted to the bank examiner, and filed and preserved in his office. [L. '03, p. 371, § 5.]

§ 3351. Not to Make Loans to Its Officers—Felony.—No trust company now in existence or hereafter organized shall make any loan to any officer, stockholder or employee from its trust funds and

such trust company shall not permit any officer, stockholder or employee to become indebted to it in any way out of its trust funds; any president, vice-president, director, secretary, treasurer, cashier, teller, clerk or agent of any such corporation who knowingly violates this section, or who aids or abets any officer, clerk or agent in any such violation, shall be guilty of a felony and punished accordingly. [L. '03, p. 372, § 6.]

§ 3352. Reports to Bank Examiner.—Every such company shall make to the bank examiner not less than two reports during each year, according to the forms which may be prescribed by him, verified by the oaths or affirmations of the president or vice-president and treasurer or secretary of such corporation, and attested by the signatures of at least three directors; every such report shall exhibit in detail and under appropriate heads the resources and liabilities of the corporation at the close of business at any day past specified by the examiner, and shall be transmitted to him within twenty days after the receipt of a request or requisition therefor by him, and an abstract or summary of every such report in such form as shall be prescribed by the examiner shall be published by the trust company once in a newspaper published in the place where such trust company is established, and such proof of publication shall be furnished as may be required by the examiner; such publication shall be made within two weeks after the filing of such report, the expense thereof to be borne by such trust company; the examiner shall also have the power to call for special reports from any trust company whenever in his judgment the same are necessary to a full and complete knowledge of its condition; every trust company which fails to make and transmit any report required under this section shall be subject to a penalty of one hundred dollars for each day after the period herein specified that it delays to make and transmit its report, to be sued for and collected by the examiner in the name and for the benefit of the state. [L. '03, p. 372, § 7.]

"Bank examiner," see note to § 3346, supra.

§ 3353. False Entries, etc., a Misdemeanor.—Every director, officer, agent or clerk of any trust company who willfully and knowingly subscribes or makes any false statement of facts, or false entries in the books of such trust company, or knowingly subscribes or exhibits any false paper, with intent to deceive any person authorized to examine as to the condition of such trust company, or willfully or knowingly subscribes to or makes any false reports, shall be deemed guilty of a gross misdemeanor and upon conviction thereof shall be imprisoned in the state penitentiary not less than one year nor more than ten years. [L. '15, p. 118, § 1. Cf. L. '03, p. 373, § 8.]

§ 3354. Dealing in Own Stock Prohibited.—No trust company shall make any loan on the security of the shares of its own capital stock, nor be the purchaser or holder of any such shares unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith; and stock so purchased or acquired shall within one year from the time of its purchase be sold or disposed of at public or private sale: Provided, that nothing in this section contained shall apply to any loan made before the passage of this act. [L. '03, p. 373, § 9.]

§ 3355. Withdrawal, etc., of Deposits for Minors.—When any deposit shall be made by or in the name of any minor, the same shall be held for the exclusive right and benefit of such depositor, and free from the control and lien of all other persons, except creditors of such minor, and shall be paid, together with the dividends and interest thereon, to the person in whose name the deposit shall have been made, and the receipt of acquittance of such minor shall be a valid and sufficient release and discharge for such deposit, or any part thereof, to the trust company. [L. '03, p. 374, § 10.]

§ 3356. Trust Companies to be Under Supervision of Bank Examiner.—Every trust company shall be subject to the inspection and supervision of the examiner, and it shall be the duty of said examiner, either personally or by some person or persons to be appointed by him, whenever he shall deem it expedient, or at the request of any such trust company, to examine any such trust company, and it shall be the duty of the officers and employees of such trust company to exhibit its books, securities, records and accounts to the person or persons authorized by said examiner to conduct the examination, and otherwise to facilitate the same so far as it may be in their power; the said examiner, or any examiner appointed by him, shall have power to examine under oath or affirmation the directors, officers and employees of any such trust company relative to its business and affairs, and for that purpose any such examiner shall have power to administer oaths and affirmations. [L. '03, p. 374, § 11.]

"Bank examiner," see note to § 3346, supra.

§ 3359. Oath of Officers as Executors, etc.—In all cases where any corporation in this state authorized by its charter to act as trustees, executors, administrators or guardians, shall be appointed executor, administrator or trustee of any estate or guardian of any infant, it shall and may be lawful for the president, cashier, or treasurer of such corporation to take and subscribe for such corporation any and all oaths or affirmations required to be taken or subscribed by such executor, administrator, trustee or guardian. [L. '03, p. 375, § 14.]

§ 3360. Individual Liability of Stockholders.—If default shall be made in the payment of any debt or liability contracted by such corporation, the stockholders thereof shall be individually responsible, equally and ratably, for the then existing debts of the corporation, but no stockholder shall be liable for the debts of the corporation to an amount exceeding the par value of the respective shares of stock by him held in such corporation at the time of such default. [L. '03, p. 375, § 15.]

§ 3361. Change of Name, Amendments, etc., How Made.—Every trust company hereafter organized under this chapter may extend its corporate existence, change its name, increase its capital stock, make such other and further amendment, change or alteration as may be desired, or amend its charter or certificate of incorporation in manner following: The board of directors shall pass a resolution declaring that such amendment, change or alteration is advisable and calling a meeting of the stockholders to take action thereon; the meeting shall be held upon such notice as the by-laws provide, and in the absence of such provisions, upon ten days' notice in writing, given personally, or by mail; if two-thirds in interest of the stockholders shall vote in favor of such amendment, change or alteration, a certificate thereof shall be signed by the president and secretary under the corporate seal, acknowledged or proved as in the case of deeds of real estate, and such certificate, together with the written assent, in person or by proxy, of two-thirds in interest of such stockholders, shall be filed in the department of the secretary of state, and upon the filing of the same, the charter or certificate of incorporation shall be, and be deemed to be amended accordingly: Provided, that the certificate to be made and filed in pursuance to this section shall contain only such provisions as it would be lawful and proper to insert in an original certificate of incorporation made at the time of making such amendment, change or alteration; no change shall be made in the charter or certificate of incorporation of such trust company whereby the rights, remedies or security of existing creditors shall be in any manner impaired; said certificate or a copy thereof, duly certified by the secretary of state, shall be evidence in all courts and places. [L. '03, p. 376, § 16.]

Quaere: Whether the articles of amendment are to be filed with the secretary of state or the bank examiner?

See note to § 3348.

§ 3362. Fees.—The secretary of state [bank examiner] shall require in advance the following fees:

For filing articles of incorporation or certified copies of articles, or other certificates required to be filed in his office. . $10.00

Issuing certificates of authority..... 10.00

For each renewal certificate of authority..... 10.00
For filing each semi-annual statement of condition..... 10.00
For making any examination required by this chapter..... 25.00

For furnishing copies of papers filed in his office, 20 cents per folio: Provided, that all fees so collected shall be paid to the state treasurer. [L. '03, p. 376, § 17.]

See note to § 3348.

CHAPTER IV.

General Provisions.

§ 3363. Liability of Banks on Forged Checks.—No bank or trust company shall be liable to a depositor for the payment by said bank or trust company of a forged or raised check, unless within sixty days after the return to the depositor of the voucher of such payment, such depositor shall notify the bank or trust company that the check so paid was raised or forged. [L. '07, p. 31, § 1.]

§ 3364. Withdrawal of Joint Deposits.—When a deposit has been made, or shall hereafter be made in any bank or trust company transacting business in this state in the name of two or more persons, payable to any of such persons, such deposit or any part thereof, or interest, or dividend thereon, may be paid to any of said persons, whether the others be living or not, and the receipt or acquittance of the person so paid shall be a valid and sufficient release and discharge to such bank or trust company for any payment so made. [L. '13, p. 6, § 1. Cf. L. '07, p. 141, § 1.]

§ 3365. Foreign Banks may Make Loans—Not to Receive Deposits.—Any foreign bank or foreign banker may keep an office for the purpose of loaning money and buying and selling exchange, coin or bullion, at any place or places within this state, but shall not in any manner, directly or indirectly, receive deposits: Provided, however, that nothing in this section contained shall prevent any existing branch of any foreign bank which was engaged in doing a banking business at any place or places within this state on the first day of January, 1905, or its successors or assigns becoming such prior to the date upon which this act takes effect, from receiving deposits and transacting a general banking business. [L. '05, p. 55, § 1.]

"Act" refers to this and the next three sections.

§ 3366. Capital Required—Misrepresentation of Capital, etc.—Every foreign bank or foreign banker heretofore having established, or hereafter establishing an office in this state, shall have, and at all times maintain, at every such office, a capital not less in amount than that required by the national bank act for the organization of a national bank at the time when, and place where, such office was or shall be opened, and the payment of taxes on such amount shall be

prima facie evidence of the payment and existence of such capital; and no such foreign bank or foreign banker shall set forth on the stationery of such bank or banker or in any manner advertise a greater capital, surplus and undivided profits than are actually maintained at any such bank within this state. [L. '05, p. 55, § 2.]

§ 3367. Penalty.—Every foreign bank or foreign banker, and every officer, agent or employee thereof, violating any of the provisions of this act, shall for each violation forfeit and pay to the state of Washington the sum of one thousand dollars. Said forfeiture may be recovered in an action by the attorney general in the name of the state of Washington in the superior court of the county where such bank or branch bank should be located. [L. '05, p. 55, § 3.]

"Act" refers to §§ 3365–3368.

§ 3368. "Foreign Bank" and "Foreign Banker" Defined.—In construing this act the terms "foreign bank" and "foreign banker" shall be deemed to include: 1. Every corporation not organized under the laws of the territory or state of Washington doing a banking business, except a national bank. 2. Every unincorporated company, partnership or association of two or more individuals organized under or pursuant to the laws of another state or country doing a banking business authorized by this act. 3. Every other unincorporated company, partnership or association of two or more individuals doing a banking business authorized by this act, if the members thereof, owning a majority interest therein, or entitled to more than one-half the profits thereof, or who would, if it were dissolved, be entitled to more than one-half the net assets thereof, are not residents of this state. 4. Every nonresident of this state doing a banking business authorized by this act in his own name and right only. [L. '05, p. 56, § 4.]

"Act refers to §§ 3365–3368.

Barbers. See "Licenses," § 7006.
Bees. See "Animals," § 3258.
Benevolent Institutions. See "Corporations," § 3731.
Bill of Exceptions. See §§ 381–397.
Billiards. See "Licenses," § 7021.
Bills of Lading. See "Bills and Notes," §§ 3369-1, 3385-1.

TITLE XIX.

BILLS AND NOTES.

CHAPTER I.—BILLS OF LADING AND RECEIPTS BY WAREHOUSEMEN.

3369–1. Persons who may issue receipts.
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CHAPTER I.

Bills of Lading and Receipts by Warehousemen.

Public terminal warehouses and receipts by: See infra, § 9503–1.

§ 3369–1. Persons Who may Issue Receipts.—Warehouse receipts may be issued by any warehouseman, and must be issued in manner and form as provided by this act. [L. '13, p. 279, § 1.]

"This act," refers to this chapter.
See infra, § 9503–6, duty to deliver receipts.

§ 3369–2. Form of Receipts—Essential Terms.—Warehouse receipts need not be in any particular form, but every such receipt must embody within its written or printed terms:

(a) The location of the warehouse where the goods are stored.

(b) The date of issue of the receipt.

(c) The constructive number of the receipt.

(d) A statement whether the goods received will be delivered to the bearer, to a specified person or to a specified person or his order.

(e) The rate of storage charges.

(f) A description of the goods or of the packages containing them. If the same be issued for wheat it shall specifically state the variety of wheat by name.

(g) The signature of the warehouseman, which may be made by his authorized agent.

(h) If the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; and

(i) A statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien. If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made, or liabilities incurred and the purpose thereof is sufficient.

A warehouseman shall be liable to any person injured thereby, for all damages caused by the omission from a negotiable receipt of any of the terms herein required. [L. '13, p. 279, § 2.]

See infra, § 9503–6, form of class A warehouse receipts.

§ 3369–3. Form of Receipt—What Terms may be Inserted.—A warehouseman may insert in a receipt, issued by him, any other terms and conditions: Provided, that such terms, and conditions shall not:

(a) Be contrary to the provisions of this act.

(b) In any wise impair his obligation to exercise that degree of care in the safekeeping of the goods intrusted to him which a reasonably careful man would exercise in regard to similar goods of his own; and any provisions so inserted contrary to the provisions of this act, shall, so far as they conflict with the provisions thereof be void. [L. '13, p. 280, § 3.]

§ 3369–4. Definition of a Non-negotiable Receipt.—A receipt in which it is stated that the goods received will be delivered to the depositor, or to any other specified person, is a non-negotiable receipt. [L. '13, p. 280, § 4.]

§ 3369–5. Definition of a Negotiable Receipt.—A receipt in which it is stated that the goods received will be delivered to the bearer, or to the order of any person named in such receipt is a negotiable receipt.

No provision shall be inserted in a negotiable receipt that it is non-negotiable. Such provision, if inserted, shall be void. [L. '13, p. 280, § 5.]

§ 3369–6. Duplicate Receipts must be so Marked.—When more than one negotiable receipt is issued for the same goods, the word "duplicate" shall be plainly placed upon the face of every such receipt, except the one first issued. A warehouseman shall be liable for all damage caused by his failure so to do to anyone who purchased the subsequent receipt for value supposing it to be an original, even though the purchase be after the delivery of the goods by the warehouseman to the holder of the original receipt. [L. '13, p. 281, § 6.]

§ 3369–7. Failure to Mark "Not Negotiable."—A non-negotiable receipt shall have plainly placed upon its face by the warehouseman

issuing it "non-negotiable" or "not negotiable." In case of the warehouseman's failure to do so, a holder of the receipt who purchased it for value, supposing it to be negotiable, may, at his option, treat such receipt as imposing upon the warehouseman the same liabilities he would have incurred had the receipt been negotiable. This section shall not apply, however, to letters, memoranda, or written acknowledgment of an informal character. [L. '13, p. 281, § 7.]

§ 3369–8. Obligation of Warehouseman to Deliver.—A warehouseman, in the absence of some lawful excuse provided by this act, is bound to deliver the goods upon a demand made either by the holder of a receipt for the goods or by the depositor, if such demand is accompanied with:

(a) An offer to satisfy the warehouseman's lien.

(b) An offer to surrender the receipt if negotiable, with such indorsements as would be necessary for the negotiation of the receipt; and

(c) A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the warehouseman. In case the warehouseman refuses or fails to deliver the goods in compliance with a demand by the holder or depositor so accompanied, the burden shall be upon the warehouseman to establish the existence of a lawful excuse for such refusal. [L. '13, p. 281, § 8.]

See infra, § 9503–8, unlawful to deliver, except upon return of receipt.

§ 3369–9. Justification of Warehouseman in Delivering.—A warehouseman is justified in delivering the goods, subject to the provisions of the three following sections, to one who is,

(a) The person lawfully entitled to the possession of the goods, or his agent.

(b) A person who is either himself entitled to delivery by the terms of a non-negotiable receipt issued for the goods, or who has written authority from the person so entitled either indorsed upon the receipt or written upon another paper; or

(c) A person in possession of a negotiable receipt by the terms of which the goods are deliverable to him or order or to bearer, or which has been indorsed to him or in blank by the person to whom delivery was promised by the terms of the receipt or by his mediate or immediate indorsee. [L. '13, p. 282, § 9.]

§ 3369–10. Warehouseman's Liability for Misdelivery.—Where a warehouseman delivers the goods to one who is not in fact lawfully entitled to the possession of them, the warehouseman shall be liable as for conversion to all having a right of property or possession in the goods if he delivered the goods otherwise than is authorized by

subdivision (b) and (c) of the preceding section and though he delivered the goods as authorized by said subdivisions he shall be so liable, if prior to such delivery he had either,

(a) Been requested, by or on behalf of the person lawfully entitled to right of property or possession in the goods, not to make such delivery; or

(b) Had information that the delivery about to be made was to one not lawfully entitled to the possession of the goods. [L. '13, p. 282, § 10.]

§ 3369-11. Negotiable Receipts must be Canceled When Goods Delivered.—Except as provided in sections 3369-36, where a warehouseman delivers goods for which he had issued a negotiable receipt, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the receipt, he shall be liable to anyone who purchases for value in good faith such receipt, for failure to deliver the goods to him, whether such purchaser acquired title to the receipt before or after the delivery of the goods by the warehouseman. [L. '13, p. 283, § 11.]

See infra, § 9503-8, duty to cancel.

§ 3369-12. Negotiable Receipts must be Canceled or Marked When Part of Goods Delivered.—Except as provided in section 3369-36, where a warehouseman delivers part of the goods for which he had issued a negotiable receipt and fails either to take up and cancel such receipt, or to place plainly upon it a statement of what goods or packages have been delivered he shall be liable, to anyone who purchases for value in good faith such receipt, for failure, to deliver all the goods specified in the receipt, whether such purchaser acquired title to the receipt before or after the delivery of any portion of the goods by the warehouseman. [L. '13, p. 283, § 12.]

§ 3369-13. Altered Receipts.—The alteration of a receipt shall not excuse the warehouseman who issued it from any liability if such alteration was:

(a) Immaterial

(b) Authorized, or

(c) Made without fraudulent intent.

If the alteration was authorized, the warehouseman shall be liable according to the terms of the receipt as altered. If the alteration was unauthorized, but made without fraudulent intent, the warehouseman shall be liable according to the terms of the receipt, as they were before alteration.

Material and fraudulent alteration of a receipt shall not excuse the warehouseman who issued it from liability to deliver, according to the terms of the receipt as originally issued, the goods for which it

was issued, but shall excuse him from any other liability to the person who made the alteration and to any person who took with notice of the alteration. Any purchaser of the receipt for value without notice of the alteration shall acquire the same rights against the warehouseman which such purchaser would have acquired if the receipt had not been altered at the time of the purchase. [L. '13, p. 283, § 13.]

§ 3369–14. Lost or Destroyed Receipts.—Where a negotiable receipt has been lost or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient sureties to be approved by the court to protect the warehouseman from any liability or expense, which he or any person injured by such delivery may incur by reason of the original receipt remaining outstanding. The court may also in its discretion order the payment of the warehouseman's reasonable costs and counsel fees.

The delivery of the goods under an order of the court, as provided in this section, shall not relieve the warehouseman from liability to a person to whom the negotiable receipt has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods. [L. '13, p. 284, § 14.]

See infra, § 9503–13, duplicates in case of loss.

§ 3369–15. Effect of Duplicate Receipts.—A receipt upon the face of which the word "duplicate" is plainly placed is a representation and warranty by the warehouseman that such a receipt is an accurate copy of an original receipt properly issued and uncanceled at the date of issue of the duplicate, but shall impose upon him no other liability. [L. '13, p. 284, § 15.]

§ 3369–16. Warehouseman cannot Set Up Title in Himself.—No title or right to the possession of the goods, on the part of the warehouseman, unless such title or right is derived directly or indirectly from a transfer made by the depositor at the time of or subsequent to the deposit for storage, or from the warehouseman's lien, shall excuse the warehouseman from liability for refusing to deliver the goods according to the terms of the receipt. [L. '13, p. 284, § 16.]

§ 3369–17. Interpleader of Adverse Claimants.—If more than one person claim the title or possession of the goods, the warehouseman may, either as a defense to an action brought against him for non-delivery of the goods, or as an original suit, whichever is appropriate, require all known claimants to interplead. [L. '13, p. 285, § 17.]

§ 3369–18. Warehouseman has Reasonable Time to Determine Validity of Claims.—If someone other than the depositor or person

claiming under him has a claim to the title or possession of the goods, and the warehouseman has information of such claim, the warehouseman shall be excused from liability for refusing to deliver the goods, either to the depositor or person claiming under him, or to the adverse claimant, until the warehouseman has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead. [L. '13, p. 285, § 18.]

§ 3369–19. Adverse Title No Defense.—Except as provided in the two preceding sections and in sections 3369–9 and 3369–36, no right or title of a third person shall be a defense to an action brought by the depositor or person claiming under him against the warehouseman for failure to deliver the goods according to the terms of the receipt. [L. '13, p. 285, § 19.]

§ 3369–20. Liability for Nonexistence or Misdescription of Goods. A warehouseman shall be liable to the holder of a receipt for damages caused by the nonexistence of the goods or by failure of the goods to correspond with the description thereof in the receipt at the time of its issue. If, however, the goods are described in a receipt merely by a statement of marks or labels upon them, or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind, or that packages containing the goods are said to contain goods of a certain kind, or by words of like purport, such statements, if true, shall not make liable the warehouseman issuing the receipt, although the goods are not of the kind which the marks or labels upon them indicate, or of the kind they were said to be by the depositor. [L. '13, p. 285, § 20.]

§ 3369–21. Liability for Care of Goods.—A warehouseman shall be liable for any loss or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful owner of similar goods would exercise, but he shall not be liable, in the absence of an agreement to the contrary, for any loss or injury to the goods which could not have been avoided by the exercise of such care. [L. '13, p. 286, § 21.]

§ 3369–22. Goods must be Kept Separate.—Except as provided in the following section, a warehouseman shall keep the goods so far separate from goods of other depositors, and from other goods of the same depositor for which a separate receipt has been issued, as to permit at all times the identification and redelivery of the goods deposited. [L. '13, p. 286, § 22.]

§ 3369–23. Fungible Goods Commingled, if Authorized.—If authorized by agreement or by custom, a warehouseman may mingle fungible goods with other goods of the same kind and grade. In such cases the various depositors of the mingled goods shall own the en-

tire mass in common, and each depositor shall be entitled to such portion thereof as the amount deposited by him bears to the whole. [L. '13, p. 286, § 23.]

§ 3369–24. Liability of Warehouseman to Depositors of Commingled Goods.—The warehouseman shall be severally liable to each depositor for the care and redelivery of his share of such mass to the same extent and under the same circumstances as if the goods had been kept separate. [L. '13, p. 286, § 24.]

§ 3369–25. Attachment or Levy upon Goods for Which a Negotiable Receipt has Been Issued.—If goods are delivered to a warehouseman by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner, and a negotiable receipt is issued for them, they cannot thereafter, while in the possession of the warehouseman, be attached by garnishment or otherwise, or be levied upon under an execution unless the receipt be first surrendered to the warehouseman or its negotiation enjoined. The warehouseman shall in no case be compelled to deliver up the actual possession of the goods until the receipt is surrendered to him or impounded by the courts. [L. '13, p. 287, § 25.]

§ 3369–26. Creditors' Remedies to Reach Negotiable Receipts.—A creditor whose debtor is the owner of a negotiable receipt shall be entitled to such aid from courts of appropriate jurisdiction, by injunction and otherwise, in attaching such receipts or in satisfying the claim by means thereof, as is allowed at law or in equity, in regard to property which cannot readily be attached or levied upon by ordinary legal process. [L. '13, p. 287, § 26.]

§ 3369–27. Claims Included in Warehouseman's Lien.—Subject to the provisions of section 3369–30, a warehouseman shall have a lien on goods deposited or on the proceeds thereof in his hands, for all lawful charges for storage and preservation of the goods; also for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing, coopering and other charges and expenses in relation to such goods; also for all reasonable charges and expenses for notice, and advertisements of sale, and for sale of the goods, where default has been made in satisfying the warehouseman's lien. [L. '13, p. 287, § 27.]

§ 3369–28. Against What Property the Lien may be Enforced.—Subject to the provisions of section 3369–30, a warehouseman's lien may be enforced:

(a) Against all goods, whenever deposited, belonging to the person who is liable as debtor for the claims in regard to which the lien is asserted, and

(b) Against all goods belonging to others which have been deposited at any time by the person who is liable as debtor for the claims in regard to which the lien is asserted, if such person had been so intrusted with the possession of the goods that a pledge of the same by him at the time of the deposit to one who took the goods in good faith for value would have been valid. [L. '13, p. 287, § 28.]

§ 3369–29. How the Lien may be Lost.—A warehouseman loses his lien upon goods,

(a) By surrendering possession thereof, or

(b) By refusing to deliver the goods when a demand is made with which he is bound to comply under the provisions of this act. [L. '13, p. 288, § 29.]

§ 3369–30. Negotiable Receipt must State Charges for Which Lien is Claimed.—If a negotiable receipt is issued for goods, the warehouseman shall have no lien thereon, except for charges for storage of those goods subsequent to the date of the receipt, unless the receipt expressly enumerates other charges for which a lien is claimed. In such case there shall be a lien for the charges enumerated so far as are within the terms of section 3369–27, although the amount of the charges so enumerated is not stated in the receipt. [L. 13, p. 288, § 30.]

§ 3369–31. Warehouseman Need not Deliver Until Lien is Satisfied.—A warehouseman having a lien valid against the person demanding the goods may refuse to deliver the goods to him until the lien is satisfied. [L. '13, p. 228, § 31.]

§ 3369–32. Warehouseman's Lien Does not Preclude Other Remedies.—Whether a warehouseman has or has not a lien upon the goods, he is entitled to all remedies allowed by law to a creditor against his debtor, for the collection from the depositor of all charges and advances which the depositor has expressly or impliedly contracted with the warehouseman to pay. [L. '13, p. 288, § 32.]

§ 3369–33. Satisfaction of Lien by Sale.—A warehouseman's lien for a claim which has become due may be satisfied as follows:

The warehouseman shall give a written notice to the person on whose account the goods are held, and to any other person known by the warehouseman to claim an interest in the goods. Such notice shall be given by delivery in person or by registered letter addressed to the last known place of business or abode of the person to be notified. The notice shall contain:

(a) An itemized statement of the warehouseman's claim, showing the sum due at the time of the notice and the date or dates when it became due.

(b) A brief description of the goods against which the lien exists.

(c) A demand that the amount of the claim as stated in the notice, and of such further claim as shall accrue, shall be paid on or before a day mentioned, not less than ten days from the delivery of the notice, if it is personally delivered, or from the time when the notice should reach its destination, according to the due course of post, if the notice is sent by mail; and

(d) A statement that unless the claim is paid within the time specified the goods will be advertised for sale and sold by auction at a specified time and place.

In accordance with the terms of a notice so given, a sale of the goods by auction may be had to satisfy any valid claim of the warehouseman for which he has a lien on the goods. The sale shall be had in the place where the lien was acquired, or, if such place is manifestly unsuitable for the purpose, at the nearest suitable place. After the time for the payment of the claim specified in the notice to the depositor has elapsed, an advertisement of the sale, describing the goods to be sold, and stating the name of the owner or person on whose account the goods are held, and the time and place of the sale, shall be published once a week for two consecutive weeks in a newspaper published in the place where such sale is to be held. The sale shall not be less than fifteen days from the time of the first publication. If there is no newspaper published in such place, the advertisement shall be posted at least ten days before such sale in not less than six conspicuous places therein.

From the proceeds of such sale the warehouseman shall satisfy his lien, including the reasonable charges of notice, advertisement, and sale. The balance, if any, of such proceeds shall be held by the warehouseman, and delivered on demand to the person to whom he would have been bound to deliver or justified in delivering the goods.

At any time before the goods are so sold any person claiming a right of property or possession therein may pay the warehouseman the amount necessary to satisfy his lien and to pay the reasonable expenses and liabilities incurred in serving notices and advertising and preparing for the sale up to the time of such payment. The warehouseman shall deliver the goods to the person making such payment if he is a person entitled, under the provisions of this act, to the possession of the goods on payment of charges thereon. Otherwise the warehouseman shall retain possession of the goods according to the terms of the original contract of deposit. [L. '13, p. 289, § 33.]

§ 3369–34. Perishable and Hazardous Goods.—If goods are of a perishable nature, or by keeping will deteriorate greatly in value, or by their odor, leakage, inflammability, or explosive nature, will be

liable to injure other property, the warehouseman may give such notice to the owner, or to the person in whose name the goods are stored, as is reasonable and possible under the circumstances, to satisfy the lien upon such goods, and to remove them from the warehouse, and in the event of the failure of such person to satisfy the lien and to remove the goods within the time so specified, the warehouseman may sell the goods at public or private sale without advertising. If the warehouseman, after a reasonable effort, is unable to sell such goods, he may dispose of them in any lawful manner, and shall incur no liability by reason thereof. The proceeds of any sale made under the terms of this section shall be disposed of in the same way as the proceeds of sales made under the terms of the preceding section. [L. '13, p. 290, § 34.]

§ 3369–35. Other Methods of Enforcing Liens.—The remedy for enforcing a lien herein provided does not preclude any other remedies allowed by law for the enforcement of a lien against personal property nor bar the right to recover so much of the warehouseman's claim as shall not be paid by the proceeds of the sale of the property. [L. '13, p. 291, § 35.]

§ 3369–36. Effect of Sale.—After goods have been lawfully sold to satisfy a warehouseman's lien or have been lawfully sold or disposed of because of their perishable or hazardous nature, the warehouseman shall not thereafter be liable for failure to deliver the goods to the depositor or owner of the goods, or to a holder of the receipt given for the goods when they were deposited, even if such receipt be negotiable. [L. '13, p. 291, § 36.]

§ 3369–37. Negotiation of Negotiable Receipts by Delivery.—A negotiable receipt may be negotiated by delivery,

(a) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the bearer, or

(b) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the receipt has indorsed it in blank to the bearer.

(c) Where, by the terms of a negotiable receipt, the goods are deliverable to bearer or where a negotiable receipt has been indorsed in blank to bearer, any holder may indorse the same to himself or to any other specified person, and in such case the receipt shall thereafter be negotiated only by the indorsement of such indorsee. [L. '13, p. 291, § 37.]

§ 3369–38. Negotiation of Negotiable Receipts by Indorsement.—A negotiable receipt may be negotiated by the indorsement of the person to whose order the goods are, by the terms of the receipt, de-

liverable. Such indorsement may be in blank, to bearer or to a specified person. If indorsed to a specified person, it may be again negotiated by the indorsement of such person in blank, to bearer or to another specified person. Subsequent negotiations may be made in like manner. [L. '13, p. 292, § 38.]

§ 3369–39. Transfer of Receipts.—A receipt which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee.

A non-negotiable receipt cannot be negotiated, and the indorsement of such a receipt gives the transferee no additional right. [L. '13, p. 292, § 39.]

§ 3369–40. Who may Negotiate a Receipt.—A negotiable receipt may be negotiated,

(a) By the owner thereof, or

(b) By any person to whom the possession or custody of the receipt has been intrusted by the owner, if, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of the person to whom the possession or custody of the receipt has been intrusted, or if at the time of such intrusting the receipt is in such form that it may be negotiated by delivery. [L. '13, p. 292, § 40.]

§ 3369–41. Rights of Person to Whom a Receipt has Been Negotiated.—A person to whom a negotiable receipt has been duly negotiated acquires thereby,

(a) Such title to the goods as the person negotiating the receipt to him had or had ability to convey to a purchaser in good faith for value, and also such title to goods as the depositor or person to whose order the goods were to be delivered by the terms of the receipt had or had ability to convey to a purchaser in good faith for value, and

(b) The direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt as fully as if the warehouseman had contracted directly with him. [L. '13, p. 292, § 41.]

§ 3369–42. Rights of Persons to Whom a Receipt has Been Transferred.—A person to whom a receipt has been transferred but not negotiated, acquires thereby, as against the transferrer, the title to the goods, subject to the terms of any agreement with the transferrer.

If the receipt is non-negotiable such person also acquires the right to notify the warehouseman of the transfer to him of such receipt, and thereby to acquire the direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt.

Prior to the notification of the warehouseman by the transferrer or transferee of a non-negotiable receipt, the title of the transferee to the goods and the right to acquire the obligation of the warehouseman may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferrer, or by a notification to the warehouseman by the transferrer or a subsequent purchaser from the transferrer of a subsequent sale of the goods by the transferrer. [L. '13, p. 293, § 42.]

§ 3369–43. Transfer of Negotiable Receipt Without Indorsement. Where a negotiable receipt is transferred for value by delivery, and the indorsement of the transferrer is essential for negotiation, the transferee acquires a right against the transferrer to compel him to indorse the receipt, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made. [L. '13, p. 293, § 43.]

§ 3369–44. Warranties on Sale of Receipt. — A person who for value negotiates or transfers a receipt by indorsement or delivery, including one who assigns for value a claim secured by a receipt, unless a contrary intention appears, warrants,

(a) That the receipt be genuine.

(b) That he has a legal right to negotiate or transfer it.

(c) That he has knowledge of no fact which would impair the validity or worth of the receipt, and,

(d) That he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a receipt the goods represented thereby. [L. '13, p. 293, § 44.]

§ 3369–45. Indorser not a Guarantor.—The indorsement of a receipt shall not make the indorser liable for any failure on the part of the warehouseman or previous indorsers of the receipt to fulfill their respective obligations. [L. '13, p. 294, § 45.]

§ 3369–46. No Warranty Implied from Accepting Payment of a Debt.—A mortgagee, pledgee, or holder for security of a receipt who in good faith demands or receives payment of the debt for which such receipt is security, whether from a party to a draft drawn for such debt or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such receipt or the quantity or quality of the goods therein described. [L. '13, p. 294, § 46.]

§ 3369–47. When Negotiation not Impaired by Fraud, Mistake or Duress.—The validity of the negotiation of a receipt is not impaired by the fact that such negotiation was a breach of duty on the part

of the person making the negotiation, or by the fact that the owner of the receipt was induced by fraud, mistake or duress to intrust the possession or custody of the receipt to such person, if the person to whom the receipt was negotiated, or a person to whom the receipt was subsequently negotiated, paid value therefor, without notice of the breach of duty, or fraud, mistake or duress. [L. '13, p. 294, § 47.]

§ 3369–48. Subsequent Negotiation.—Where a person having sold, mortgaged or pledged goods which are in a warehouse and for which a negotiable receipt has been issued, or having sold, or pledged the negotiable receipt representing such goods, continues in possession of the negotiable receipt, the subsequent negotiation thereof by that person under any sale, or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, mortgage, or pledge, shall have the same effect as if the first purchaser of the goods or receipt had expressly authorized the subsequent negotiation. [L. '13, p. 294, § 48.]

§ 3369–49. Negotiation Defeats Vendor's Lien.—Where a negotiable receipt has been issued for goods, no seller's lien or right of stoppage in transit shall defeat the rights of any purchaser for value in good faith to whom such receipt has been negotiated, whether such negotiations be prior or subsequent to the notification to the warehouseman who issued such receipt of the seller's claim to a lien or right of stoppage in transit. Nor shall the warehouseman be obliged to deliver or justified in delivering the goods to an unpaid seller unless the receipt is first surrendered for cancellation. [L. '13, p. 295, § 49.]

§ 3369–50. Issue of Receipt for Goods not Received. — A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a receipt knowing that the goods for which such receipt is issued have not been actually received by such warehouseman, or are not under his actual control at the time of issuing such receipt, shall be guilty of a gross misdemeanor. [L. '13, p. 295, § 50.]

§ 3369–51. Issue of Receipt Containing False Statement.—A warehouseman or any officer, agent, or servant of a warehouseman, who fraudulently issues or aids in fraudulently issuing a receipt for goods knowing that it contains any false statement, shall be guilty of a gross misdemeanor. [L. '13, p. 295, § 51.]

§ 3369–52. Issue of Duplicate Receipts not so Marked. — A warehouseman or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a duplicate or additional negotiable receipt for goods knowing that a former negotiable receipt for the same goods or any part of them is outstanding and uncanceled, without

plainly placing upon the face thereof the word "duplicate" except in the case of lost or destroyed receipt after proceedings as provided for in section 3369–14, shall be guilty of a gross misdemeanor. [L. '13, p. 295, § 52.]

§ 3369–53. Issue for Warehouseman's Goods of Receipts Which Do not State That Fact.—Where there are deposited with or held by a warehouseman goods of which he is the owner, either solely or jointly, or in common with others, such warehouseman or any of his officers, agents, or servants who, knowing this ownership issues or aids in issuing a negotiable receipt for such goods, which does not state such ownership, shall be guilty of a gross misdemeanor. [L. '13, p. 296, § 53.]

§ 3369–54. Delivery of Goods Without Obtaining Negotiable Receipt.—A warehouseman, or any officer, agent, or servant of a warehouseman who delivers goods out of the possession of such warehouseman, knowing that a negotiable receipt the negotiation of which would transfer the right to the possession of such goods is outstanding and uncanceled, without obtaining the possession of such receipt at or before the time of such delivery, shall, except in the cases provided for in sections 3369–14 and 3369–36, be found guilty of a gross misdemeanor. [L. '13, p. 296, § 54.]

§ 3369–55. Negotiation of Receipt for Mortgaged Goods.--Any person who deposits goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable receipt which he afterward negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage shall be guilty of a gross misdemeanor. [L. '13, p. 296, § 55.]

§ 3369–56. When Rules of Common Law Still Applicable.—In any case not provided for in this act, the rules of law and equity, including the law-merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause shall govern. [L. '13, p. 296, § 56.]

§ 3369–57. Interpretation Shall Give Effect to Purpose of Uniformity.—This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. [L. '13, p. 297, § 57.]

§ 3369–58. Definitions.—(1) In this act, unless the context or subject matter otherwise requires, "Action" includes counterclaim, setoff, and suit in equity.

"Delivery" means voluntary transfer of possession from one person to another.

"Fungible goods" means goods of which any unit is, from its nature or by mercantile custom, treated as the equivalent of any other unit.

"Goods" means chattels or merchandise in storage, or which has been or is about to be stored.

"Holder" of a receipt means a person who has both actual possession of such receipt and a right of property therein.

"Order" means an order by indorsement on the receipt.

"Owner" does not include mortgagee or pledgee.

"Person" includes a corporation or partnership or two or more persons having a joint or common interest.

To "purchase" includes to take as mortgagee or pledgee.

"Purchaser" includes mortgagee and pledgee.

"Receipt" means a warehouse receipt.

"Value" is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a receipt is taken either in satisfaction thereof or as security therefor.

"Warehouseman" means a person lawfully engaged in the business of storing goods for profit.

(2) A thing is done "in good faith" within the meaning of this act, when it is in fact done honestly, whether it be done negligently or not. [L. '13, p. 297, § 58.]

§ 3369-59. Prior Receipts.—The provisions of this act do not apply to receipts made and delivered prior to the taking effect of this act. [L. '13, p. 298, § 59.]

§ 3369-61. Name of Act.—This act may be cited as the "Uniform Warehouse Receipts Act." [L. '13, p. 298, § 61.]

CHAPTER II.

Bills of Lading by Carriers.

PART I.

THE ISSUE OF BILLS OF LADING.

§ 3385-1. Bills Governed by This Act.—Bills of lading issued by any common carrier shall be governed by this act. [L. '15, p. 462, § 1.].

"This act" refers to this chapter.

§ 3385-2. Form of Bills — Essential Terms.—Every bill must embody within its written or printed terms:

(a) The date of its issue,

(b) The name of the person from whom the goods have been received,

(c) The place where the goods have been received,

(d) The place to which the goods are to be transported,

(e) A statement whether the goods received will be delivered to a specified person, or to the order of a specified person,

(f) A description of the goods or of the packages containing them which may, however, be in such general terms as are referred to in section 3385–23, and

(g) The signature of the carrier.

A negotiable bill shall have the words "order of" printed thereon immediately before the name of the person upon whose order the goods received are deliverable.

A carrier shall be liable to any person injured thereby for the damage caused by the omission from a negotiable bill of any of the provisions required in this section. [L. '15, p. 462, § 2.]

§ 3385–3. Form of Bills — Terms Inserted.—A carrier may insert in a bill, issued by him, any other terms and conditions, provided that such terms and conditions shall not—

(a) Be contrary to law or public policy, or

(b) In anywise impair his obligation to exercise at least that degree of care in the transportation and safekeeping of the goods intrusted to him which a reasonably careful man would exercise in regard to similar goods of his own. [L. '15, p. 463, § 3.]

§ 3385–4. Non-negotiable or Straight Bill. — A bill in which it is stated that the goods are consigned or destined to a specified person, is a non-negotiable or straight bill. [L. '15, p. 463, § 4.]

§ 3385–5. Negotiable or Order Bill. — A bill in which it is stated that the goods are consigned or destined to the order of any person named in such bill, is a negotiable or order bill.

Any provision in such a bill that it is non-negotiable shall not affect its negotiability within the meaning of this act. [L. '15, p. 463, § 5.]

§ 3385–6. Negotiable Bills not Issued in Sets.—Negotiable bills issued in this state for the transportation of goods to any place in the United States on the continent of North America, except Alaska, shall not be issued in parts or sets.

If so issued the carrier issuing them shall be liable for failure to deliver the goods described therein to anyone who purchases a part for value in good faith, even though the purchase be after the delivery of the goods by the carrier to a holder of one of the other parts. [L. '15, p. 463, § 6.]

§ 3385–7. Duplicate Negotiable Bills Marked.—When more than one negotiable bill is issued in this state for the same goods to be transported to any place in the United States on the continent of North America, except Alaska, the word "duplicate" or some other word or words indicating that the document is not an original bill

shall be placed plainly upon the face of every such bill, except the one first issued. A carrier shall be liable for the damage caused by his failure so to do to anyone who has purchased the bill for value in good faith as an original, even though the purchase be after the delivery of the goods by the carrier to the holder of the original bill. [L. '15, p. 464, § 7.]

See supra, § 2646, duplicates when misdemeanor.

§ 3385–8. Non-negotiable Bills Marked. — A non-negotiable bill shall have placed plainly upon its face by the carrier issuing it "non-negotiable" or "not negotiable."

This section shall not apply, however, to memoranda or acknowledgments of an informal character. [L. '15, p. 464, § 8.]

§ 3385–9. Insertion of Name of Person to be Notified.—The insertion in a negotiable bill of the name of a person to be notified of the arrival of the goods shall not limit the negotiability of the bill, or constitute notice to a purchaser thereof of any rights or equities of such person in the goods. [L. '15, p. 464, § 9.]

§ 3385–10. Acceptance of Bill Indicates Assent to Its Terms.—Except as otherwise provided in this act, where a consignor receives a bill and makes no objection to its terms or conditions at the time he receives it, neither the consignor nor any person who accepts delivery of the goods, nor any person who seeks to enforce any provision of the bill, shall be allowed to deny that he is bound by such terms and conditions, so far as they are not contrary to law or public policy. [L. '15, p. 464, § 10.]

PART II.

OBLIGATIONS AND RIGHTS OF CARRIERS UPON THEIR BILLS OF LADING.

§ 3385–11. Obligation of Carrier to Deliver.—A carrier, in the absence of some lawful excuse, is bound to deliver goods upon a demand made either by the consignee named in the bill for the goods, or if the bill is negotiable, by the holder thereof, if such demand is accompanied by—

(a) An offer in good faith to satisfy the carrier's lawful lien upon the goods,

(b) An offer in good faith to surrender, properly indorsed, the bill which was issued for the goods, if the bill is negotiable, and

(c) A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the carrier.

In case the carrier refuses or fails to deliver the goods in compliance with a demand by the consignee or holder so accompanied, the

burden shall be upon the carrier to establish the existence of a lawful excuse for such refusal or failure. [L. '15, p. 465, § 11.]

§ 3385–12. Justification of Carrier in Delivering.—A carrier is justified, subject to the provisions of the three following sections, in delivering goods to one who is

(a) A person lawfully entitled to the possession of the goods, or

(b) The consignee named in a non-negotiable bill for the goods, or

(c) A person in possession of a negotiable bill for the goods by the terms of which the goods are deliverable to his order, or which has been indorsed to him or in blank by the consignee or by the mediate or immediate indorsee of the consignee. [L. '15, p. 465, § 12.]

§ 3385–13. Carrier's Liability for Misdelivery. — Where a carrier delivers goods to one who is not lawfully entitled to the possession of them, the carrier shall be liable to anyone having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by subdivisions (b) and (c) of the preceding section; and, though he delivered the goods as authorized by either of said subdivisions, he shall be so liable if prior to such delivery he—

(a) Had been requested, by or on behalf of a person having a right of property or possession in the goods, not to make such delivery, or

(b) Had information at the time of the delivery that it was to a person not lawfully entitled to the possession of the goods.

A request or information to be effective within the meaning of this section must be given to an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such a request or information, and must be given in time to enable the officer or agent to whom it is given, acting with reasonable diligence, to stop delivery of the goods. [L. '15, p. 466, § 13.]

§ 3385–14. Negotiable Bills Canceled When Goods Delivered—Except as provided in section 3385–27, and except when compelled by legal process, if a carrier delivers goods for which a negotiable bill had been issued, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the bill, such carrier shall be liable for failure to deliver the goods to anyone who for value and in good faith purchases such bill, whether such purchaser acquired title to the bill before or after the delivery of the goods by the carrier, and notwithstanding delivery was made to the person entitled thereto. [L. '15, p. 466, § 14.]

See supra, § 2647, penalty, failure to cancel, when.

§ 3385–15. Negotiable Bills When Canceled or Marked.—Except as provided in section 3385–27, and except when compelled by legal process, if a carrier delivers part of the goods for which a negotiable bill had been issued and fails either—

(a) To take up and cancel the bill, or

(b) To place plainly upon it a statement that a portion of the goods has been delivered, with a description, which may be in general terms, either of the goods or packages that have been so delivered or of the goods or packages which still remain in the carrier's possession, he shall be liable for failure to deliver all the goods specified in the bill, to anyone who for value and in good faith purchases it, whether such purchaser acquired title to it before or after the delivery of any portion of the goods by the carrier, and notwithstanding such delivery was made to the person entitled thereto. [L. '15, p. 466, § 15.]

See note to last section.

§ 3385–16. Altered Bills.—Any alteration, addition or erasure in a bill after its issue without authority from the carrier issuing the same either in writing or noted on the bill shall be void, whatever be the nature and purpose of the change, and the bill shall be enforceable according to its original tenor. [L. '15, p. 467, § 16.]

§ 3385–17. Lost or Destroyed Bills. — Where a negotiable bill has been lost or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient surety to be approved by the court to protect the carrier or any person injured by such delivery from any liability or loss, incurred by reason of the original bill remaining outstanding. The court may also in its discretion order the payment of the carrier's reasonable costs and counsel fees.

The delivery of the goods under an order of the court as provided in this section, shall not relieve the carrier from liability to a person to whom the negotiable bill has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods. [L. '15, p. 467, § 17.]

§ 3385–18. Effect of Duplicate Bills. — A bill upon the face of which the word "duplicate" or some other word or words indicating that the document is not an original bill is placed plainly shall impose upon the carrier issuing the same the liability of one who represents and warrants that such bill is an accurate copy of an original bill properly issued, but no other liability. [L. '15, p. 467, § 18.]

§ 3385–19. Carrier cannot Set Up Title in Himself.—No title to goods or right to their possession, asserted by a carrier for his own benefit, shall excuse him from liability for refusing to deliver the goods according to the terms of a bill issued for them, unless such title or right is derived directly or indirectly from a transfer made by

the consignor or consignee after the shipment, or from the carrier's lien. [L. '15, p. 468, § 19.]

§ 3385–20. Interpleader of Adverse Claimants.—If more than one person claims the title or possession of goods, the carrier may require all known claimants to interplead, either as a defense to an action brought against him for nondelivery of the goods, or as an original suit, whichever is appropriate. [L. '15, p. 468, § 20.]

§ 3385–21. Time to Determine Validity of Claims. — If someone other than the consignee or person in possession of the bill, has a claim to the title or possession of the goods, and the carrier has information of such claim, the carrier shall be excused from liability for refusing to deliver the goods either to the consignee or person in possession of the bill, or to the adverse claimant, until the carrier has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead. [L. '15, p. 468, § 21.]

§ 3385–22. Adverse Title When No Defense.—Except as provided in the two preceding sections and in section 3385–12, no right or title of a third person unless enforced by legal process shall be a defense to an action brought by the consignee of a non-negotiable bill or by the holder of a negotiable bill against the carrier for failure to deliver the goods on demand. [L. '15, p. 468, § 22.]

§ 3385–23. Liability for Nonreceipt or Misdescription.—If a bill of lading has been issued by a carrier or on his behalf by an agent or employee the scope of whose actual or apparent authority includes the issuing of bills of lading, the carrier shall be liable to

(a) The consignee named in a non-negotiable bill, or

(b) The holder of a negotiable bill,

Who has given value in good faith relying upon the description therein of the goods, for damages caused by the nonreceipt by the carrier or a connecting carrier of all or part of the goods or their failure to correspond with the description thereof in the bill at the time of its issue.

If, however, the goods are described in a bill merely by a statement of marks or labels upon them or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind or quantity, or in a certain condition, or it is stated in the bill that packages are said to contain goods of a certain kind or quantity or in a certain condition, or that the contents or condition of the contents of packages are unknown, or words of like purport are contained in the bill, such statements, if true, shall not make liable the carrier issuing the bill, although the goods are not of the kind or quantity or in the condition which the marks or labels upon them in-

dicate, or of the kind or quantity or in the condition they were said to be by the consignor. The carrier may, also, by inserting in the bill the words "shipper's load and count" or other words of like purport indicate that the goods were loaded by the shipper and the description of them made by him; and if such statement be true, the carrier shall not be liable for damages caused by the improper loading or by the nonreceipt or by the misdescription of the goods described in the bill. [L. '15, p. 469, § 23.]

§ 3385–24. Attachment or Levy upon Goods.—If goods are delivered to a carrier by the owner or by a person whose act in conveying the title to them to a purchaser for value in good faith would bind the owner and a negotiable bill is issued for them, they cannot thereafter, while in the possession of the carrier, be attached by garnishment or otherwise, or be levied upon under an execution, unless the bill be first surrendered to the carrier or its negotiation enjoined. The carrier shall in no such case be compelled to deliver the actual possession of the goods until the bill is surrendered to him or impounded by the court. [L. '15, p. 469, § 24.]

§ 3385–25. Creditor's Remedies to Reach Negotiable Bills.—A creditor whose debtor is the owner of a negotiable bill shall be entitled to such aid from courts of appropriate jurisdiction by injunction and otherwise in attaching such bill, or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process. [L. '15, p. 470, § 25.]

§ 3385–26. Statement of Charges for Which Lien is Claimed.—If a negotiable bill is issued the carrier shall have no lien on the goods therein mentioned, except for charges on those goods for freight, storage, demurrage and terminal charges, and expenses necessary for the preservation of the goods or incident to their transportation subsequent to the date of the bill, unless the bill expressly enumerates other charges for which a lien is claimed. In such case there shall also be a lien for the charges enumerated so far as they are allowed by law and the contract between the consignor and the carrier. [L. '15, p. 470, § 26.]

§ 3385–27. Effect of Sale.—After goods have been lawfully sold to satisfy a carrier's lien, or because they have not been claimed, or because they are perishable or hazardous, the carrier shall not thereafter be liable for failure to deliver the goods to the consignee or owner of the goods, or to a holder of the bill given for the goods when they were shipped, even if such bill be negotiable. [L. '15, p. 470, § 27.]

PART III.

NEGOTIATION AND TRANSFER OF BILLS.

§ 3385–28. Negotiation of Negotiable Bills by Delivery.—A negotiable bill may be negotiated by delivery where, by the terms of the bill, the carrier undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the bill has indorsed it in blank. [L. '15, p. 471, § 28.]

§ 3385–29. Negotiation of Negotiable Bills by Indorsement.—A negotiable bill may be negotiated by the indorsement of the person to whose order the goods are deliverable by the tenor of the bill. Such indorsement may be in blank or to a specified person. If indorsed to a specified person, it may be negotiated again by the indorsement of such person in blank or to another specified person. Subsequent negotiation may be made in like manner. [L. '15, p. 471, § 29.]

§ 3385–30. Transfer of Bills. — A bill may be transferred by the holder by delivery, accompanied with an agreement, express or implied, to transfer the title to the bill or to the goods represented thereby.

A non-negotiable bill cannot be negotiated, and the indorsement of such a bill gives the transferee no additional right. [L. '15, p. 471, § 30.]

§ 3385–31. Who may Negotiate a Bill.—A negotiable bill may be negotiated by any person in possession of the same, however such possession may have been acquired if, by the terms of the bill, the carrier undertakes to deliver the goods to the order of such person, or if at the time of negotiation the bill is in such form that it may be negotiated by delivery. [L. '15, p. 471, § 31.]

§ 3385–32. Rights of Person to Whom a Bill has Been Negotiated. A person to whom a negotiable bill has been duly negotiated acquires thereby—

(a) Such title to the goods as the person negotiating the bill to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the consignee and consignor had or had power to convey to a purchaser in good faith for value, and

(b) The direct obligation of the carrier to hold possession of the goods for him according to the terms of the bill as fully if the carrier had contracted directly with him. [L. '15, p. 471, § 32.]

§ 3385–33. Rights of Person to Whom a Bill has Been Transferred. A person to whom a bill has been transferred but not negotiated acquires thereby as against the transferrer, the title to the goods, subject to the terms of any agreement with the transferrer. If the bill

is non-negotiable, such person also acquires the right to notify the carrier of the transfer to him of such bill, and thereby to become the direct obligee of whatever obligations the carrier owed to the transferrer of the bill immediately before the notification.

Prior to the notification of the carrier by the transferrer or transferee of a non-negotiable bill, the title of the transferee to the goods and the right to acquire the obligation of the carrier may be defeated by garnishment or by attachment or execution upon the goods by a creditor of the transferrer, or by a notification to the carrier by the transferrer or a subsequent purchaser from the transferrer of a subsequent sale of the goods by the transferrer.

A carrier has not received notification within the meaning of this section unless an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such a notification, has been notified; and no modification shall be effective until the officer or agent to whom it is given has had time with the exercise of reasonable diligence to communicate with the agent or agents having actual possession or control of the goods. [L. '15, p. 472, § 33.]

§ 3385–34. Transfer of Negotiable Bill Without Indorsement. — Where a negotiable bill is transferred for value by delivery, and the indorsement of the transferrer is essential for negotiation, the transferee acquires a right against the transferrer to compel him to indorse the bill, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made. This obligation may be specifically enforced. [L. '15, p. 472, § 34.]

§ 3385–35. Warranties on Sale of Bill.—A person who negotiates or transfers for value a bill by indorsement or delivery, including one who assigns for value a claim secured by a bill, unless, a contrary intention appears, warrants—

(a) That the bill is genuine,

(b) That he has a legal right to transfer it,

(c) That he has knowledge of no fact which would impair the validity or worth of the bill, and

(d) That he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a bill the goods represented thereby.

In the case of an assignment of a claim secured by a bill, the liability of the assignor shall not exceed the amount of the claim. [L. '15, p. 473, § 35.]

§ 3385–36. Indorser not a Guarantor. — The indorsement of a bill shall not make the indorser liable for any failure on the part of the carrier or previous indorsers of the bill to fulfill their respective obligations. [L. '15, p. 473, § 36.]

§ 3385-37. No Warranty Implied from Accepting Payment of a Debt.—A mortgagee or pledgee, or other holder of a bill for security who in good faith demands or receives payment of the debt for which such bill is security, whether from a party to a draft drawn for such debt or from any other person, shall not be deemed by so doing to represent or to warrant the genuineness of such bill or the quantity or quality of the goods therein described. [L. '15, p. 473, § 37.]

§ 3385-38. When Negotiation not Impaired by Fraud, etc.—The validity of the negotiation of a bill is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the bill was deprived of the possession of the same by fraud, accident, mistake, duress or conversion, if the person to whom the bill was negotiated, or a person to whom the bill was subsequently negotiated, gave value therefor, in good faith, without notice of the breach of duty, or fraud, accident, mistake, duress or conversion. [L. '15, p. 473, § 38.]

§ 3385-39. Subsequent Negotiation.—Where a person having sold, mortgaged, or pledged goods which are in a carrier's possession and for which a negotiable bill has been issued, or having sold, mortgaged, or pledged the negotiable bill representing such goods, continues in possession of the negotiable bill, the subsequent negotiation thereof by that person under any sale, pledge, or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, shall have the same effect as if the first purchaser of the goods or bill had expressly authorized the subsequent negotiation. [L. '15, p. 474, § 39.]

§ 3385-40. Form of the Bill as Indicating Rights of Buyer and Seller.—Where goods are shipped by the consignor in accordance with a contract or order for their purchase, the form in which the bill is taken by the consignor shall indicate the transfer or retention of the property or right to the possession of the goods as follows:

(a) Where by the bill the goods are deliverable to the buyer or to his agent, or to the order of the buyer or of his agent, the consignor thereby transfers the property in the goods to the buyer.

(b) Where by the bill the goods are deliverable to the seller or to his agent, or to the order of the seller or his agent, the seller thereby reserves the property in the goods. But if, except for the form of the bill, the property would have passed to the buyer on shipment of the goods, the seller's property in the goods shall be deemed to be only for the purpose of securing performance by the buyer of his obligations under the contract.

(c) Where by the bill the goods are deliverable to the order of the buyer or of his agent, but possession of the bill is retained by the

seller or his agent, the seller thereby reserves a right to the possession of the goods, as against the buyer.

(d) Where the seller draws on the buyer for the price and transmits the draft and bill together to the buyer to secure acceptance or payment of the draft, the buyer is bound to return the bill if he does not honor the draft, and if he wrongfully retains the bill he acquires no added right thereby. If, however, the bill provides that the goods are deliverable to the buyer, or to the order of the buyer, or is indorsed in blank or to the buyer by the consignee named therein, one who purchases in good faith, for value, the bill or goods from the buyer, shall obtain the title to the goods, although the draft has not been honored, if such purchaser has received delivery of the bill indorsed by the consignee named therein, or of the goods, without notice of the facts making the transfer wrongful. [L. '1915, p. 474, § 40.]

§ 3385-41. Demand or Sight Draft to be Paid When—Acceptance of Time Draft.—Where the seller of goods draws on the buyer for the price of the goods and transmits the draft and a bill of lading for the goods either directly to the buyer or through a bank or other agency, unless a different intention on the part of the seller appears, the buyer and all other parties interested shall be justified in assuming:

(a) If the draft is by its terms or legal effect payable on demand or presentation or at sight, or not more than three days thereafter (whether such three days be termed days of grace or not), that the seller intended to require payment of the draft before the buyer should be entitled to receive or retain the bill.

(b) If the draft is by its terms payable on time, extending beyond three days after demand, presentation or sight (whether such three days be termed days of grace or not), that the seller intended to require acceptance, but not payment of the draft before the buyer should be entitled to receive or retain the bill.

The provisions of this section are applicable whether by the terms of the bill the goods are consigned to the seller, or to his order, or to the buyer, or to his order, or to a third person, or to his order. [L. '15, p. 475, § 41.]

§ 3385-42. Negotiation Defeats Vendor's Lien.—Where a negotiable bill has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the rights of any purchaser for value in good faith to whom such bill has been negotiated, whether such negotiation be prior or subsequent to the notification to the carrier who issued such bill of the seller's claim to a lien or right of stoppage in transitu. Nor shall the carrier be obliged to deliver or justified in delivering the goods to an unpaid seller unless such bill is first surrendered for cancellation. [L. '15, p. 476, § 42.]

§ 3385–43. Rights and Remedies Under Mortgages and Liens.—Except as provided in section 3385–42, nothing in this act shall limit the rights and remedies of a mortgagee or lienholder whose mortgage or lien on goods would be valid, apart from this act, as against one who for value and in good faith purchased from the owner, immediately prior to the time of their delivery to the carrier, the goods which are subject to the mortgage or lien and obtained possession of them. [L. '15, p. 476, § 43.]

PART IV.

CRIMINAL OFFENSES.

§ 3385–44. Issue of Bill for Goods not Received.—Any officer, agent or servant of a carrier, who with intent to defraud issues or aids in issuing a bill knowing that all or any part of the goods for which such bill is issued have not been received by such carrier, or by an agent of such carrier or by a connecting carrier, or are not under the carrier's control at the time of issuing such bill, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. [L. '15, p. 476, § 44.]

§ 3385–45. Issue of Bill Containing False Statement.—Any officer, agent, or servant of a carrier, who with intent to defraud issues or aids in issuing a bill for goods knowing that it contains any false statement, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. [L. '15, p. 477, § 45.]

§ 3385–46. Issue of Duplicate Bills not so Marked.—Any officer, agent, or servant of a carrier, who with intent to defraud issues or aids in issuing a duplicate or additional negotiable bill for goods in violation of the provisions of section 3385–7, knowing that a former negotiable bill for the same goods or any part of them is outstanding and uncanceled, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. [L. '15, p. 477, § 46.]

§ 3385–47. Negotiation of Bill for Mortgaged Goods.—Any person who ships goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable bill which he afterward negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. [L. '15, p. 477, § 47.]

§ 3385–48. Negotiation of Bill—Goods not in Carrier's Possession. Any person who with intent to deceive negotiates or transfers for value a bill knowing that any or all of the goods which by the terms of such bill appear to have been received for transportation by the carrier which issued the bill, are not in the possession or control of such carrier, or of a connecting carrier, without disclosing this fact, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. [L. '15, p. 477, § 48.]

§ 3385–49. Inducing Carrier to Issue Bill When Goods Have not been Received.—Any person who with intent to defraud secures the issue by a carrier of a bill knowing that at the time of such issue, any or all of the goods described in such bill as received for transportation have not been received by such carrier, or an agent of such carrier, or a connecting carrier, or are not under the carrier's control, by inducing an officer, agent, or servant of such carrier falsely to believe that such goods have been received by such carrier, or are under its control, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. [L. '15, p. 478, § 49.]

§ 3385–50. Issue of Non-negotiable Bill not so Marked.—Any person who with intent to defraud issues or aids in issuing a non-negotiable bill without the words "not negotiable" placed plainly upon the face thereof, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years or by a fine not exceeding five thousand dollars, or by both. [L. '15, p. 478, § 50.]

PART V.

INTERPRETATION.

§ 3385–51. Rule for Cases not Provided for in This Act.—In any case not provided for in this act, the rules of law and equity including the law-merchant, and in particular the rules relating to the law of principal and agent, executors, administrators and trustees, and to the effect of fraud, misrepresentation, duress or coercion, accident, mistake, bankruptcy, or other invalidating cause, shall govern. [L. '15, p. 478, § 51.]

§ 3385–52. Interpretation—Effect.—This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. [L. '15, p. 479, § 52.]

§ 3385–53. Definitions.—(1) In this act, unless the context or subject matter otherwise requires—

"Action" includes counterclaim, setoff, and suit in equity.

"Bill" means bill of lading.

"Consignee" means the person named in the bill as the person to whom delivery of the goods is to be made.

"Consignor" means the person named in the bill as the person from whom the goods have been received for shipment.

"Goods" means merchandise or chattels in course of transportation, or which have been or are about to be transported.

"Holder" of a bill means a person who has both actual possession of such bill and a right of property therein.

"Order" means an order by indorsement on the bill.

"Owner" does not include mortgagee or pledgee.

"Person" includes a corporation or partnership of two or more persons having a joint or common interest.

To "purchase" includes to take as mortgagee and to take as pledgee.

"Purchaser" includes mortagee and pledgee.

"Value" is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a bill is taken either in satisfaction thereof or as security therefor.

(2) A thing is done "in good faith" within the meaning of this act, when it is in fact done honestly, whether it be done negligently or not. [L. '15, p. 479, § 53.]

§ 3385–54. Act Does not Apply to Existing Bills.—The provisions of this act do not apply to bills made and delivered prior to the taking effect thereof. [L. '15, p. 479, § 54.]

§ 3385–55. Inconsistent Legislation Repealed. — Sections 3385, 3386, 3387, 3388, 3389, 3390, and 3391 of Remington & Ballinger's Annotated Codes and Statutes of Washington and all acts or parts of acts inconsistent with this act are hereby repealed. [L. '15, p. 480, § 55.]

§ 3385–56. Name of Act.—This act may be cited as the Uniform Bills of Lading Act. [L. '15, p. 480, § 56.]

CHAPTER III.

Negotiable Instruments.

§ 3392. Negotiability, What Constitutes.—An instrument to be negotiable must conform to the following requirements:

1. It must be in writing and signed by the maker or drawer;

2. Must contain an unconditional promise or order to pay a sum certain in money;

3. Must be payable on demand, or at a fixed or determinable future time;

4. Must be payable to order or to bearer; and,

5. Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty. [L. '99, p. 340, § 1.]

Cited in 62 Wash. 443; 66 Wash. 263, 378; 66 Wash. 377; 72 Wash. 611; 74 Wash. 661; 81 Wash. 445–447.

For former laws on the subject of negotiable bills and notes, see L. '54, pp. 400–402; L. '60, pp. 302, 303; L. '63, pp. 427–429; Cd. '81, §§ 2295–2309; 1 H. C., §§ 2383–2397; Bal. Code, §§ 3650–4664.

Negotiable bills of lading, etc., see two previous chapters of this title.

See supra, § 124 et seq., parties to actions.
See supra, § 157, and notes, statute of limitations.
See supra, § 191, action by assignee of chose in action.
See supra, § 974 et seq., and notes, actions to protect sureties.
See supra, § 1116 et seq., foreclosure of mortgages.
See supra, § 1143, promissory note not to discharge statutory liens.
See infra, § 3699, and notes, private corporations.
See infra, § 6250, legal interest.
See infra, § 9310, notes, etc., made and drawn by telegraph.

§ 3393. "Sum Certain" Defined.—The sum payable is a sum certain within the meaning of this act, although it is to be paid—

1. With interest; or

2. By stated installments; or

3. By stated installments, with a provision that upon default in payment of any installment or of interest, the whole shall become due; or

4. With exchange, whether at a fixed rate or at the current rate; or

5. With costs of collection or an attorney's fees, in case payment shall not be made at maturity. [L. '99, p. 340, § 2.]

Cited in 66 Wash. 263; 81 Wash. 445–447.

§ 3394. "Unconditional" Defined.—An unqualified order or promise to pay is unconditional within the meaning of this act, though coupled with—

1. An indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount; or

2. A statement of the transaction which gives rise to the instrument.

But an order or promise to pay only out of a particular fund is not unconditional. [L. '99, p. 340, § 3.]

Cited in 66 Wash. 379; 81 Wash. 445–447.

§ 3395. "Determinable Future Time" Defined.—An instrument is payable at a determinable future time, within the meaning of this act, which is expressed to be payable—

1. At a fixed period after date or sight; or

2. On or before a fixed or determinable future time specified therein; or

3. On or at a fixed period after the occurrence of a specified event, which is certain to happen, though the time of happening be uncertain.

An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect. [L. '99, p. 341, § 4.]

Cited in 81 Wash. 445–447.

§ 3396. Negotiability—Effect of Provisions on.—An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which—

1. Authorizes the sale of collateral securities in case the instrument be not paid at maturity; or

2. Authorizes a confession of judgment if the instrument be not paid at maturity; or

3. Waives the benefit of any law intended for the advantage or protection of the obligor; or

4. Gives the holder an election to require something to be done in lieu of payment of money.

But nothing in this section shall validate any provision or stipulation otherwise illegal. [L. '99, p. 341, § 5.]

Cited in 62 Wash. 443; 81 Wash. 445–447, 451.

§ 3397. Validity and Negotiability—When not Affected.—The validity and negotiable character of an instrument are not affected by the fact that—

1. It is not dated; or

2. Does not specify the value given, or that any value has been given therefor; or

3. Does not specify the place where it is drawn or the place where it is payable; or

4. Bears a seal; or

5. Designates a particular kind of current money in which payment is to be made.

But nothing in this section shall alter or repeal any statute requiring in certain cases, the nature of the consideration to be stated in the instrument. [L. '99, p. 341, § 6.]

§ 3398. When "Payable on Demand."—An instrument is payable on demand—

1. Where it is expressed to be payable on demand, or at sight, or on presentation; or

2. In which no time for payment is expressed.

Where an instrument is issued, accepted or indorsed when overdue, it is, as regards the person so issuing, accepting or indorsing it, payable on demand. [L. '99, p. 342, § 7.]

§ 3399. When "Payable to Order."—The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order. It may be drawn payable to the order of—

1. A payee who is not maker, drawer, or drawee; or
2. The drawer or maker; or
3. The drawee; or
4. Two or more payees jointly; or
5. One or some of several payees; or
6. The holder of an office for the time being.

Where the instrument is payable to order the payee must be named or otherwise indicated therein with reasonable certainty. [L. '99, p. 342, § 8.]

§ 3400. When "Payable to Bearer."—The instrument is payable to bearer—

1. When it is expressed to be so payable; or
2. When it is payable to a person named therein or bearer; or
3. When it is payable to the order of a fictitious or nonexisting person, and such fact was known to the person making it so payable; or
4. When the name of the payee does not purport to be the name of any person; or
5. When the only or last indorsement is an indorsement in blank. [L. '99, p. 342, § 9.]

§ 3401. Intent to Conform to Requirements Sufficient.—The instrument need not follow the language of this act, but any terms are sufficient which clearly indicate an intention to conform to the requirements hereof. [L. '99, p. 342, § 10.]

Cited in 72 Wash. 611.

§ 3402. Date Prima Facie True.—Where the instrument or an acceptance or any indorsement thereon is dated, such date is deemed prima facie to be the true date of the making, drawing, acceptance or indorsement as the case may be. [L. '99, p. 343, § 11.]

§ 3403. Effect of Ante or Post Date.—The instrument is not invalid for the reason only that it is ante-dated or post-dated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery. [L. '99, p. 343, § 12.]

§ 3404. Blank Date—Holder may Fill.—Where an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly.

The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him, the date so inserted is to be regarded as the true date. [L. '99, p. 343, § 13.]

§ 3405. Defects and Blanks—Holders' Right to Fill.—Where the instrument is wanting in any material particular, the person in possession thereof has a prima facie authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a prima facie authority to fill it up as such for any amount. In order, however, that any such instrument when completed may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time. [L. '99, p. 343, § 14.]

§ 3406. Negotiation Without Delivery or Authority, Invalid.—Where an incomplete instrument has not been delivered it will not, if completed and negotiated, without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery. [L. '99, p. 343, § 15.]

§ 3407. Delivery, What Constitutes.—Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties, and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting or indorsing, as the case may be; and in such case the delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved. [L. '99, p. 344, § 16.]

Cited in 53 Wash. 84; 63 Wash. 77; 85 Wash. 77.

§ 3408. Construction of Ambiguities.—Where the language of the instrument is ambiguous, or there are omissions therein, the following rules of construction apply—

1. Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, references may be had to the figures to fix the amount;

2. Where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof;

3. Where the instrument is not dated, it will be considered to be dated as of the time it was issued;

4. Where there is a conflict between the written and printed provisions of the instrument, the written provisions prevail;

5. Where the instrument is so ambiguous that there is doubt whether it is a bill or note, the holder may treat it as either at his election;

6. Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser;

7. Where an instrument containing the words "I promise to pay" is signed by two or more persons, they are deemed to be jointly and severally liable thereon. [L. '99, p. 344, § 17.]

Cited in 78 Wash. 27; 79 Wash. 415.

§ 3409. Liability—Signature Necessary—Assumed or Trade Name. No person is liable on the instrument whose signature does not appear thereon, except as herein otherwise expressly provided. But one who signs in a trade or assumed name will be liable to the same extent as if he had signed his own name. [L. '99, p. 345, § 18.]

§ 3410. Signature by Agent.—The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose; and the authority of the agent may be established as in other cases of agency. [L. '99, p. 345, § 19.]

Cited in 68 Wash. 451.

§ 3411. Liability of Agent.—Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character, without disclosing his principal, does not exempt him from personal liability. [L. '99, p. 345, § 20.]

§ 3412. Signature by "Procuration"—Notice.—A signature by "procuration" operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent

in so signing acted within the actual limits of his authority. [L. '99, p. 345, § 21.]

§ 3413. Assignment by Corporation or Infant Passes Title.—The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon. [L. '99, p. 345, § 22.]

§ 3414. Forgery—Effect of.—Where a signature is forged or made without authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party, against whom it is sought to enforce such right, is precluded from setting up the forgery or want of authority. [L. '99, p. 345, § 23.]

§ 3415. Consideration Presumed.—Every negotiable instrument is deemed prima facie to have been issued for a valuable consideration; and every person whose signature appears thereon to have become a party thereto for value. [L. '99, p. 346, § 24.]

Cited in 77 Wash. 298; 85 Wash. 185, 465; 87 Wash. 43.

§ 3416. Value, What Constitutes.—Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes value; and is deemed such whether the instrument is payable on demand or at a future time. [L. '99, p. 346, § 25.]

Cited in 85 Wash. 465.

§ 3417. "Holder for Value," When.—Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who became such prior to that time. [L. '99, p. 346, § 26.]

Cited in 83 Wash. 83; 85 Wash. 465.

§ 3418. Same—Lien.—Where the holder has a lien on the instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien. [L. '99, p. 346, § 27].

Cited in 85 Wash. 465, 466.

§ 3419. Lack of Consideration as a Defense.—Absence or failure of consideration is matter of defense as against any person not a holder in due course; and partial failure of consideration is a defense pro tanto, whether the failure is an ascertained and liquidated amount or otherwise. [L. '99, p. 346, § 28.]

Cited in 53 Wash. 140.

See infra, § 5317, notes in consideration of gambling contract, void when.

§ 3420. Accommodation Party, Who is.—An accommodation party is one who has signed the instrument as maker, drawer, acceptor or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party. [L. '99, p. 346, § 29.]

Cited in 71 Wash. 221; 79 Wash. 415; 83 Wash. 83; 86 Wash. 288.

§ 3421. How Negotiated.—An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer it is negotiated by delivery; if payable to order it is negotiated by the indorsement of the holder completed by delivery. [L. '99, p. 347, § 30.]

§ 3422. How Indorsed.—The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement. [L. '99, p. 347, § 31.]

§ 3423. Indorsement must be Entire.—The indorsement must be an indorsement of the entire instrument. An indorsement, which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the instrument to two or more indorsees severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part, it may be indorsed as to the residue. [L. '99, p. 347, § 32.]

§ 3424. Same — May be Special, etc. — An indorsement may be either special or in blank; and it may also be either restrictive or qualified, or conditional. [L. '99, p. 347, § 33.]

Cited in 83 Wash. 83.

§ 3425. Special and Blank Indorsements, What are.—A special indorsement specifies the person to whom, or to whose order, the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer, and may be negotiated by delivery. [L. '99, p. 347, § 34.]

§ 3426. Blank Indorsement may be Changed to Special. — The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement. [L. '99, p. 347, § 35.]

§ 3427. Restrictive Indorsements. — An indorsement is restrictive, which either—

1. Prohibits the further negotiation of the instrument; or

2. Constitutes the indorsee the agent of the indorser; or

3. Vests the title in the indorsee in trust for or to the use of some other person.

But the mere absence of words implying power to negotiate does not make an indorsement restrictive. [L. '99, p. 347, § 36.]

§ 3428. Rights of Restrictive Indorsee.—A restrictive indorsement confers upon the indorsee the right—

1. To receive payment of the instrument;

2. To bring any action thereon that the indorser could bring;

3. To transfer his rights as such indorsee, where the form of the indorsement authorizes him to do so.

But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement. [L. '99, p. 348, § 37.]

Cited in 83 Wash. 83.

§ 3429. Qualified Indorsement. — A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words "without recourse" or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument. [L. '99, p. 348, § 38.]

§ 3430. Conditional Indorsement, Effect of.—Where an indorsement is conditional, a party required to pay the instrument may disregard the condition, and make payment to the indorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated, will hold the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally. [L. '99, p. 348, § 39.]

§ 3431. Special Indorsement, Payable to Bearer, Effect of.—Where an instrument, payable to bearer, is indorsed specially, it may nevertheless be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement. [L. '99, p. 348, § 40.]

§ 3432. Payable to Two or More—Indorsement.—Where an instrument is payable to the order of two or more payees or indorsees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others. [L. '99, p. 348, § 41.]

§ 3433. Indorsement to "Cashier," Effect of. — Where an instrument is drawn or indorsed to a person as "cashier" or other fiscal officer of a bank or corporation, it is deemed prima facie to be payable to the bank or corporation of which he is such officer; and may be negotiated by either the indorsement of the bank or corporation, or the indorsement of the officer. [L. '99, p. 348, § 42.]

§ 3434. Misspelled Name, How Indorsed. — Where the name of a payee or indorsee is wrongly designated or misspelled, he may indorse the instrument as therein described, adding, if he think fit, his proper signature. [L. '99, p. 349, § 43.]

§ 3435. Indorsement in Representative Capacity.—Where any person is under obligation to indorse in a representative capacity, he may indorse in such terms as to negative personal liability. [L. '99, p. 349, § 44.]

§ 3436. Presumption of Negotiation Before Indorsement.—Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed prima facie to have been effected before the instrument was overdue. [L. '99, p. 349, § 45.]

§ 3437. Indorsement Presumed Made When Dated.—Except where the contrary appears, every indorsement is presumed prima facie to have been made at the place where the instrument is dated. [L. '99, p. 349, § 46.]

§ 3438. Negotiability Continues.—An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise. [L. '99, p. 349, § 47.]

§ 3439. Striking Indorsement.—The holder may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out, and all indorsers subsequent to him, are thereby relieved from liability on the instrument. [L. '99, p. 349, § 48.]

§ 3440. Transfer Without Indorsement.—Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferrer had therein, and the transferee acquires, in addition, the right to have the indorsement of the transferrer. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made. [L. '99, p. 349, § 49.]

§ 3441. Transfer Back to Prior Party.—Where an instrument is negotiated back to a prior party, such party may, subject to the provisions of this act, reissue and further negotiate the same. But he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable. [L. '99, p. 349, § 50.]

§ 3442. Holder may Sue in Own Name. — The holder of a negotiable instrument may sue thereon in his own name; and payment to him in due course discharges the instrument. [L. '99, p. 350, § 51.]

§ 3443. "Holder in Due Course," When.—A holder in due course is a holder who has taken the instrument under the following conditions:—

1. That it is complete and regular upon its face;

2. That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact;

3. That he took it in good faith and for value;

4. That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it. [L. '99, p. 350, § 52.]

Cited in 55 Wash. 579, 580; 57 Wash. 597; 61 Wash. 463; 62 Wash. 539; 63 Wash. 192, 195; 64 Wash. 61, 277; 79 Wash. 116.

§ 3444. Same, When not. — Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course. [L. '99, p. 350, § 53.]

Cited in 85 Wash. 467.

§ 3445. Notice of Defect Before Full Payment.—Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him. [L. '99, p. 350, § 54.]

§ 3446. Title Defective, When.—The title of a person who negotiates an instrument is defective within the meaning of this act when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud. [L. '99, p. 350, § 55.]

Cited in 57 Wash. 634; 62 Wash. 540; 63 Wash. 192, 195; 64 Wash. 277, 280; 69 Wash. 312; 85 Wash. 469.

§ 3447. Notice of Defect, What is.—To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith. [L. '99, p. 350, § 56.]

Cited in 53 Wash. 86; 55 Wash. 579, 580; 63 Wash. 192, 195, 196, 199; 69 Wash. 312, 313.

§ 3448. "Holder in Due Course"—Right to Full Payment.—A holder in due course holds the instrument free from any defects of title of prior parties, and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for

the full amount thereof against all parties liable thereon. [L. '99, p. 350, § 57.]

Cited in 63 Wash. 196.

§ 3449. Defenses Against One not a Holder in Due Course.—In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were non-negotiable. But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the instrument, has all the rights of such former holder in respect of all parties prior to the latter. [L. '99, p. 351, § 58.]

Cited in 56 Wash. 630, 631, 632; 62 Wash. 538, 543; 69 Wash. 312; 83 Wash. 83.

§ 3450. "Due Course" Presumed — Burden of Proof. — [Every] holder is deemed prima facie to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as holder in due course. But the last-mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title. [L. '99, p. 351, § 59.]

Cited in 54 Wash. 565; 56 Wash. 630, 631, 632; 57 Wash. 597; 62 Wash. 539; 63 Wash. 192, 195; 64 Wash. 277, 280; 69 Wash. 312; 79 Wash. 115; 84 Wash. 447.

§ 3451. Maker's Undertaking—Estoppel.—The maker of a negotiable instrument by making it engages that he will pay it according to its tenor, and admits the existence of the payee and his then capacity to indorse. [L. '99, p. 351, § 60.]

Cited in 56 Wash. 630, 631, 632; 79 Wash. 190.

§ 3452. Drawer's Undertaking—Estoppel.—The drawer by drawing the instrument admits the existence of the payee and his then capacity to indorse; and engages that on due presentment the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negativing or limiting his own liability to the holder. [L. '99, p. 351, § 61.]

Cited in 56 Wash. 630, 631, 632.

§ 3453. Acceptor's Undertaking—Estoppel. — The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance; and admits—

1. The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and

2. The existence of the payee and his then capacity to indorse. [L. '99, p. 351, § 62.]

Cited in 56 Wash. 630, 631, 632.

§ 3454. Signer, an Indorser, Unless Intention Clearly Indicated.—A person placing his signature upon an instrument otherwise than as maker, drawer or acceptor is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity. [L. '99, p. 352, § 63.]

§ 3455. Blank Signature by One not a Party—Liability.—Where a person, not otherwise a party to an instrument, places thereon his signature in blank before delivery, he is liable as indorser in accordance with the following rules:

1. If the instrument is payable to the order of a third person, he is liable to the payee and to all subsequent parties.

2. If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer.

3. If he signs for the accommodation of the payee, he is liable to all parties subsequent to the payee. [L. '99, p. 352, § 64.]

§ 3456. Warranties by Negotiator. — Every person negotiating an instrument by delivery or by a qualified indorsement, warrants—

1. That the instrument is genuine and in all respects what it purports to be;

2. That he has a good title to it;

3. That all prior parties had capacity to contract;

4. That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.

But when the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee.

The provisions of subdivision 3 of this section do not apply to persons negotiating public or corporate securities, other than bills and notes. [L. '99, p. 352, § 65.]

See, also, § 3460, infra.

§ 3457. Warranties by Indorser. — Every indorser who indorses without qualification, warrants to all subsequent holders in due course—

1. The matters and things mentioned in subdivisions 1, 2 and 3 of the next preceding section; and

2. That the instrument is at the time of his indorsement valid and subsisting.

And, in addition, he engages that on due presentment, it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored, and the necessary proceedings on dis-

honor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. [L. '99, p. 352, § 66.]

Cited in 62 Wash. 658.

§ 3458. Liability of Indorser — When Negotiable by Delivery. — Where a person places his indorsement on an instrument negotiable by delivery he incurs all the liabilities of an indorser. [L. '99, p. 353, § 67.]

Cited in 62 Wash. 658.

§ 3459. Order of Liability—Agreements Admissible—Joint Payees, etc.—As respects one another, indorsers are liable prima facie in the order in which they indorse; but evidence is admissible to show that as between or among themselves they have agreed otherwise. Joint payees or joint indorsees who indorse are deemed to indorse jointly and severally. [L. '99, p. 353, § 68.]

§ 3460. Liability of Broker Negotiating Without Indorsement. — Where a broker or other agent negotiates an instrument without indorsement, he incurs all the liabilities prescribed by section 3456, unless he discloses the name of his principal, and the fact that he is acting only as agent. [L. '99, p. 353, § 69.]

Cited in 57 Wash. 597; 85 Wash. 470.

§ 3461. Presentment—When Necessary. — Presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if the instrument is, by its terms, payable at a special place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part. But except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers. [L. '99, p. 353, § 70.]

Cited in 54 Wash. 557.

See infra, § 3471, when not necessary.

§ 3462. Time of Presentment.—Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof. [L. '99, p. 353, § 71.]

§ 3463. Presentment, Sufficiency of.—Presentment for payment, to be sufficient, must be made—

1. By the holder, or by some person authorized to receive payment on his behalf.

2. At a reasonable hour on a business day;

3. At a proper place as herein defined;

4. To the person primarily liable on the instrument, or if he is absent or inaccessible, to any person found at the place where the presentment is made. [L. '99, p. 354, § 72.]

See infra, § 3536.

§ 3464. Same, Place of.—Presentment for payment is made at the proper place—

1. Where a place of payment is specified in the instrument and it is there presented;

2. Where no place of payment is specified, but the address of the person to make payment is given in the instrument and it is there presented;

3. Where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment;

4. In any other case if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence. [L. '99, p. 354, § 73.]

§ 3465. Exhibition of Instrument Necessary.—The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it. [L. '99, p. 354, § 74.]

§ 3466. Presentment at Bank, Time of.—Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient. [L. '99, p. 354, § 75.]

See, also, infra, § 3477.

§ 3467. Same—To Personal Representative.—Where the person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative if such there be, and if, with the exercise of reasonable diligence, he can be found. [L. '99, p. 354, § 76.]

§ 3468. Same—To One of Partners.—Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm. [L. '99, p. 354, § 77.]

See infra, § 3489, notice to one, notice to all.
See infra, § 3518, bill addressed to two or more.

§ 3469. Presentment to All Parties, When Necessary. — Where there are several persons not partners, primarily liable on the instrument and no place of payment is specified, presentment must be made to them all. [L. '99, p. 355, § 78.]

§ 3470. Presentment Unnecessary to Charge Drawer, When.—Presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument. [L. '99, p. 355, § 79.]

§ 3471. Presentment Unnecessary to Charge Indorser, When.—Presentment for payment is not required in order to charge an indorser where the instrument was made or accepted for his accommodation and he has no reason to expect that the instrument will be paid if presented. [L. '99, p. 355, § 80.]

See supra, § 3461, when necessary.

§ 3472. Excusable Delay.—Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause for delay ceases to operate, presentment must be made with reasonable diligence. [L. '99, p. 355, § 81.]

See infra § 3559.

§ 3473. Presentment Unnecessary. — Presentment for payment is dispensed with—

1. Where after the exercise of reasonable diligence presentment as required by this act cannot be made;

2. Where the drawee is a fictitious person;

3. By waiver of presentment, express or implied. [L. '99, p. 355, § 82.]

§ 3474. When Dishonored.—The instrument is dishonored by nonpayment when—

1. It is duly presented for payment and payment is refused or cannot be obtained; or

2. Presentment is excused and the instrument is overdue and unpaid. [L. '99, p. 355, § 83.]

§ 3475. Dishonor Attaches Liability to Secondary Parties. — Subject to the provisions of this act, when the instrument is dishonored by nonpayment, an immediate right of recourse to all parties secondarily liable thereon accrues to the holder. [L. '99, p. 355, § 84.]

§ 3475½. No Grace—Sundays and Holidays.—Every negotiable instrument is payable at the time fixed therein without grace. When the day of maturity falls upon Sunday, or a holiday, the instrument

is payable on the next succeeding business day. [L. '15, p. 547, § 1. Cf. L. '99, p. 355, § 85.]

See infra, § 3536, application of this section.
See infra, § 3584, Sundays and holidays.

§ 3476. Computation of Time.—Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and by including the date of payment. [L. '99, p. 356, § 86.]

See infra, § 3533, fixed by presentment.

§ 3477. "Payable at Bank," an Order on Bank.—Where the instrument is made payable at a bank it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon. [L. '99, p. 356, § 87.]

See, also, supra, § 3466.

§ 3478. Payment in Due Course.—Payment is made in due course when it is made at or after the maturity of the instrument to the holder thereof in good faith and without notice that his title is defective. [L. '99, p. 356, § 88.]

§ 3479. Notice of Dishonor Necessary to Charge.—Except as herein otherwise provided, when a negotiable instrument has been dishonored by nonacceptance or nonpayment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged. [L. '99, p. 356, § 89.]

See infra, § 3504, not required when.

§ 3480. Who may Give Notice.—The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who, upon taking it up, would have a right to reimbursement from the party to whom the notice is given. [L. '99, p. 356, § 90.]

§ 3481. Notice by Agent.—Notice of dishonor may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not. [L. '99, p. 356, § 91.]

§ 3482. Notice by Holder, Who Benefits by.—Where notice is given by or on behalf of the holder, it inures for the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given. [L. '99, p. 356, § 92.]

§ 3483. Notice by Party Entitled, Who Benefits.—Where notice is given by or on behalf of a party entitled to give notice, it inures

for the benefit of the holder and all parties subsequent to the party to whom notice is given. [L. '99, p. 357, § 93.]

§ 3484. Agent may Notify Parties or Principal.—Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon the receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder. [L. '99, p. 357, § 94.]

§ 3485. Sufficiency of Notice.—A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact misled thereby. [L. '99, p. 357, § 95.]

§ 3486. Notice may be Written or Oral.—The notice may be in writing or merely oral and may be given in any terms which sufficiently identify the instrument, and indicate that it has been dishonored by nonacceptance or nonpayment. It may in all cases be given by delivering it personally or through the mails. [L. '99, p. 357, § 96.]

Cited in 62 Wash. 660.

§ 3487. Notice, to Whom Given.—Notice of dishonor may be given either to the party himself or to his agent in that behalf. [L. '99, p. 357, § 97.]

§ 3488. Notice, When Party Deceased.—When any party is dead, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if with reasonable diligence he can be found. If there be no personal representative, notice may be sent to the last residence or last place of business of the deceased. [L. '99, p. 357, § 98.]

§ 3489. Notice to One of Partners.—Where the parties to be notified are partners, notice to any one partner is notice to the firm even though there has been a dissolution. [L. '99, p. 357, § 99.]

See supra, § 3468, presentment to one partner.

§ 3490. Joint Parties, Notice to Each.—Notice to joint parties who are not partners must be given to each of them, unless one of them has authority to receive such notice for the others. [L. '99, p. 357, § 100.]

§ 3491. Insolvency—Notice to Whom.—Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for

the benefit of creditors, notice may be given either to the party himself or to his trustee or assignee. [L. '99, p. 358, § 101.]

§ 3492. Notice Immediately upon Dishonor.—Notice may be given as soon as the instrument is dishonored; and unless delay is excused as hereinafter provided, must be given within the times fixed by this act. [L. '99, p. 358, § 102.]

§ 3493. Parties Living in Same Place, Notice When.—Where the person giving and the person to receive notice reside in the same place, notice must be given within the following times—

1. If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following.

2. If given at his residence, it must be given before the usual hours of rest on the day following.

3. If sent by mail, it must be deposited in the postoffice in time to reach him in the usual course on the day following. [L. '99, p. 358, § 103.]

§ 3494. Living in Different Places, Notice When.—Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times—

1. If sent by mail, it must be deposited in the postoffice in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter.

2. If given otherwise than through the postoffice, then within the time that notice would have been received in due course of mail, if it had been deposited in the postoffice within the time specified in the last subdivision. [L. '99, p. 358, § 104.]

§ 3495. Notice by Mail.—Where notice of dishonor is duly addressed and deposited in the postoffice, the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails. [L. '99, p. 358, § 105.]

§ 3496. Deposited in Postoffice, When.—Notice is deemed to have been deposited in the postoffice when deposited in any branch postoffice or in any letter-box under the control of the postoffice department. [L. '99, p. 358, § 106.]

§ 3497. Notice to Antecedent Parties.—Where a party receives notice of dishonor, he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor. [L. '99, p. 359, § 107.]

§ 3498. **Notice, Where Addressed.**—Where a party has added an address to his signature, notice of dishonor must be sent to that

address; but if he has not given such address, then the notice must be sent as follows—

1. Either to the postoffice nearest to his place of residence, or to the postoffice where he is accustomed to receive his letters; or

2. If he live in one place, and have his place of business in another, notice may be sent to either place; or

3. If he is sojourning in another place, notice may be sent to the place where he is so sojourning.

But where the notice is actually received by the party within the time specified in this act, it will be sufficient, though not sent in accordance with the requirements of this section. [L. '99, p. 359, § 108.]

§ 3499. Waiver of Notice.—Notice of dishonor may be waived, either before the time of giving notice has arrived, or after the omission to give due notice, and the waiver may be express or implied. [L. '99, p. 359, § 109.]

§ 3500. What Parties Bound by Waiver of Notice.—Where the waiver is embodied in the instrument itself, it is binding upon all parties; but where it is written above the signature of an indorser, it binds only him. [L. '99, p. 359, § 110.]

§ 3501. Waiver of Protest Waives Notice of Presentment and Dishonor.—A waiver of protest, whether in case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of a formal protest, but also of presentment and notice of dishonor. [L. '99, p. 359, § 111.]

§ 3502. Notice of Dishonor Dispensed With, When.—Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it cannot be given to or does not reach the parties sought to be charged. [L. '99, p. 359, § 112.]

§ 3503. Excusable Delay.—Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence. [L. '99, p. 359, § 113.]

§ 3504. When Drawer not Entitled to Notice of Dishonor.—Notice of dishonor is not required to be given to the drawer in either of the following cases—

1. When the drawer and drawee are the same person;

2. Where the drawee is a fictitious person or a person not having capacity to contract;

3. When the drawer is the person to whom the instrument is presented for payment;

4. Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument;

5. Where the drawer has countermanded payment. [L. '99, p. 360, § 114.]

§ 3505. When Indorser not Entitled to Notice.—Notice of dishonor is not required to be given to an indorser in either of the following cases—

1. Where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the instrument;

2. Where the indorser is the person to whom the instrument is presented for payment;

3. Where the instrument was made or accepted for his accommodation. [L. '99, p. 360, § 115.]

See supra, § 3479, notice when necessary.

§ 3506. Notice of Nonacceptance, Effect of.—Where due notice of dishonor by nonacceptance has been given notice of a subsequent dishonor by nonpayment is not necessary, unless in the meantime the instrument has been accepted. [L. '99, p. 360, § 116.]

§ 3507. Omission of Notice.—An omission to give notice of dishonor by nonacceptance does not prejudice the rights of a holder in due course subsequent to the omission. [L. '99, p. 360, § 117.]

§ 3508. Protest Required Only on Foreign Bills.—Where any negotiable instrument has been dishonored it may be protested for nonacceptance or nonpayment, as the case may be; but protest is not required except in the case of foreign bills of exchange. [L. '99, p. 360, § 118.]

See infra, § 8298, notaries may.
See, also, infra, § 3542.

§ 3509. Discharge of Instrument, How Effected.—A negotiable instrument is discharged—

1. By payment in due course by or on behalf of the principal debtor;

2. By payment in due course by the party accommodated, where the instrument is made or accepted for accommodation;

3. By the intentional cancellation thereof by the holder;

4. By any other act which will discharge a simple contract for the payment of money;

5. When the principal debtor becomes the holder of the instrument at or after maturity in his own right. [L. '99, p. 360, § 119.]

Cited in 75 Wash. 516; 78 Wash. 31.

§ 3510. Discharge of Parties Secondarily Liable.—A person secondarily liable on the instrument is discharged—

1. By any act which discharges the instrument;
2. By the intentional cancellation of his signature by the holder;
3. By the discharge of a prior party;
4. By a valid tender of payment made by a prior party;
5. By a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved;
6. By any agreement binding upon the holder to extend the time of payment, or to postpone the holder's right to enforce the instrument, unless made with the assent of the party secondarily liable, or unless the right of recourse against such party is expressly reserved. [L. '99, p. 361, § 120.]

Cited in 66 Wash. 661; 75 Wash. 517; 87 Wash. 598, 600, 601, 602.

§ 3511. Renegotiation by Secondary Party.—Where the instrument is paid by a party secondarily liable thereon, it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements, and again negotiate the instrument, except—

1. Where it is payable to the order of a third person, and has been paid by the drawer; and
2. Where it was made or accepted for accommodation, and has been paid by the party accommodated. [L. '99, p. 361, § 121.]

Cited in 78 Wash. 31.

§ 3512. Holder's Renunciation of Rights.—The holder may expressly renounce his rights against any party to the instrument, before, at, or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument discharges the instrument. But a renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon. [L. '99, p. 361, § 122.]

Cited in 58 Wash. 359; 87 Wash. 42, 598, 599.

§ 3513. Unintentional Cancellation—Burden of Proof.—A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative; but where an instrument or any signature thereon appears to have been canceled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake or without authority. [L. '99, p. 362, § 123.]

§ 3514. Material Alterations, Effect of.—Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided, except as against a party who has himself

made, authorized or assented to the alteration, and subsequent indorsers. But when an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor. [L. '99, p. 362, § 124.]

Cited in 57 Wash. 353; 58 Wash. 359; 74 Wash. 655, 662; 87 Wash. 598.

§ 3515. Material Alterations Defined.—Any alteration which changes—

1. The date;
2. The sum payable, either for principal or interest;
3. The time or place of payment;
4. The number or the relations of the parties;
5. The medium or currency in which payment is to be made;

Or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration. [L. '99, p. 362, § 125.]

Cited in 57 Wash. 353; 58 Wash. 359; 71 Wash. 222; 74 Wash. 655.

§ 3516. Bill of Exchange Defined.—A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer. [L. '99, p. 362, § 126.]

Cited in 65 Wash. 672; 74 Wash. 329; 78 Wash. 125.

§ 3517. Bill not an Assignment—Drawee Liable on Acceptance.—A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same. [L. '99, p. 363, § 127.]

Cited in 74 Wash. 329; 78 Wash. 125.

§ 3518. Joint Drawees.—A bill may be addressed to two or more drawees jointly, whether they are partners or not; but not to two or more drawees in the alternative or in succession. [L. '99, p. 363, § 128.]

§ 3519. Inland and Foreign Bills Defined.—An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within this state. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill. [L. '99, p. 363, § 129.]

§ 3520. Bill may be Promissory Note.—Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious per-

son, or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or a promissory note. [L. '99, p. 363, § 130.]

Cited in 61 Wash. 421.

§ 3521. Referee in Case of Need.—The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in case of need, that is to say in case the bill is dishonored by nonacceptance or nonpayment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may see fit. [L. '99, p. 363, § 131.]

§ 3522. Acceptance Defined.—The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money. [L. '99, p. 363, § 132.]

Cited in 74 Wash. 329; 78 Wash. 126.

§ 3523. Holder may Require Acceptance in Writing.—The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill and, if such request is refused, may treat the bill as dishonored. [L. '99, p. 363, § 133.]

§ 3524. Acceptance on Separate Paper.—Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value. [L. '99, p. 364, § 134.]

§ 3525. Promise to Accept, Effect of.—An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who, upon the faith thereof, receives the bill for value. [L. '99, p. 364, § 135.]

§ 3526. Grace.—The drawee is allowed twenty-four hours after presentment in which to decide whether or not he will accept the bill; but the acceptance if given dates as of the day of presentation. [L. '99, p. 364, § 136.]

§ 3527. When Acceptance Presumed.—Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or nonaccepted to the holder, he will be deemed to have accepted the same. [L. '99, p. 364, § 137.]

§ 3528. Time of Acceptance.—A bill may be accepted before it has been signed by the drawer, or while otherwise incomplete, or when it

is overdue, or after it has been dishonored by a previous refusal to accept, or by nonpayment. But when a bill payable after sight is dishonored by nonacceptance and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment. [L. '99, p. 364, § 138.]

§ 3529. Acceptance Either General or Qualified.—An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn. [L. '99, p. 364, § 139.]

Cited in 78 Wash. 126.

§ 3530. General Acceptance Defined.—An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere. [L. '99, p. 364, § 140.]

§ 3531. Qualified Acceptance Defined.—An acceptance is qualified, which is—

1. Conditional, that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated;

2. Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn;

3. Local, that is to say, an acceptance to pay only at a particular place;

4. Qualified as to time;

5. The acceptance of some one or more of the drawees, but not of all. [L. '99, p. 364, § 141.]

Cited in 78 Wash. 126, 127.

§ 3532. Qualified Acceptance, Rights of Parties Under.—The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, he may treat the bill as dishonored by nonacceptance. Where a qualified acceptance is taken, the drawer and indorsers are discharged from liability on the bill, unless they have expressly or impliedly authorized the holder to take a qualified acceptance, or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified acceptance, he must, within a reasonable time, express his dissent to the holder, or he will be deemed to have assented thereto. [L. '99, p. 365, § 142.]

§ 3533. Presentment for Acceptance, When Necessary.—Presentment for acceptance must be made—

1. Where the bill is payable after sight, or in any other case, where presentment for acceptance is necessary in order to fix the maturity of the instrument; or

2. Where the bill expressly stipulates that it shall be presented for acceptance; or

3. Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable. [L. '99, p. 365, § 143.]

§ 3534. Discharge of Drawer by Failure to Present.—Except as herein otherwise provided, the holder of a bill which is required by the next preceding section to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fail to do so, the drawer and all indorsers are discharged. [L. '99, p. 365, § 144.]

§ 3535. Presentment to Whom and When.—Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour, on a business day and before the bill is overdue, to the drawer or some person authorized to accept or refuse acceptance on his behalf; and—

1. Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only.

2. Where the drawee is dead, presentment may be made to his personal representative;

3. Where the drawee has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee. [L. '99, p. 365, § 145.]

§ 3536. Presentment on What Days.—A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of sections 3463 and 3475½. [L. '15, p. 547, § 2. Cf. L. '99, p. 366, § 146.]

§ 3537. Failure to Present Excusable, When.—Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time with the exercise of reasonable diligence to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawers and indorsers. [L. '99, p. 366, § 147.]

§ 3538. Presentment Excused, When.—Presentment for acceptance is excused and a bill may be treated as dishonored by nonacceptance, in either of the following cases—

1. Where the drawee is dead, or has absconded, or is a fictitious person, or a person not having capacity to contract by bill;

2. Where, after the exercise of reasonable diligence, presentment cannot be made;

3. Where, although presentment has been irregular, acceptance has been refused on some other ground. [L. '99, p. 366, § 148.]

§ 3539. Dishonor by Nonacceptance.—A bill is dishonored by nonacceptance,—

1. When it is duly presented for acceptance and such an acceptance as is prescribed by this act is refused or cannot be obtained; or

2. When presentment for acceptance is excused and the bill is not accepted. [L. '99, p. 366, § 149.]

§ 3540. Dishonored When not Promptly Accepted.—Where a bill is duly presented for acceptance, and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by nonacceptance or he loses the right of recourse against the drawer and indorser. [L. '99, p. 367, § 150.]

§ 3541. Effect of Dishonor by Nonacceptance.—When a bill is dishonored by nonacceptance, an immediate right of recourse against the drawers and indorsers accrues to the holder and no presentment for payment is necessary. [L. '99, p. 367, § 151.]

§ 3542. Protest Necessary on Foreign Bills.—Where a foreign bill appearing on its face to be such is dishonored by nonacceptance, it must be duly protested for nonacceptance, and where such a bill which has not previously been dishonored by nonacceptance is dishonored by nonpayment it must be duly protested for nonpayment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary. [L. '99, p. 367, § 152.]

See § 3508, supra.

§ 3543. What Protest must Specify.—The protest must be annexed to the bill, or must contain a copy thereof, and must be under the hand and seal of the notary making it, and must specify—

1. The time and place of presentment;

2. The fact that presentment was made and the manner thereof;

3. The cause or reason for protesting the bill;

4. The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found. [L. '99, p. 367, § 153.]

See infra, § 8300, record of protests.

§ 3544. Who may Make Protest.—Protest may be made by,—

1. A notary public; or

2. By any respectable [responsible] resident of the place where the bill is dishonored, in the presence of two or more credible witnesses. [L. '99, p. 367, § 154.]

See infra, § 8298, notaries may.

§ 3545. When Protest must be Made.—When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting. [L. '99, p. 367, § 155.]

§ 3546. Place of Protest.—A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business, or residence, of some person other than the drawee, has been dishonored by nonacceptance, it must be protested for nonpayment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary. [L. '99, p. 368, § 156.]

§ 3547. Protest for Both Nonacceptance and Nonpayment.—A bill which has been protested for nonacceptance may be subsequently protested for nonpayment. [L. '99, p. 368, § 157.]

§ 3548. Insolvency, Effect of.—Where the acceptor has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers. [L. '99, p. 368, § 158.]

§ 3549. Protest Excused, When.—Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence. [L. '99, p. 368, § 159.]

§ 3550. Lost Bill.—Where a bill is lost or destroyed or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof. [L. '99, p. 368, § 160.]

§ 3551. Acceptance for Honor.—Where a bill of exchange has been protested for dishonor by nonacceptance or protested for better security and is not overdue, any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill supra protest for the honor of any party liable thereon or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for part only of the sum for which the bill is drawn; and where there has been an acceptance for honor

for one party, there may be a further acceptance by a different person for the honor of another party. [L. '99, p. 368, § 161.]

§ 3552. How Made.—An acceptance for honor supra protest must be in writing and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor. [L. '99, p. 369, § 162.]

§ 3553. Presumed for Honor of Drawer.—Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer. [L. '99, p. 369, § 163.]

§ 3554. Liability of Acceptor for Honor.—The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted. [L. '99, p. 369, § 164.]

§ 3555. Acceptor for Honor's Undertaking.—The acceptor for honor by such acceptance engages that he will on due presentment pay the bill according to the terms of his acceptance: Provided, it shall not have been paid by the drawee: And provided also, that it shall have been duly presented for payment and protested for nonpayment and notice of dishonor given to him. [L. '99, p. 369, § 165.]

§ 3556. Maturity of Bill Accepted for Honor.—Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for nonacceptance and not from the date of the acceptance for honor. [L. '99, p. 369, § 166.]

§ 3557. When Protest Necessary.—Where a dishonored bill has been accepted for honor supra protest or contains a reference in case of need, it must be protested for nonpayment before it is presented for payment to the acceptor for honor or referee in case of need. [L. '99, p. 369, § 167.]

§ 3558. Presentment for Payment to Acceptor for Honor.—Presentment for payment to the acceptor for honor must be made as follows:

1. If it is to be presented in the place where the protest for nonpayment was made, it must be presented not later than the day following its maturity.

2. If it is to [be] presented in some other place than the place where it was protested, then it must be forwarded within the time specified in section 3494. [L. '99, p. 369, § 168.]

§ 3559. Delay in Presentment Excused.—The provisions of section 3472 apply where there is delay in making presentment to the acceptor for honor or referee in case of need. [L. '99, p. 370, § 169.]

§ 3560. Protest Necessary.—When the bill is dishonored by the acceptor for honor it must be protested for nonpayment by him. [L. '99, p. 370, § 170.]

§ 3561. Payment for Honor.—Where a bill has been protested for nonpayment, any person may intervene and pay it supra protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn. [L. '99, p. 370, § 171.]

§ 3562. Attestation by Notary.—The payment for honor supra protest in order to operate as such and not as a mere voluntary payment must be attested by a notarial act of honor, which may be appended to the protest or form an extension to it. [L. '99, p. 370, § 172.]

§ 3563. Declaration Necessary.—The notarial act of honor must be founded on a declaration made by the payer for honor, or by his agent in that behalf, declaring his intention to pay the bill for honor and for whose honor he pays. [L. '99, p. 370, § 173.]

§ 3564. Preference Between Two Offering Payment.—Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill is to be given the preference. [L. '99, p. 370, § 174.]

§ 3565. Payer for Honor Subrogated.—Where a bill has been paid for honor, all parties subsequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for, and succeeds to, both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter. [L. '99, p. 370, § 175.]

§ 3566. Refusal to Receive Payment Supra Protest.—Where the holder of a bill refuses to receive payment supra protest, he loses his right of recourse against any party who would have been discharged by such payment. [L. '99, p. 370, § 176.]

§ 3567. Payer for Honor Entitled to Bill and Protest.—The payer for honor, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor, is entitled to receive both the bill itself and the protest. [L. '99, p. 370, § 177.]

§ 3568. When Set Constitutes One Bill.—Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitutes one bill. [L. '99, p. 370, § 178.]

§ 3569. Negotiation of Parts to Different Holders.—Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders the true owner of the bill. But nothing in this section affects the rights of a person who in due course accepts or pays the part first presented to him. [L. '99, p. 371, § 179.]

§ 3570. Indorsement to Different Parties—Liability.—Where the holder of a set indorses two or more parts to different persons, he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed, as if such parts were separate bills. [L. '99, p. 371, § 180.]

§ 3571. Acceptance of Different Parts.—The acceptance may be written on any part and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill. [L. '99, p. 371, § 181.]

§ 3572. Payment, When a Part not Delivered.—When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon. [L. '99, p. 371, § 182.]

§ 3573. Discharge of Part Discharges Whole.—Except as herein otherwise provided where any one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged. [L. '99, p. 371, § 183.]

§ 3574. Promissory Note Defined.—A negotiable promissory note within the meaning of this act is an unconditional promise in writing made by one person to another signed by the maker engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order, it is not complete until indorsed by him. [L. '99, p. 371, § 184.]

§ 3575. Check Defined.—A check is a bill of exchange drawn on a bank, payable on demand. Except as herein otherwise provided, the provisions of this act applicable to a bill of exchange payable on demand apply to a check. [L. '99, p. 371, § 185.]

Cited in 65 Wash. 672; 85 Wash. 467.

§ 3576. Presentment of Check.—A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay. [L. '99, p. 372, § 186.]

Cited in 85 Wash. 467, 471.

§ 3577. Certification an Acceptance.—Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance. [L. '99, p. 372, § 187.]

§ 3578. Certification Discharges Drawer.—Where the holder of a check procures it to be accepted or certified, the drawer and all indorsers are discharged from liability thereon. [L. '99, p. 372, § 188.]

§ 3579. Check, not an Assignment.—A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder unless and until it accepts or certifies the check. [L. '99, p. 372, § 189.]

§ 3580. Style of Act.—This act shall be known as the Negotiable Instruments Act. [L. '99, p. 372, § 190.]

§ 3581. Definition of Terms.—In this act unless the context otherwise requires,—

"Acceptance" means an acceptance completed by delivery or notification.

"Action" includes counterclaim and setoff.

"Bank" includes any person or association of persons carrying on the business of banking, whether incorporated or not.

"Bearer" means the person in possession of a bill or note which is payable to bearer.

"Bill" means bill of exchange, and "note" means negotiable promissory note.

"Delivery" means transfer of possession, actual or constructive, from one person to another.

"Holder" means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof.

"Indorsement" means an indorsement completed by delivery.

"Instrument" means negotiable instrument.

"Issue" means the first delivery of the instrument, complete in form, to a person who takes it as a holder.

"Person" includes a body of persons, whether incorporated or not.

"Value" means valuable consideration.

"Written" includes printed, and "writing" includes print. [L. '99, p. 372, § 191.]

§ 3582. Who Primarily and Who Secondarily Liable.—The person "primarily" liable on an instrument is the person who by the terms of the instrument is absolutely required to pay the same. All other parties are "secondarily" liable. [L. '99, p. 373, § 192.]

Cited in 75 Wash. 517; 79 Wash. 190; 87 Wash. 598.

§ 3583. Reasonable Time, How Determined.—In determining what is a "reasonable time" or an "unreasonable time," regard is to be had to the nature of the instrument, the usage of trade or business, if any, with respect to such instruments, and the facts of the particular case. [L. '99, p. 373, § 193.]

§ 3584. Sundays and Holidays.—Where the day, or the last day, for doing any act herein required or permitted to be done falls on

Sunday or on a holiday, the act may be done on the next succeeding secular or business day. [L. '99, p. 373, § 194.]

See, also, § 3475½, supra.

§ 3585. Act not Retroactive.—The provisions of this act do not apply to negotiable instruments made and delivered prior to the passage thereof. [L. '99, p. 373, § 195.]

§ 3586. Law-merchant.—In any case not provided for in this act the rules of the law-merchant shall govern. [L. '99, p. 373, § 196.]

Cited in 81 Wash. 448.

See supra, §§ 3392–3414.

Blind, The. See "Education," § 4387.

Board. Of arbitration, see "Labor Law," § 6599.

Of equalization, see "Taxation," § 9200.

Boards. See "State and State Boards."

Bonding and Indemnity Companies. See "Insurance," § 6059–83.

Bonds. Actions on official bonds, see § 958.

By school districts, see "Education," § 4607.

By surety companies, see "Insurance," § 6059–193.

For county purposes, see "Finance," § 5085.

For local improvements, see "Municipal Corporations," § 8018.

For indebtedness and funding, see "Municipal Corporations," § 8035; "Finance," § 5102.

Of officials. See "Officers," § 8324.

Of river improvement districts, see "Navigation," § 8136.

Boom Companies. See "Logs," § 7110.

Boulevards. See "Highways," § 5783.

Boundaries. See "Counties," §§ 3767, 3804; "Municipal Corporations," § 7443; "Education," § 4427.

Establishment of, see §§ 947–949.

TITLE XX.

BOUNTIES.

3587. County commissioners may offer bounties for killing wild animals.
3588. Limit of amount of such bounties.
3589. Commissioners to fix rate of bounty offered.
3590. Notice of offering bounty.
3591. Payment of bounties—Records of.
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3593. State bounties on cougar, lynx, wildcat, coyote and wolf.
3594. Proof of killing—Burning identification.
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3597. Bounty on seals and sea-lions.
3598. Proof of killing—Affidavit.
3599. Delivery of scalps—Certificate—Destruction of scalps.
3600. Scalp, of what to consist.

§ 3587. County Commissioners may Offer Bounties for Killing Wild Animals.—The county commissioners of the several counties of this state are hereby authorized to offer and pay out of the county funds of the county treasury a bounty for the scalps of cougars, or panthers, or mountain lions, black or cinnamon bears, wildcats, black and gray wolves, muskrats, squirrels, lynx, and coyotes. [Cf. L. '77, p. 324, § 1; L. '79, p. 141, § 2; Cd. '81, § 2557; L. '86, p. 112, § 1; 1 H. C., § 2418.]

For former laws on this subject see L. '54, pp. 407, 408; L. '63, pp. 494, 495; L. '71, p. 62; repealed by L. '73, p. 483.

§ 3588. Limit of Amount of Such Bounties.—The bounty provided for in this act, shall not exceed, for each scalp, as follows: For each mountain lion, cougar, or panther, not more than five dollars; for each black or cinnamon bear, not more than four dollars; for each black or gray wolf, not more than five dollars; for each wildcat, not more than two dollars; for each coyote, not more than one dollar; for each lynx, not more than two dollars; for each muskrat caught within fifty yards of any dike or dam, not less than ten nor more than twenty cents; and for each squirrel, not more than five cents: Provided, that in the county of Clarke, the board of commissioners may offer and pay double the amount specified as a bounty for killing the animals named. [Cf. L. '77, p. 324, § 2; L. '79, p. 141, § 3; Cd. '81, § 2558; L. '86, p. 112, § 2; 1 H. C., § 2419.]

"Act" in this section refers to §§ 3587–3592.

§ 3589. Commissioners to Fix Rate of Bounty Offered.—Whenever, in the opinion of the board of county commissioners, it shall be necessary to offer a bounty as provided in this act, they shall so order in open court, and cause the order to be spread upon the minutes of the session. Said order shall fix the rate to be offered by the county for scalps, and may contain anything else necessary for carrying out

and not inconsistent with the provisions of this act. [Cf. L. '77, p. 324, § 3; L. '79, p. 142, § 4; Cd. '81, § 2559; 1 H. C., § 2420.]

"Act" in this section refers to §§ 3587–3592.

§ 3590. Notice of Offering Bounty.—It shall be the duty of the county auditor, whenever the county commissioners shall order that a bounty shall be paid, as provided in the preceding section, to give notice of the order of the board by posting, or causing to be posted, one notice in each precinct in the county; said notice shall state the amounts fixed by the board per scalp for each animal. [Cf. L. '77, p. 324, § 4; L. '79, p. 142, § 5; Cd. '81, § 2560; 1 H. C., § 2421.]

§ 3591. Payment of Bounties—Records of.—Whenever any persons shall have any scalp of any animal named in this act upon which they wish to obtain bounty, they shall present the same to the county auditor, whose duty it shall be to examine the same, and ascertain if they have both ears upon them, and such person shall also present to the auditor a bill certified by affidavit that the animal or animals were killed within the county, and that it is just and correct; said bill shall be audited by the county auditor, and presented to the board of county commissioners at their next regular meeting, whose duty it shall be to order the same paid out of the treasury in like moneys [manner] as other claims against the county. It shall also be the duty of the auditor to keep a book provided for the purpose, in which he shall enter the names of all persons presenting scalps, the number and kind presented, and, after allowance by the board, the amount allowed to each person, which book shall be presented at each regular session for their examination and approval. The said auditor shall destroy said scalps, and return the proceedings to each regular session of the board of county commissioners. [Cf. L. '77, p. 324, §§ 5, 6; L. '79, p. 142, §§ 6, 7; Cd. '81, § 2561; 1 H. C., § 2422.]

"Act" in this section refers to §§ 3587–3592.
See infra, § 3594, identification to secure state bounty.

§ 3592. Revocation of Offer.—The county commissioners may, at any regular term of the court, revoke their orders offering bounty for scalps. [Cf. L. '77, p. 325, § 7; L. '79, p. 142, § 8; Cd. '81, § 2562; 1 H. C., § 2423.]

§ 3593. State Bounties on Cougar, Lynx, Wildcat, Coyote, and Wolf.—Any person who shall kill any cougar, lynx, wildcat, coyote or timber wolf in the state of Washington shall be entitled to a bounty therefor as follows: For each cougar, twenty dollars ($20); for each lynx or wildcat, five dollars ($5); for each coyote, one dollar ($1); and for each timber wolf, fifteen dollars ($15). [L. '09, p. 689, § 1.]

Wolves other than "timber" wolves: See § 3587, supra.

§ 3594. Proof of Killing—Burning Identification.—Upon the production to the county auditor of any county of the entire hide or pelt and right fore leg to the knee joint intact of any cougar, lynx, wildcat, coyote or timber wolf, killed in such county, each of which hides or pelts shall show two ears, eye holes, skin to tip of nose, and right fore leg to the knee joint intact, the county auditor shall require satisfactory proof that such animal was killed in such county. When the county auditor is satisfied that such animal was killed in his county, he shall cut from such hide or pelt the bone of the right fore leg to the knee as aforesaid which shall be burned in the presence of such auditor and one other county official, who shall certify to the date and place of such burning. [L. '09, p. 689, § 2. Cf. L. '05, p. 122, § 2.]

See supra, § 3591, identification to secure county bounties.

§ 3595. Penalty for Fraud.—Any person or persons obtaining or attempting to obtain said bounty on the hide or pelts of any cougar, wildcat, lynx, coyote, or timber wolf, killed more than thirty days prior to the date of obtaining or attempting to obtain said bounty or that was killed outside of the boundaries of the county in which the same was offered, or make any other false or fraudulent representation for the purpose of obtaining such bounty, shall be guilty of a felony and upon conviction thereof shall be imprisoned in the state penitentiary for a period of time not to exceed five years, or shall be punished by a fine of not less than five hundred dollars nor more than five thousand dollars, or by both such fine and imprisonment at the discretion of the court. [L. '09, p. 689, § 3. Cf. L. '05, p. 24, § 6; L. '05, p. 122, § 4.]

§ 3596. County Credit for Bounties Paid.—The amount paid by any county for scalps under this act shall be credited to it by the state auditor upon receipt by the state auditor of a sworn statement from the county auditor as to the amount of warrants issued under the provisions of this act in said county, which statement shall be rendered to the state auditor by each county quarterly, and the state auditor shall make a charge against the general fund of the state for any such credits: Provided, that the credits herein provided for shall not exceed twenty-five thousand dollars ($25,000) for each biennial period. [L. '05, p. 24, § 4; L. '09, p. 690, § 4.]

"Act" refers to §§ 3593–3596.

§ 3597. Bounty on Seals and Sea-lions.—There shall be paid a bounty in the sum of one dollar for the killing of each common seal (phoca vitulina) and the sum of two dollars and fifty cents for the killing of each sea-lion, when killed within the waters of the state of Washington, or within the waters of the Pacific Ocean within one marine league of the Washington shore: Provided, however, that no

more than twenty-five hundred dollars shall be paid in any year as a bounty under the provisions of this act. [L. '03, p. 344, § 1.]

"Act" refers to the following sections of this Title.

§ 3598. Proof of Killing Affidavit.—Any person killing or causing to be killed within the waters of the state of Washington, or within the Pacific Ocean within one marine league of the Washington shore, any common seal (phoca vitulina), or any sea-lion, shall scalp or cause to be scalped said seal or sea-lion and shall take the scalp to the fish commissioner of the state of Washington, or any deputy, and shall make an affidavit that the animal from which the scalp was taken, was killed within the state of Washington, or in the Pacific Ocean within one marine league of the Washington shore, together with date of killing, which said affidavit shall be in the following form:

State of Washington,
County of ——, } ss.

I, (A. B.), being first duly sworn, on oath depose and say, that I killed (in case the party making the affidavit did not kill, then he must include herein that he saw killed, and here insert the kind killed and the place and the time when killed), said animals within the state of Washington, or (if in the waters of the Pacific Ocean), within one marine league of the Washington shore, and that the scalp or scalps, which are here presented, are the identical scalps taken from said animals and which animals were killed within the year 190—.

Signed, ——.

Subscribed and sworn to before me this —— day of ——, 190—.

—— ——,

Fish commissioner of the state of Washington.

That thereupon said fish commissioner, or his deputy shall immediately investigate the truth of said affidavit and all allegations therein, and shall be authorized to demand additional evidence, and the fish commissioner and any deputy appointed by him, is hereby authorized to administer oaths and take the affidavit hereinbefore provided. [L. '03, p. 345, § 2.]

§ 3599. Delivery of Scalps—Certificate—Destruction of Scalps.—The party killing said animals and presenting said affidavit mentioned in the preceding section shall be required to deliver all scalps to the fish commissioner, or the deputy taking the affidavit. Thereupon the fish commissioner, upon being satisfied the party making the affidavit actually killed or caused to be killed the number of animals named in his affidavit, and the scalps presented are in number identical with the number and kind stated in the affidavit, and all delivered to the fish commissioner, shall issue a certificate in duplicate which shall be in the following form:

State of Washington, }
County of ——, } ss.

No. ——.

This is to certify, that —— has satisfactorily proved to me that he killed —— within the waters of the state of Washington, and is entitled to receive from the state treasurer the sum of —— therefor.

—— ——,

Fish commissioner of the state of Washington.

Provided, that in case the affidavit and scalps herein provided are presented to a deputy fish commissioner, the deputy shall investigate the statements contained in said affidavit, and he shall forward the said affidavit, together with his report in writing thereon, to the fish commissioner, and the fish commissioner shall thereupon investigate the same and if satisfied of the truth of said affidavit, shall issue the certificate hereinbefore mentioned, but the deputy fish commissioner shall not destroy the scalps delivered to him until the fish commissioner issues the certificate. No deputy shall be permitted to issue any certificate hereunder. Each certificate and duplicate shall be correctly and consecutively numbered, the original shall be delivered to the party making affidavit, and the duplicate shall be numbered the same as the original and shall be immediately forwarded to the state auditor to be filed in his office. The party receiving such (such) certificate, or his assigns or order, upon presentation of such certificate to the state auditor shall be entitled to be paid the amount thereof and the state auditor upon said certificate being presented to him shall compare the same with the duplicate thereof and if found in all respects correct shall issue a warrant for the amount thereof. The fish commissioner shall immediately after issuing the certificate hereinbefore mentioned, destroy all scalps presented, but shall preserve and keep of record all affidavits, and shall keep correct record of the number and amount of each certificate issued, in a book provided for that purpose, and when the total amount of certificates issued shall equal twenty-five hundred dollars ($2,500) in any one year, no more certificates shall be issued for that year, and no further bounty paid for that year. [L. '03, p. 345, § 3.]

§ 3600. Scalp, of What to Consist.—A scalp, referred to in this act, shall consist of both ears, of the seal or sea-lion, connected by a strip of skin that grew between them, at least two inches wide, intact. [L. '03, p. 347, § 4.]

Bowling. See "Licenses," § 7021.

Brands. See "Animals," § 3156; "Health," § 5447d; "Inspection," § 6052; "Logs," § 7091.

Bridges. See "Highways," § 5674; "Municipal Corporations," § 7862; "Railroads," § 8670.

TITLE XXI.

BUILDING AND LOAN ASSOCIATIONS.

3601-1. Creation of building and loan associations, etc.
3601-2. By-laws—Approval.
3601-3. Responsibility of incorporators.
3601-4. Oath of directors—Bonds.
3601-5. Limitation on charges, etc.
3601-6. Value of shares—Free shares—Stock.
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3601-9. Securities deposited with state.
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3601-19. Examination—Inspector—Expenses.
3601-20. State auditor to take charge of association, when—Receiver.
3601-21. Disbarred from state, when—Re-entry.
3601-22. Penalties.
3601-23. Act exclusive as to new organizations.
3601-24. Advertising limited.
3601-25. Names prohibited.
3601-26. Act exclusive—Existing contracts not impaired.
3601-27. Offenses.

§ 3601-1. Creation of Building and Loan Associations, etc.—Ten or more persons, citizens of the state of Washington, may form a savings and loan association or savings and loan society for the purpose of accumulating the savings and funds of its members and lending its shareholders or others the funds so accumulated by the making and acknowledging in quadruplicate and by filing as hereinafter required articles of incorporation specifying:

(a) The name of the proposed association, which shall terminate with the words "Savings and Loan Association," or "Savings and Loan Society."

(b) The city, town or village and the county wherein the principal place of business of the association is to be located and which must be within the state of Washington.

(c) The number of its directors, which shall not be less than seven nor more than fifteen. The first board of directors shall hold office for a term to be specified in said articles of not less than two, and not more than six months from the time said association is authorized to do business.

(d) The names, occupation and postoffice addresses of its first directors.

(e) The names, occupation and postoffice addresses of the subscribers to the articles of incorporation, and a statement of the number of shares which each has agreed to take. The matured value of the total number of shares so subscribed shall be at least twenty-five thousand dollars.

(f) The limit of capital to be accumulated.

(g) The time of duration of said association, which shall not exceed fifty years.

Said articles shall be filed in the first instance in the office of the state auditor pending his approval thereof and of the by-laws of said association as hereinafter provided for.

The articles of incorporation may be amended by a vote of at least two-thirds in number of the shareholders voting at any general meeting, or by a special meeting called for that purpose, and a copy of the resolution making said amendment shall be certified in quadruplicate by the president and secretary under the seal of said corporation, and when so certified shall be so filed and kept the same as in the case of original articles, and from the time of said filing, said amendment shall have the same effect as if embraced in the original articles of incorporation: Provided, however, that no increase in the authorized capital shall be made unless three-fourths of the capital previously authorized has actually been issued. [L. '13, p. 326. § 1.]

§ 3601–2. By-laws—Approval.—Each association shall adopt by-laws for its government and therein describe the manner in which its business shall be transacted, which by-laws shall be in conformity with the provisions of this act, and the laws of this state, and at all times be open to the inspection of the state auditor and the members of the association at its home office. All by-laws shall be subject to the approval of the state auditor before going into effect, and in case any provision in such by-laws shall be contrary to the provisions of this act, or to the laws of this state, or be detrimental to the interests of the members of such organization, or against public policy, he may, under the advice and consent of the attorney general, require the same to be stricken out. [L. '13, p. 327, § 2.]

"This act" refers to this chapter.

§ 3601–3. Responsibility of Incorporators.—Whenever said articles of incorporation are in due form and regularly executed and the by-laws have been duly approved as above required, the state auditor thereupon shall ascertain from the best source of information at his command the responsibility, character and general fitness of the incorporators. If he shall be satisfied concerning the several matters specified above, he shall, within a reasonable time, issue under his hand and official seal a certificate reciting in substance the filing in his office of the articles of incorporation and by-laws; that said ar-

ticles and by-laws conform to all the requirements of law; that he has approved the same, and that he verily believes the incorporators are fit and proper to conduct the business of a savings and loan association as defined in this act and said by-laws. Said certificate shall be made in quadruplicate and attached to each copy of the articles of incorporation, one of which shall be retained by the state auditor and the other three shall be returned to the incorporators who shall forthwith file one copy thereof in the office of the secretary of state, one in the office of the auditor of the county in which the chief place of business of said association is located, and the other shall be retained by the association, whereupon the incorporation of said association shall be deemed complete. [L. '13, p. 328, § 3.]

§ 3601–4. Oath of Directors—Bonds.—Each officer and director, when appointed or elected, shall take an oath that he will, so far as the duty devolves upon him, diligently and honestly administer the affairs of such association, and will not knowingly violate the by-laws or any of the provisions of law applicable to such association.

Each officer or agent having the custody of money or securities of an association shall be required to give bond to such association in an amount to be determined by the board of directors of such association commensurate with his liability. [L. '13, p. 328, § 4.]

§ 3601–5. Limitation on Charges, etc.—The membership of the association shall consist of those persons holding shares therein.

The by-laws may provide for an entrance, membership or withdrawal fee, but the total of such fees shall not exceed two dollars upon each share, and no other fee, penalties, fines or forfeitures shall be charged, except reasonable charges for expenses in closing loans, and for delinquency in making payments on stock and loans.

The above provision shall not apply to dividends which may revert to the association as provided in section 3601–7. [L. '13, p. 329, § 5.]

§ 3601–6. Value of Shares—Free Shares—Stock.—The capital of every such association shall consist of the accumulated payments made by its members and dividends credited thereon, and shall be represented by shares. Every share issued shall have a matured value of one hundred dollars. Every such association shall be either permanent or serial in character as provided by the terms of its by-laws. A permanent association may issue shares at any time and credit its dividends upon the pass-books of its members. A serial association may issue shares in series and credit its dividends equally upon each share issued in such series. No shares of a prior series shall be issued after the issuing in a later series, when issued upon the serial plan, except at the book value at the last distribution of profits plus the dues and accumulated earnings thereon since such distribution.

Shares which have not been transferred to the association as security for the repayment of a loan shall be called free shares. Shares that have been so transferred shall be called pledged shares.

No preferred stock shall be issued, i. e., stock upon which a different or stipulated rate of dividends shall be guaranteed or paid before or regardless of the amount of dividends distributed to other classes of shares, neither shall any shares be issued which shall be exempt from bearing their pro rata portion of loss: Provided, however, that nothing herein contained shall be held to prohibit any association already having reserve stock outstanding from continuing to have an equal amount of such stock outstanding, and from issuing, if necessary, additional reserve fund stock so as to equal five per cent of the capital as defined in this section; and when so provided in its by-laws, such reserve fund stock may participate in all earnings equitably with the general stock and be chargeable with all real estate taken under foreclosure or otherwise in the adjustment of delinquent loans together with all direct losses of whatever nature sustained by the association in the general course of business and in consideration of such guaranty against loss, and when provided in the by-laws such stock may receive additional dividends, and such stock shall not be subject to withdrawal until all other classes of stock and all other liabilities of the association shall first have been liquidated, and any such association may agree to mature its other classes of stock at a fixed time, providing any deficiency arising therefrom shall be chargeable only to such reserve fund stock.

Any association may issue the shares classified below when so provided by its by-laws:

(a) Installment shares upon which a regular stipulated payment of dues shall be made at stated periods expressed in the by-laws.

(b) Savings shares, upon which payments shall be made in such sums and at such times as the holder thereof may elect until the shares reach their matured value or are withdrawn.

(c) Fully paid shares, upon which a single payment amounting to one hundred dollars per share shall be paid at the time of subscription.

(d) Juvenile shares. Any association may issue juvenile shares to, or in the name of, any minor which shall be held for the exclusive right and benefit of such minor and free from the control or lien of all other persons; and the accumulated savings on these shares together with the dividends credited thereon shall be paid to the persons in whose name the shares have been issued and the receipt or acquittance of such minor shall be valid and sufficient release and discharge to the association for such accumulated savings, together with the dividends credited thereon or any part thereof. [L. '13, p. 329, § 6.]

§ 3601–7. Dividends.—Profits and losses shall be ascertained and distributed semi-annually or annually. Dividends shall be taken from the net earnings of the association and, subject to the provisions of section 3601–6 relating to reserve fund stock shall be distributed ratably to all classes of shares and to each share in proportion to the accumulation made thereon: Provided, that when stock is withdrawn within two years of its issuance, the withdrawing member shall receive only such proportion of the dividends as may be provided in the by-laws, but when such stock is more than two years old, the withdrawing member shall receive at least seventy-five per cent of the dividends. The remaining dividends may revert to the undivided earnings. No dividends shall be credited or paid except by a vote of the board of directors duly entered upon the minutes, whereupon shall be recorded the vote by ayes and nays. It shall be lawful for the association, in addition to the contingent fund required by section 3601–13, to hold in its fund of undivided earnings, such sums as the board of directors may from time to time deem necessary or wise: Provided, however, that when the undivided earnings, including the contingent fund, exceed fifteen per cent of the dues and dividends credited to members, the board of directors shall declare such extra dividend in excess of the dividend regularly apportioned, as may be necessary to distribute among the shareholders the accumulation in excess of such authorized surplus. [L. '13, p. 331, § 7.]

§ 3601–8. Loans, How Made—Investments.—For every loan made, except a loan from one association to another, a note or bond secured by first mortgage on improved real estate shall be taken, which security shall be conservatively worth at least twice the value of the loan. No mortgage loan shall be made except upon the report in writing of an appraiser or a committee of appraisers appointed by the board of directors, which report shall state the conservative value of the mortgage security. The directors in their discretion may also loan upon the security of the shares in the association to the amount of ninety per cent of their withdrawal value, and may loan upon or invest in bonds of the United States and of the state of Washington, and in such classes of bonds and warrants of the counties, school districts and other municipalities, as well as local improvement districts, in this state, as the state auditor may from time to time approve. Any association having a surplus for which there is no demand for loaning purposes or for the payment of withdrawals or matured shares, may loan the same to another domestic association, and such association may borrow from other associations or otherwise for loaning purposes or for the payment of withdrawals or matured shares: Provided, that no association shall borrow any amount or amounts which in the aggregate shall exceed twenty-five per cent

of the actual value of mortgages on deposit with the state auditor, as shown by the last preceding semi-annual statement of the borrowing associations, as provided in section 3601–9.

In borrowing said amount or amounts for the purposes specified, any such association may, at its election, borrow the same or any part thereof upon its debenture bonds, maturing on or before five years after date and bearing interest not exceeding six per cent per annum, interest payable semi-annually. In no case shall any such bonds be issued when there are sufficient funds on hand or receivable in time to meet approved applications for loans or for the payment of maturing stock or withdrawals of stock. Such debenture bonds may be retired by action of the board of directors at any time after one year from date of issue, by the secretary of the association giving notice in writing sixty days or more prior to the next interest date to the recorded holders thereof, and on return of said retired bonds, together with the coupons attached, said holders shall receive their par value. At the expiration of said interest period, the bonds so called shall cease to draw interest. Whenever the state auditor shall deem any indebtedness incurred under the provisions of this section to be detrimental to the interests of the shareholders of any such association, he shall notify such association to reduce its indebtedness to such amount as he shall consider reasonable, giving such association such reasonable time as may be necessary to effect such reduction of indebtedness. [L. '13, p. 332, § 8.]

§ 3601–9. Securities Deposited With State.—Every savings and loan association heretofore or hereafter incorporated under the laws of this state, and governed by this act, shall deposit and keep with the state auditor, or with a duly chartered trust company of this state, approved by the state auditor, in trust for all its members and creditors, all mortgages and notes secured thereby, received by it in the usual course of business. When deposited with a trust company such company shall certify to the state auditor the possession of such securities, and the same shall not be surrendered without the authority or sanction of the state auditor. All associations except such as confine their business operations wholly to the county in which such associations are incorporated and adjoining counties, not having or owning mortgages to the amount of twenty-five thousand dollars, shall deposit with the state auditor additional securities to make with the securities so owned and deposited a total value of not less than twenty-five thousand dollars. Such additional securities shall consist of bonds of the United States and of the state of Washington, and such classes of bonds and warrants of the counties, school districts and other municipalities, as well as local improvement districts, in said state, as the state auditor may from time to time approve,

and such additional securities may be withdrawn from time to time when mortgage securities of corresponding value shall be deposited, as provided in this act, or when other securities of like character are substituted therefor, and it shall be the duty of the state auditor, from time to time, to examine said associations to ascertain whether all of its securities are deposited, as required by this act: Provided, that all securities heretofore taken in any other state, territory or nation, by any association organized under the laws of this state, and subject to the provisions of this act, and there deposited under the laws of such state, territory or nation, with some officer, authorized to receive the same, shall not be deposited with the auditor of the state of Washington. But in every such case a certificate of such deposit shall be filed with the auditor of this state, and renewed annually, together with a statement verified by the affidavit of some officer of such association, who has knowledge of the facts, showing all of the securities taken by such association, in such other state, territory or nation, at the time of the filing of such certificate; and in case any securities taken in any such state, territory or nation are not deposited there, then the same shall be deposited here, as required by this act.

Every foreign association doing business in this state and governed by this act shall deposit and keep with the auditor of this state, or with a duly chartered trust company of this state, approved by the state auditor, in trust for all its members and creditors in this state, all mortgages heretofore received by it in this state and now in effect, and all mortgages hereafter received by it in the usual course of its business in this state. Such securities shall be kept and dealt with by the state auditor or by such trust company in like manner as the securities deposited by savings and loan associations organized under the laws of this state. Every association governed by this act shall on or before the first day of February and on or before the first day of August in each year, file with the state auditor a verified statement of the total amount due to the association from the borrowers, upon the mortgage loans on deposit with the state auditor upon respectively the thirty-first day of December and the thirtieth day of June last preceding. Payments upon stock pledged to the association for a loan, which payments are accumulated for the purpose of meeting the loan at or prior to its maturity, shall be considered as payments upon such loan within the intent of this section. [L. '13, p. 333, § 9.]

§ 3601–10. Surrender of Securities.—All interest and dividends which may accrue on securities held by the state auditor or such trust company as provided for herein and all dues, or monthly payments, which may become payable on stock pledged as security for loans, and notes and mortgages for which are deposited in accordance with

the provisions of this act, may be collected and retained by the association depositing such securities or mortgages, so long as such association remains solvent and faithfully performs all contracts with its members, and when any mortgage shall have been fully paid to said association the same shall be surrendered by said state auditor, or under his order, upon filing with him a certificate of the auditor of the county where the real estate is situated, to the effect that the satisfaction of said mortgage has been filed for record. Any mortgage upon which default has been made may be surrendered as aforesaid, upon filing with the state auditor an affidavit sworn to by the president and secretary of the association owning the same, stating that such mortgage is in default and that it is withdrawn for the purpose of foreclosure. [L. '13, p. 335, § 10.]

§ 3601-11. May Hold Real Estate—Limitation.—Any savings and loan association may purchase at any sale, public or private, any real estate upon which it may have a mortgage, judgment, lien, or other encumbrance or in which it may have any interest, and may sell, convey, lease or mortgage the same at pleasure to any person or persons, but shall not otherwise acquire or deal in real estate: Provided, that any such association may acquire such real estate or a leasehold interest therein as may be necessary or convenient for a location for the transaction of its business: Provided further, that no such association shall use more than ten per cent of its assets at any time in acquiring real estate for its business location: Provided further, that all real estate except that used for its business location shall be sold by said association within five years from and after the time that title thereto is acquired. [L. '13, p. 335, § 11.]

§ 3601-12. Checking Accounts Prohibited.—No savings and loan association shall carry any demand, commercial or checking account and no such association shall receive any savings account or any sum of money on deposit without issuing shares of stock for the same. [L. '13, p. 336, § 12.]

§ 3601-13. Contingent Fund.—At each periodical distribution of profits, unless such association already has issued paid-up reserve fund stock equal to five per cent of the amount credited to members to which losses may be chargeable as provided in section 3601-6, the board of directors shall reserve and carry to a contingent fund, a sum equal to at least five per cent of the net earnings during the period since the last previous dividend was declared, until such contingent fund shall be equal to at least five per cent of the amount credited to members. The directors may at any time carry to such contingent fund any further portion of the undivided earnings that in their discretion may seem wise, except as herein provided. Losses of the

association may be paid therefrom, and whenever the contingent fund is reduced below five per cent the board of directors shall at each periodical distribution of profits carry to such contingent fund at least five per cent of the net earnings during the period since the last dividend was declared until such contingent fund shall again be equal to at least five per cent of the amount credited to members. [L. '13, p. 336, § 13.]

§ 3601–14. Losses.—Whenever the losses of an association exceed the contingent fund, or the reserve fund, if reserve fund stock has been issued as provided in section 3601–6, they may be charged against the undivided earnings, if any, and in the event that they also exceed such undivided earnings, shall be charged pro rata against all classes of shares according to the withdrawal value thereof. [L. '13, p. 336, § 14.]

§ 3601–15. Expenses.—The expenses of such association shall be paid from its earnings, and no deduction from dues shall be made either directly or indirectly for that purpose. No such association shall pay or be or become liable to pay either directly or indirectly in the course of any calendar year as salaries, commissions, fees or other compensation to its officers, directors, auditor, attorneys, agents, clerks and all other employees and for rent, advertising, and all other operating expenses, sums of money the aggregate of which shall exceed two and one-half per cent of the average amount of assets of such association during such year. The term "operating expenses" as used in this connection shall not be construed to include membership fees, taxes, assessments, repairs or insurance on real estate or commissions on the sale of real estate, or on the placing of loans, or any interest which the association may have paid or become liable to pay, proper legal charges for searching titles or the preparation of legal papers, expenses of foreclosure suits or other bona fide litigation, nor charges for examinations made by the direction of the state auditor. The provisions of this section, in so far as they limit the expenditure for expenses, shall not apply to any association whose accumulated capital is less than forty thousand dollars: Provided, however, that the annual expenses of every such latter association shall not exceed a total of one thousand dollars. The provisions of this section shall apply as well to foreign as to domestic corporations doing business under the permission and certificate of the state auditor and said auditor shall not renew such permission or issue such certificate to any corporation that shall have violated the provisions of this section. [L. '13, p. 337, § 15.]

§ 3601–16. Withdrawal of Shares—Payment of Value.—Shares shall not be withdrawn until after a lapse of three months from the time of issuance of such shares and not then except at the option of

the association, and after one day's written notice of intention to withdraw such shares shall have been given subsequent to the expiration of such three months; but shares may be withdrawn at any time after one year from the time of issuance and after one day's written notice of such withdrawal has been given to the association. The withdrawing shareholder shall be paid the amount of the withdrawal value of the shares, as shown by the last prior distribution of profits and as determined by the by-laws, together with all the dues paid thereon since such distribution: Provided, that upon withdrawal of shares pledged to the association for a stock loan or stock loans, the association shall first deduct therefrom the indebtedness due the association. Withdrawals shall be paid in the order of their filing, except as hereinafter provided, and it shall be the duty of the secretary or other officer discharging such duties to enter upon each notice the order and date of such filing. Except as hereinafter provided, not more than two-thirds of the receipts of the association in any month shall be applied to the payment of withdrawals and matured shares without the consent of the board of directors. Whenever an application for withdrawal shall have been on file or the payment of matured shares demanded and either shall have remained unpaid for a period of six months, all the receipts of the association in any month from dues, loans repaid, and the proceeds of all other investments, shall, after the payment of expenses and general indebtedness, be applied toward the payment of withdrawals and matured stock; and the board of directors, or the state auditor, in his discretion, may direct that withdrawals be paid upon a ratable and proportionate basis. After filing the notice of withdrawal provided herein, the withdrawing member shall be entitled to the dividends credited to the same class of shares, until the final payment of his shares is made; and membership in the association shall remain unimpaired so long as any accumulation remains to his credit. No officer, director, attorney, clerk or agent of such association, and no person in any way interested or concerned in the management of its affairs shall discount or directly or indirectly purchase a share of any such association, whether filed for withdrawal or not, except by payment therefor of the withdrawal value of such share as determined herein. The board of directors of any association may retire all classes of free shares by enforcing withdrawals of the same: Provided, that the by-laws shall clearly state the manner in which such withdrawals may be enforced: And provided also, that the holders thereof shall be paid the full value of the shares, including, in such case, their proportion of the contingent fund. [L. '13, p. 337, § 16.]

§ 3601–17. Exemption from Taxation.—Shares held by members shall be exempt from taxation and the association itself shall not be

taxable, except that its tangible personal and real property shall be taxed as other tangible personal and real property is taxed. [L. '13, p. 339, § 17.]

§ 3601–18. Annual Reports—License Fees.—On or before the first day of September in each year every savings and loan association doing business in this state shall deposit with the state auditor a report of its affairs and operations for the year ending on the thirtieth day of June immediately preceding. Such report shall be verified under oath by the president and secretary or by three directors of the association, and shall contain such information as the state auditor from time to time request. Upon filing such report, there shall be paid to the state auditor for the state general fund, in lieu of all other corporation fees or licenses, a fee determined as follows: If the assets of the association as shown by said report amount to fifty thousand dollars or less, a fee of ten dollars; if more than fifty thousand dollars and less than one hundred thousand dollars a fee of twenty dollars; if more than one hundred thousand dollars and less than two hundred thousand dollars, a fee of thirty dollars; if more than two hundred fifty thousand dollars and less than five hundred thousand dollars, a fee of forty dollars; if more than five hundred thousand dollars and less than one million dollars, a fee of sixty dollars; and if more than one million dollars, a fee of one hundred dollars. If such association shall fail to furnish to the auditor of the state any report required by this act, at the time so required, it shall forfeit the sum of twenty-five dollars per day for every day such report shall be delayed or withheld; and an action shall be started in the name of the state to recover such penalty and the same shall be paid into the treasury of the state. After receiving such report, the auditor, if satisfied that such association has complied with all the provisions of this act and is entitled to do business in this state, shall issue a certificate stating the compliance with such provisions, and that such association is entitled to do business in this state, which certificate shall be in force for the period of one year unless sooner revoked. [L. '13, p. 39, § 18.]

§ 3601–19. Examination—Inspector—Expenses.—The state auditor shall have supervision of all such associations doing business in this state, and shall be charged with the execution of the laws of this state relating thereto. At least annually but not oftener than twice a year except in cases of extreme necessity he shall make or cause to be made an examination into the affairs of all such associations doing business in this state. Such examinations shall be made by an inspector of savings and loan associations to be appointed by the state auditor, and who shall hold office during his pleasure. Such inspector shall be paid for the time actually spent in examining the affairs of

any association at the rate of eight dollars per diem and railroad fare. Such compensation shall be paid by the association and where several associations are examined in the course of a single trip made by the examiner, the railroad fare shall be equitably proportioned by the state auditor among the associations so examined. All examinations made by such inspector shall be full and complete, and in making the same he shall have full access to, and may compel the production of all books, papers, moneys, and records of the association under examination, and may administer oaths to and examine the officers of such association or any person connected therewith as to its business and affairs, and any willful false swearing shall be deemed perjury and be punishable as such: Provided, whenever by the laws of the state under which any foreign association is organized, annual examinations of such association are required and are made pursuant thereto, then such foreign association shall not be examined hereunder: Provided, such foreign association shall furnish to the auditor of this state annually a certificate of the proper officer of such other state that he has made an examination pursuant to the laws of such other state, and that the affairs of such association are in accord with the laws of such other state: And provided further, that the auditor of this state may, whenever he deems it advisable, cause examination of such foreign association to be made as is required in the case of associations organized under the laws of this state. [L. '13, p. 340, § 19.]

§ 3601–20. State Auditor to Take Charge of Association, When—Receiver.—Whenever it shall appear to the state auditor that the affairs of any savings and loan association are in an unsound condition or that it is conducting its business in an unsafe or unlawful manner, the state auditor shall at once notify the board of directors of such association, giving them twenty days in which to restore its affairs to a safe and sound condition or to discontinue its illegal practices. If after twenty days such restoration shall not have been made, or such illegal practices shall not have been discontinued, the state auditor shall direct the inspector of savings and loan associations to take possession of all books, records and assets of every description of such association and hold and retain the possession of same pending the further proceedings herein specified. Should the board of directors, secretary or person in charge of such association refuse to permit the said inspector to take possession as aforesaid, the state auditor shall communicate such fact to the attorney general, whereupon it shall become the duty of the attorney general at once to institute such proceedings as may be necessary to place such inspector in immediate possession of the property of such association. Upon taking possession of the effects of the association as aforesaid said inspector shall prepare a full and true statement

of the affairs and conditions of such association, including an itemized statement of its assets and liabilities, and shall receive and collect all debts, dues and claims belonging to it and pay the immediate and reasonable expenses of his trust. Said inspector shall be required to execute to the state auditor a good and sufficient bond in a sum required by the state auditor conditioned upon the faithful discharge of his duties as custodian of such association, which said bond shall be approved by the state auditor, and the expense of which shall be borne by the association under examination.

When the condition of such association has been fully ascertained, and it shall appear that the affairs of said association are in fact in an unsound condition, or that it is in fact continuing its business in an unsafe or unlawful manner, the state auditor shall report the facts to the attorney general and it shall thereupon become the duty of the attorney general to institute proceedings in the superior court of the proper county for the appointment of a receiver and for the dissolution of such association, or such other proceedings as the occasion may require. [L. '13, p. 341, § 20.]

§ 3601–21. Disbarred from State, When—Re-entry.—Any savings and loan association organized under the laws of any other state or territory that shall remove any action that shall be commenced against it in a court of this state to a United States court, or that shall fail to pay any judgment rendered against it upon a suit in any court in this state within sixty days after the rendition of final judgment in such case, or that shall fail to make reports to the state auditor as provided in this act, or to do any other act to be done or performed as required by law, and after the continued failure to do such act for twenty days after notice in writing from the state auditor of such failure, shall have no right or authority to do or transact any further business within the limits of this state, and the state auditor shall thereupon cause notice of the termination of such authority to do business to be mailed to such association, and to be published in some newspaper of general circulation at the capital of the state, and shall communicate the facts to the attorney general of this state; who shall institute such proceedings in the matter as the case may require: Provided, any such corporation may be again authorized to commence business upon such terms as the state auditor may deem just and proper, and upon full compliance with the provisions of this act. [L. '13, p. 342, § 21.]

§ 3601–22. Penalties.—Any officer, director or agent of any savings and loan association or any other person who shall sell or issue or knowingly cause to be sold or issued to any resident of this state, any stock of said association while said association does not have on deposit with the state auditor as required by this act, securities

of the value and at the time herein prescribed, or while such association shall not have the certificate of the state auditor authorizing it to do business as herein prescribed shall be guilty of a gross misdemeanor. [L. '13, p. 343, § 22.]

Cited in 83 Wash. 12.

§ 3601-23. Act Exclusive as to New Organizations.—After the passage and approval of this act, it shall be unlawful for any person, association or persons or domestic associations not already organized and doing business under sections 3601 to 3638, both inclusive, of Remington & Ballinger's Annotated Codes and Statutes of Washington, to conduct a business in the form or of a character similar to that authorized by this act without first incorporating under this act. After the passage and approval of this act no foreign association not already lawfully engaged in the state of Washington in the business of a savings and loan association shall be permitted to conduct such a business in this state, and hereafter no savings and loan associations organized under the laws of this state not already lawfully engaged in the business of a savings and loan association outside of the state of Washington shall be permitted to engage in business outside of this state: Provided, that no such association shall loan on property outside of this state more than the aggregate of the amount from time to time standing to the credit of members outside of the state. [L. '13, p. 343, § 23.]

Cited in 83 Wash. 12, 13; 87 Wash. 109.

§ 3601-24. Advertising Limited.—It shall be unlawful for any savings and loan association to make, publish, or circulate any advertisement, sign, circular or statement intended or calculated to induce persons to purchase stock of such association in the belief that such stock is subject to withdrawal on demand or that a stipulated or agreed rate of interest or dividend is payable thereon, except as provided in section 3601-6. [L. '13, p. 343, § 24.]

Cited in 83 Wash. 12, 13.

§ 3601-25. Names Prohibited.—After the passage and approval of this act, no person, association of persons, or corporation conducting a business not in the form and of a character similar to that authorized by this act shall have or continue to use for a part of its title or corporate name any combination of two or more of the following words, to wit: "building," "savings," "loan," "home,' "association" or "society." [L. '13, p. 344, § 25.]

§ 3601-26. Act Exclusive—Existing Contracts not Impaired.—The powers, rights, duties, privileges and obligations of every association heretofore or hereafter organized and doing business in the form or of a character similar to that authorized by this act, shall be governed,

controlled, construed, extended, limited and determined by the provisions of this act, to the same extent and effect as if said association had been organized and incorporated under or pursuant to the provisions of this act, and the articles of incorporation, by-laws, and rules of every such association heretofore made or existing are hereby modified, altered and amended to conform with the provisions of this act and the same are declared void where such articles of incorporation, by-laws or rules are inconsistent with the provisions of this act; except that the obligations of any existing association, whether between such association and its shareholders or any one of them or any other person or persons or any valid contract between the shareholders of such association existing at the time this act takes effect shall not be in any way impaired by the provisions of this act; and with such exceptions every savings and loan association shall possess the powers, rights, duties and privileges, and be subject to the obligations, restrictions and liabilities conferred and imposed by this act, notwithstanding anything to the contrary in its articles of incorporation, by-laws or rules. All obligations to any such association heretofore contracted shall be enforceable by it and in its name, and demands, claims and rights of action against any such association may be enforced against it as fully and completely as they might have been enforced before. [L. '13, p. 344, § 26.]

§ 3601–27. Offenses.—Every officer, director, agent or other employee of any savings and loan association, who shall willfully violate or fail to comply with any of the provisions of this act, shall be guilty of a misdemeanor. [L. '13, p. 345, § 27.]

Bulk Sales Law. See "Frauds," § 5296.
Bureau of Labor. See "Labor Law," § 6550.
Bureau of Statistics. See "State and State Boards," § 8957.
Burial. See "Health," § 5425.
Of soldiers, see "Soldiers and Sailors," § 8929.
Business Names. See "Partnerships and Business Names," § 8369.
Canals. See "Navigation," § 8146.
Capitol Building Lands. See "Lands of the State," § 6695.
Carriers. See "Railroads."

TITLE XXII.

CEMETERIES AND CEMETERY ASSOCIATIONS.

3639. Association for establishing burying grounds, etc.
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3654. Cemetery board, duty.
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§ 3639. Associations for Establishing Burying Grounds, etc.—Any number of individuals, in any portion of this state, may associate for the purpose of procuring and establishing a burying ground or place of sepulture; and, being so associated, they shall, on complying with the provisions of this section, be a body politic and corporate, may choose a president and other officers, may enact by-laws for regulating the affairs of such corporation not inconsistent with the laws of this state, and compel the observance thereof by suitable penalties, may sue and be sued, and do all acts necessary and proper for the well-ordering of the affairs of such corporation: Provided, that, before any such association shall be entitled to the privileges granted in this section, they shall lodge with the secretary of state a copy of their articles of association, and shall cause the same to be recorded in the records of the county where such burying ground is situated. [L. '57, p. 28, § 1; Abb. R. P. S., p. 322.]

Cited in 59 Wash. 46, 47.

See infra, § 3643, method of incorporation, a later enactment.

§ 3639–1. Cemetery Sites on School Lands.—Any cemetery association may purchase, under the provision of law governing the sale thereof, a cemetery site or sites, of not less than one acre nor more than ten acres each, of any school lands of the state of Washington. [L. '15, p. 419, § 15.

§ 3640. Lot in Burying Ground Exempt from Process.—Whenever any part of such burying ground shall have been designated and ap-

propriated by the proprietors thereof as the burying place of any particular person or family, the same shall not be liable to be taken or disposed of by any warrant or execution, for any tax or debt whatever; nor shall the same be liable to be sold to satisfy the demands of creditors whenever the estate of such owner shall be insolvent. [L. '57, p. 28, § 2; 1 H. C., § 2426.]

Cited in 59 Wash. 44, 46, 48.

See Const., Art. VII, § 2, exemptions from taxation.

See infra, § 9098, exemption from taxation.

§ 3640½. Reservation by Private Owner.—Any person owning any land, exclusive of encumbrances of any kind, situate two miles outside of the corporate limits of any incorporated city or town, may have the same reserved exclusively for burial and cemetery purposes by complying with the terms of the next section, provided said lands so sought to be reserved shall not exceed in area one acre. [L. '01, p. 307, § 1.]

§ 3641. Plat and Survey—Dedication.—Such person or persons shall cause such land to be surveyed and platted. A deed of dedication of said tract for burial and cemetery purposes with a copy of said plat shall be filed with the county auditor of the county in which said lands are situated and the title thereto shall be and remain in the owner, his heirs and assigns, subject to the trust aforesaid. [L. '01, p. 308, §§ 2, 3.]

§ 3642. Exemption from Taxes and Debts.—Upon compliance with the requirements of the preceding section said lands shall forever be exempt from taxation, judgment and other liens and executions. [L. '01, p. 308, § 4.]

See note to § 3640.

§ 3643. Cemetery Associations—Method of Incorporation.—Ten or more persons residing within any county of this state may associate themselves together be [by] an agreement in writing in the manner and form prescribed in sections 3740 to 3751, inclusive, infra, for the purpose of organizing themselves into a cemetery association, and upon complying with the provisions of said act, so far as applicable, they shall be and remain a corporation. [L. '99, p. 44, § 1.]

Cited in 59 Wash. 44, 47.

See, also, supra, § 3639.

§ 3644. Corporate Powers.—All such associations shall have power to prescribe the terms on which members may be admitted, the number of its trustees and officers and the time and manner of their election or appointment and the time and place of meeting for the trustees and for the association, and to pass all such other by-laws

as may be necessary for the good government of such association. [L. '99, p. 45, § 2.]

§ 3645. Lands Exempt from Taxation—Funds Irreducible—Application—Debts.—Such association shall be authorized to purchase or take by gift or devise, and hold land exempt from execution and from any appropriation to public purposes, for the sole purpose of a cemetery not exceeding eighty acres, which shall be exempt from taxation if intended to be used exclusively for burial purposes, and in nowise with a view to profit of the members of such association: Provided, that when the land already held by the association is all practically used then the amount thereof may be increased by adding thereto not exceeding twenty acres at a time. Such association may by its by-laws provide that a stated percentage of the moneys realized from the sale of lots, donations or other sources of revenue, shall constitute an irreducible fund, which fund may be invested in such manner or loaned upon such securities as the association or the trustees thereof may deem proper. The interest or income arising from the irreducible fund, provided for in any by-laws, or so much thereof as may be necessary, shall be devoted exclusively to the preservation and embellishment of the lots sold to the members of such association, and where any by-law has been enacted for the creation of an irreducible fund as herein provided for it cannot thereafter be amended in any manner whatever except for the purpose of increasing such fund. After paying for the land all the future receipts and income of such association subject to the provisions herein for the creation of an irreducible fund, whether from the sale of lots, from donations, rents or otherwise, shall be applied exclusively to laying out, preserving, protecting and embellishing the cemetery and the avenues leading thereto, and in the erection of such buildings as may be necessary or convenient for the cemetery purposes, and to paying the necessary expenses of the association. No debts shall be contracted in anticipation of any future receipts except for originally purchasing, laying out and embellishing the grounds and avenues, for which debts so contracted such association may issue bonds or notes and secure the same by way of mortgage upon any of its lands, excepting such lots as shall have been conveyed to the members thereof; and such association shall have power to adopt such rules and regulations as they shall deem expedient for disposing of and for conveying burial lots. [L. '99, p. 45, § 3.]

Cited in 59 Wash. 44.

See supra, § 3640, note.

§ 3646. May Sell Unsuitable Land.—It shall be lawful for said trustees, wherever in their opinion any portion or portions of their lands are unsuitable for burial purposes, to sell such portion or por-

tions, and apply the avails thereof to the general purposes of such association. [L. '99, p. 46, § 4.]

§ 3647. Burial Lots Entitled to All Exemptions.—Burial lots, sold by such association, shall be for the sole purpose of interment, and shall be exempt from taxation; execution, attachment or other claims, lien or process whatsoever, if used as intended, exclusively for burial purposes and in no wise with a view to profit. [L. '99, p. 46, § 5.]

§ 3649. Plan of Grounds—Recording—Duties.—All such associations shall cause a plan of their grounds and of the blocks and lots by them laid out, to be made and recorded, such blocks and lots to be numbered by regular consecutive numbers, and shall have power to inclose, improve and adorn the grounds and avenues, to erect buildings for the use of the association and to prescribe rules for the designation and adorning of lots and for erecting monuments in the cemetery, and to prohibit any use, division, improvement or adornment of a lot which they may deem improper. An annual exhibit shall be made of the affairs of the association. The plan, or plat, hereinbefore required, shall be recorded by the proper county auditor for a fee not to exceed ten cents a lot, and if the actual cost of recording the same shall be less than ten cents a lot, then said auditor shall record the same at the actual cost thereof. [L. '99, p. 46, § 6; L. '05, p. 123, § 1.]

§ 3650. Trust Funds—Authority to Accept.—All associations and companies owning cemeteries may take and hold any property, real and personal, bequeathed or given upon trust, to apply the income thereof under the direction of the trustees or managers of such associations or companies, for the improvement or embellishment of such cemeteries, or the erection or preservation of any buildings, structures, fences or walks erected or to be erected upon the lands of such cemetery associations or companies, or upon the lots or plots of any of the proprietors, or for the repair, preservation, erection or removal of any tomb, monument, gravestone, fence, railing, or other erection in or around any cemetery lot or plot, or for planting and cultivating trees, shrubs, flowers or plants in or around any such lot or plot, or for improving or embellishing such cemeteries or any of the lots or plots in any other manner or form consistent with the design and purposes of such associations and companies, according to the terms of such grant, devise or bequest. [L. '05, p. 231, § 1.]

§ 3651. Mutilation, etc., Prohibited—Penalty.—Any person who shall willfully destroy, mutilate, deface, injure or remove any tomb, monument or gravestone, or other structure in any cemetery, or any fence railing or other work for the protection or ornament of a cemetery or tomb, monument or gravestone or other structure afore-

said or of any cemetery lot within a cemetery or shall willfully destroy, cut, break or injure any tree, shrub or plant within the limits of a cemetery shall be deemed guilty of a misdemeanor and shall upon conviction thereof before any court of competent jurisdiction be punished by a fine of not less than five dollars nor more than five hundred dollars, and imprisonment in the county jail for a term not less than one nor more than thirty days, according to the nature and aggravation of the offense and such offender shall also be liable in an action of trespass in the name of said association, to pay all such damages as have been occasioned by his unlawful act or acts, which wrong, when recovered shall be applied to the reparation and restoration of the property destroyed or injured as above. [L. '99, p. 47, § 7.]

See supra, § 2493, opening road through, prohibited.
See supra, § 2491, opening grave to steal body.

§ 3652. County, Town, and City may Provide for Burial of Dead.—Each and every county, town, or city shall have power to provide a hearse and pall for burial of the dead, and to procure and hold lands for burying grounds, and to make regulations, and fence the same, and to preserve the monuments erected therein, and to levy and collect the necessary taxes for that purpose, in the same manner as other taxes are levied and collected. [L. '57, p. 28, § 3; 1 H. C., § 2427.]

See infra, § 7507, power of first class cities over.
See infra, § 7612, second class cities may provide.
See infra, § 9339½, townships may establish.

§ 3653. Cemeteries—Cities may Own and Regulate.—Any city may acquire, hold and improve lands for cemetery purposes and may sell lots therein and may provide by ordinance that a certain specified percentage of the moneys for any lot sold may be set aside and invested, and the income from said investment be used in the care of said lots, and may take and hold any property, real or personal, bequeathed or given upon trust, and apply the income thereof for the improvement or embellishment of such cemeteries or the erection or preservation of any buildings or structures, fences or walks erected or to be erected upon the cemeteries of such city, or for the repair, preservation, erection or renewal of any tomb, monument, gravestone, fence, railing or other erection at or around any cemetery, lot or plat, or for planting and cultivating trees, shrubs, flowers or plants in or around such lot or plat or for improving or embellishing such cemetery in any other manner or form consistent with the design and purpose of such city, according to the terms of such grant, devise or bequest. [L. '09, p. 602, § 1.]

§ 3654. Cemetery Board, Duty.—It shall be the duty of the cemetery board and other body or commission having in charge the care

and operation of cemeteries to invest all sums set aside from the sale of lots, and all sums of money received, and to care for the income of all money and property held in trust for the purposes designated herein: Provided, however, that all investments shall be made in municipal, county, school or state bonds, or in first mortgages on good and improved real estate. [L. '09, p. 603, § 2.]

§ 3655. Investments.—All investments shall be approved by the council or legislative body of the city. [L. '09, p. 603, § 3.]

§ 3656. Separate Fund.—All moneys received or obtained in the manner herein provided shall be deposited with the city treasurer of said city, and shall be kept separate and apart in a fund known as the cemetery improvement fund, and shall be paid out by the said treasurer only upon warrants drawn by the order of the cemetery board and indorsed by the mayor and attested by the city comptroller of said city, or other authorized officer. [L. '09, p. 603, § 4.]

§ 3657. Records—Audit.—Accurate books of account shall be kept of all transactions pertaining to said fund, which books shall be open to the public for inspection and shall be audited by the auditing committee of said city. [L. '09, p. 603, § 5.]

§ 3658. Management of Funds.—The said city shall, by ordinance, make all necessary rules and regulations concerning the control and management of said fund to properly safeguard the same, but shall in no wise be liable for any of said funds except a misappropriation thereof, and shall not have power to bind the city or said fund for any further liability than whatever net interest may be actually realized from such investments, and shall not be liable to any particular person for more than the proportionate part of such net earnings. [L. '09, p. 603, § 6.]

Certiorari. See § 1001.
Charitable Institutions. See "Corporations," § 3731.

TITLE XXIII.

CHATTEL MORTGAGES AND CONDITIONAL SALES.

CHAPTER I.—CHATTEL MORTGAGES.

3659. Property subject to.
3660. Affidavit of good faith—Acknowledgment—Recording.
3661. Must be filed within ten days.
3662. Constructive notice.
3663. Effect of affidavit—Limitation.
3664. Form of mortgage for less than one hundred dollars.
3665. Recording mortgages in excess of three hundred dollars.
3666. Property in two counties.
3667. Certificate of satisfaction.
3668. Recording, effect of failure.
3669. Penalty for removing mortgaged property.

CHAPTER II.—CONDITIONAL SALES.

3670. Contracts to be filed, when.
3671. Auditor to index.

CHAPTER I.

Chattel Mortgages.

§ 3659. Property Subject to.—Mortgages may be made upon all kinds of personal property, and upon the rolling stock of a railroad company and upon all kinds of machinery, and upon boats and vessels, and upon portable mills, and such like property, and upon growing crops and upon crops before the seed thereof shall have been sown or planted: Provided, that the mortgaging of crops before the seed thereof shall have been sown or planted, for more than one year in advance, is hereby forbidden, and all securities or mortgages hereafter executed on such unsown or unplanted crops are declared void and of no effect, unless such crops are to be sown or planted within one year from the time of the execution of the mortgage. [L. '99, p. 157, § 1. Cf. L. '79, p. 104, § 1; Cd. '81, § 1986; 1 H. C., § 1646.]

Cited in 1 Wash. 546, 583; 4 Wash. 249; 6 Wash. 91; 8 Wash. 573; 21 Wash. 275; 77 Wash. 492; 78 Wash. 140.

For former laws on this subject see L. '63, pp. 426, 427; L. '65, p. 26; L. '75, pp. 43–46; L. '77; pp. 286, 287.

See supra, § 1104 et seq., and notes, foreclosure of chattel mortgages.

§ 3660. Affidavit of Good Faith—Acknowledgment—Recording.—A mortgage of personal property is void as against all creditors of the mortgagor, both existing and subsequent, whether or not they have or claim a lien upon such property, and against all subsequent purchasers, pledgees, and mortgagees and encumbrancers for value in good faith, unless it is accompanied by the affidavit of the mortgagor that it is made in good faith, and without any design to hinder, delay, or defraud creditors, and unless it is acknowledged and filed

within ten days from the time of the execution thereof in the office of the county auditor of the county in which the mortgaged property is situated as provided by law. [L. '15, p. 277, § 1. Cf. L. '79, p. 105, § 2. Cd. '81, § 1987; 1 H. C., § 1648.]

Cited in 6 Wash. 91; 9 Wash. 26; 11 Wash. 385, 402; 12 Wash. 193; 14 Wash. 361, 455; 16 Wash. 517; 19 Wash. 445; 20 Wash. 19; 22 Wash. 63; 24 Wash. 112, 598; 30 Wash. 590; 50 Wash. 18; 60 Wash. 251; 73 Wash. 498; 77 Wash. 354; 78 Wash. 136, 139; 82 Wash. 67; 84 Wash. 230, 232; 86 Wash. 204.

See references to last section.

See infra, § 8786, auditor to record.

See infra, § 3662, a later enactment, making a mortgage that is merely "filed and indexed" notice to "all the world," and § 3665, making it "optional" to record mortgages for over three hundred dollars.

§ 3661. Must be Filed Within Ten Days.—Every such instrument within ten days from the time of the execution thereof shall be filed in the office of the county auditor of the county in which the mortgaged property is situated, and such auditor shall file all such instruments when presented for the purpose, upon the payment of the proper fees therefor, indorse thereon the time of reception, the number thereof, and shall enter in a suitable book to be provided by him at the expense of his county, with an alphabetical index thereto, used exclusively for that purpose, ruled into separate columns with appropriate heads: "The time of filing," "Name of mortgagor," "Name of mortgagee," "Date of instrument," "Amount secured," "When due," and "Date of release." An index to said book shall be kept in the manner required for indexing deeds to real estate, and the county auditor shall receive for the services required by this act the sum of fifteen cents for every instrument, and the moneys so collected shall be accounted for as other fees of his office. Such instrument shall remain on file for the inspection of the public. [L. '99, p. 158. § 2.]

Cited in 66 Wash. 298, 299.

"Every such instrument," refers to the mortgages mentioned in § 3659.

See supra, § 3660, and infra, § 3668, when to be recorded.

See infra, § 3665, recording mortgages over three hundred dollars.

Recording assignments of, see infra, § 8800.

§ 3662. Constructive Notice.—Every mortgage filed and indexed in pursuance of this act shall be held and considered to be full and sufficient notice to all the world, of the existence and conditions thereof, but shall cease to be notice, as against creditors of the mortgagors and subsequent purchasers and mortgagees in good faith after the expiration of the time such mortgage becomes due, unless before the expiration of two years after the time such mortgage becomes due, the mortgagee, his agent or attorney, shall make and file as aforesaid an affidavit setting forth the amount due upon the mortgage, which affidavit shall be annexed to the instrument to which it relates and

the auditor shall indorse on said affidavit the time it was filed. [L. '99, p. 158, § 3.]

Cited in 77 Wash. 116, 117.

This act refers to §§ 3659 and 3661–3667.

§ 3663. Effect of Affidavit—Limitation.—The effect of any such affidavit shall not continue beyond one year from the time when such mortgage would otherwise cease to be valid as against such creditors and subsequent purchasers and mortgagees in good faith; unless before the time when any such mortgage would otherwise cease to be valid, as aforesaid, a similar affidavit be filed and annexed as provided in the preceding section, and with like effect. [L. '99, p. 159, § 4.]

§ 3664. Form of Mortgage for Less Than One Hundred Dollars.—A mortgage contemplated by this act which is given to secure the sum of one hundred dollars or less, exclusive of interest and costs of foreclosure, may be made in substantially the following form:

This mortgage made this —— day of —— in the year —— by A. B., of ——, mortgagor, to C. D., of ——, mortgagee.

Witnesseth: That the mortgagor mortgages to the mortgagee (here describe the property) as security for the payment to him of —— dollars, on (or before) the —— day of —— in the year ——, with interest thereon (or security for the payment of a note or obligation, describing it, etc.).

A. B.

Signed and delivered in the presence of

E. F.
G. H.

[L. '99, p. 159, § 5.]

See note to § 3662.

§ 3665. Recording Mortgages in Excess of Three Hundred Dollars. A mortgage given to secure the sum of three hundred dollars or more exclusive of interest, costs and attorneys or counsel fees may be recorded and indexed with like force and effect as if this act had not been passed, but such mortgage or a copy thereof must also be filed and indexed as required by this act. [L. '99, p. 159, § 6.]

Cited in 66 Wash. 299.

See note to § 3662.

§ 3666. Property in Two Counties.—In case the property mortgaged exists in two or more counties, a copy of such mortgage may be filed in each of such counties with like force and effect as the original mortgage. [L. '99, p. 159, § 7.]

§ 3667. Certificate of Satisfaction.—Whenever any mortgage, filed under the provisions of this act, has been paid, or the conditions

thereof satisfied, the mortgagee, or his assignee or personal representatives, shall make to the mortgagor, his assignee or personal representatives a certificate in writing, under his hand, stating the date of the mortgage and a description of the property thereby mortgaged, and that the same has been discharged in full; and on delivering said certificate in writing to the officer with whom such mortgage is filed, the said officer shall deliver said mortgage to the person producing such certificate on payment of the sum of ten cents for filing said certificate, and shall file said certificate in his office, indorsing thereon the true date of filing the same, and shall keep and preserve said certificate among the records in his office, and shall write the word "satisfied" with the date opposite to such mortgage, in the index in which such mortgages are entered under the heading "release." [L. '99, p. 160, § 8.]

Satisfaction after record of an assignment, see infra, § 8800.
See infra, § 8799, court may order cancellation.

§ 3668. Recording, Effect of Failure.—A mortgage of personal property must be recorded in the office of the county auditor of the county in which the mortgaged property is situated, in a book kept exclusively for that purpose. When personal property mortgaged is thereafter removed from the county in which it is situated, it is, except as between the parties to the mortgage, exempted from the operation thereof, unless either,—

1. The mortgagee within thirty days after such removal causes the mortgage to be recorded in the county to which the property has been removed; or

2. The mortgage be recorded in the custom-house; or

3. The mortgagee within thirty days after such removal takes possession of the property: Provided, that a mortgage on any vessel or boat, or part of a vessel or boat, over twenty tons burden, shall be recorded in the office of the collector of customs, where such vessel is registered, enrolled, or licensed, and need not be recorded elsewhere. [L. '79, p. 105, § 3 in pt.; Cd. '81, § 1988; 1 H. C., § 1649.]

Cited in 11 Wash. 385; 15 Wash. 275; 16 Wash. 517; 24 Wash. 112; 30 Wash. 590; 44 Wash. 144, 145.

See supra, § 3661, superseding the first sentence of this section.

§ 3669. Penalty for Removing Mortgaged Property.—Any mortgagor of personal property, or the successor in interest of such mortgagor, who, with intent to hinder, delay or defraud the mortgagee thereof, or his or her assigns or legal representatives, shall injure or destroy such property or any part thereof, or shall conceal such property or any part thereof, or shall remove the same or any part thereof from the county where it was situated at the date of the mortgage before it is duly released, without the consent in writing of the mort-

gagee, or shall sell or dispose of the same, or any interest therein, where he parts with the possession thereof, without the consent in writing of the mortgagee, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail for a period not exceeding six months or by a fine of not more than twice the value of such property, or by both such fine and imprisonment. [Cf. L. '79, p. 106, § 14; Cd. 81, § 1999; 1 H. C., § 1662; L. '93, p. 224, § 1.]

See notes to § 1104, supra.

CHAPTER II.

Conditional Sales.

§ 3670. Contracts to be Filed When.—That all conditional sales of personal property, or leases thereof, containing a conditional right to purchase, where the property is placed in the possession of the vendee, shall be absolute to all bona fide purchasers, pledgees, mortgagees, encumbrancers and subsequent creditors, whether or not such creditors have or claim a lien upon such property, unless within ten days after the taking of possession by the vendee, a memorandum of such sale, stating its terms and conditions and signed by the vendor and vendee, shall be filed in the auditor's office of the county, wherein, at the date of the vendee's taking possession of the property, the vendee resides. [L. '15, p. 276, § 1. Cf. L. '93, p. 253, § 1; L. '03, p. 6, § 1.]

Cited in 50 Wash. 647, 648; 55 Wash. 333, 339, 540, 544; 58 Wash. 620; 63 Wash. 309; 65 Wash. 652, 653; 72 Wash. 245, 475, 605; 79 Wash. 534; 80 Wash. 383; 82 Wash. 211, 255; 83 Wash. 78; 84 Wash. 73, 427; 86 Wash. 206.

See infra, § 5291, bill of sale to be recorded if vendor retains possession.

§ 3671. Auditor to Index.—It shall be the duty of the county auditor wherein any such memorandum is presented to him for that purpose, to file all such instruments, upon payment of proper fees therefor, indorse thereon the time of reception, the number thereof, and he shall enter in a suitable book to be provided by him at the expense of his county, with an alphabetical index thereto, and exclusively for that purpose, ruled into separate columns with appropriate heads, "The time of filing." "Name of vendor," "Name of vendee." "Date of instrument," "Amount of purchase price," and "Date of release." An index of said book shall be kept in the manner required for indexing deeds to real estate, and the county auditor shall receive for the services required by this chapter the sum of twenty-five cents for each instrument, and the money so collected shall be accounted for as other fees of his office. Such instrument shall remain on file for the inspection of the public until full payment has been made thereon, and shall be satisfied or canceled in the same manner and upon payment of same

fees as chattel mortgages are satisfied or canceled. [L. '93, p. 254, § 2; L. '03, p. 6, § 2.]

Cited in 50 Wash. 647, 648.

Children. Adoption of, see §§ 1696–1699.
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Homeless or neglected, see §§ 1700–1707.
Cities. See "Municipal Corporations."
City Boards of Health. See "Health," § 5535.
City Depositaries. See "Finance," § 5078.
Claim and Delivery. See §§ 707–717.
Claims. Adverse claims to property levied upon, see §§ 573–577.
Agent to prosecute state claims, see "Lands of the State," § 6623.
Against decedent's estates, see § 1470.
Before legislature. See "Legislature," § 6939.
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Of supreme court, see "State Officers," § 9057.
Fees of, see "Costs," § 497.
Commercial Waterways. See "Navigation," § 8169a.
Commission Merchants. See "Licenses," § 7024.
Commissioner of Deeds. See "Notaries Public," § 3000-2,
Commissioner of Agriculture. See "Agriculture," § 3000-2.
Commissioner of Labor. See "Labor Law," § 6550.
Commissioner of Public Lands. See "Lands of the State," § 6628.
Commissioners. To convey real estate, see §§ 605–612.
Common Carriers. See "Railroads."
Community Property. See "Husband and Wife," § 5917.
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Of rolling stock, see "Railroads," § 8741.

TITLE XXIV.

CONGRESSIONAL DISTRICTS AND ELECTIONS.

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3676d. General election laws to apply.

§ 3673a. First District.—The city of Seattle and Kitsap county shall constitute the first congressional district and shall be entitled to one representative in congress of the United States. [L. '13, p. 275, § 1.]

§ 3674a. Second District.—The counties of Clallam, Jefferson, Snohomish, Skagit, Whatcom, San Juan Island and that portion of King county outside of Seattle, shall constitute the second congressional district and shall be entitled to one representative in congress of the United States. [L. '13, p. 275, § 2.]

§ 3675a. Third District.—The counties of Chehalis, Mason, Thurston, Pierce, Pacific, Lewis, Wahkiakum, Cowlitz, Clarke and Skamania shall constitute the third congressional district and shall be entitled to one representative in congress of the United States. [L. '13, p. 275, § 3.]

§ 3675–1. Fourth District.—The counties of Klickitat, Yakima, Benton, Kittitas, Whitman, Grant, Adams, Franklin, Walla Walla, Columbia, Garfield and Asotin shall constitute the fourth congressional district and shall be entitled to one representative in congress of the United States. [L. '13, p. 276, § 4.]

§ 3675–2. Fifth District.—The counties of Ferry, Stevens, Lincoln, Spokane, Chelan, Okanogan, Douglas and Pend d' Oreille shall constitute the fifth congressional district and shall be entitled to one representative in congress of the United States. [L. '13, p. 276, § 5.]

§ 3676. Election in Each District.—At the next general election to be held on the first Tuesday after the first Monday in November, 1914, one representative in the congress of the United States shall be elected in each of the congressional districts by the qualified electors therein and the votes for said representatives shall be given, received, returned and canvassed as the same are now given, received, returned and canvassed for electors for President and Vice-President of the United States. L. '13, p. 276, § 6.]

§ 3676a. Election to Fill Vacancy—Primary—Time for Writ.—That whenever any vacancy exists in the office of United States senator or representative in congress from this state, or representative in congress from any congressional district of this state by death, resignation, disability or failure to qualify, of persons elected to such office, and there shall be a necessity for the filling of such vacancy, or threatened vacancy, for the term or the remainder of the unexpired term, the governor shall issue a writ of election to fill such vacancy, which writ shall fix the time for such election not less than twenty-five days after the issuance thereof, and such writ shall also fix a day not less than fifteen days after the issuance of the writ, and not less than ten days before the special election called therein, for the holding of a special primary for the purpose of nominating candidates to be voted for at such special election. [L. '15, p. 232, § 1. Cf. L. '13 p. 276, § 5; L. '09, Ex. Sess., p. 62, § 1.]

§ 3676b. Contents of Writ—Notice of Election and Primary.—The writ shall name the district in and the term or part of term for which the vacancy exists, or is about to exist, and the governor shall immediately notify each county auditor within such district of the issuance of such writ, and each auditor shall publish notices of such special election and such special primary in accordance with such writ, by publishing such notices at least once in the county official paper, if there be one, and if there be no county official paper, then in some other paper of general circulation in the county, and also by posting such notices in each precinct in his county: Provided, however, that when the time named in such writ for the holding of such special primary is not more than fifteen (15) days before the time fixed for the holding of the special election, the notices of such official election shall be combined in and be made a part of the notices of such special primary: And provided further, that the time for either such special election of such special primary may be held at the same time as holding the corresponding regular elections and when either such special election or such special primary is so held, the writ shall so provide that for such election names of the candidates for such congressional office may be placed on the regular ballots and voted for as other candidates at such election. [L. '09, Ex. Sess., p. 62, § 2.]

§ 3676c. Registration—Conduct of Election—Canvass of Vote. Whenever either such special election or special primary shall be held at the same time as the regular corresponding election, the registration of voters for such general election, in precincts where registration is required, shall be sufficient for such special election or special primary, and the officers of the election shall be the same, and the election shall be merged with and become a part of the regular election. Whenever the writ of election shall fix a different date for

either such special election or such special primary, the election officers of the last preceding corresponding election shall be taken to be the election officers for such special election or such special primary, as the case may be, and the registration for the last general election in precincts where registration is required, shall be deemed a sufficient registration for such special election or such special primary: Provided, however, any person having registered since such last general election, and otherwise qualified may vote, but no person shall be allowed to vote at such special election or special primary, who shall have registered within three (3) days of the election at which he offers to vote. Canvass of votes at any such special primary shall be made in each county within five (5) days after such primary, and returns sent immediately to the secretary of state, where the returns from all the counties shall be canvassed and the candidate of each party shall be determined in the same manner as now provided by law, and the names thereof shall be certified at once to the several county auditors in the district. No name shall be printed on the primary ballots that shall not have been filed with the secretary of state at least ten (10) days before the special primary. [L. '09, Ex. Sess., p. 63, § 3.]

§ 3676d. General Election Laws to Apply.—The general election laws and the laws relating to primary elections shall apply to the special elections herein provided for, in so far as the same are not inconsistent with this act and shall be construed with and made a part of this act for the purpose of carrying out the spirit and intent thereof. [L. '09, Ex. Sess., p. 64, § 4.]

Constables. See "Justices of the Peace and Constables," § 6524.
Construction. Rules of, etc., see §§ 143–152.
Contempt. See §§ 1049–1082.
Before justices of the peace, see §§ 1891–1897.
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CHAPTER I.

Organization and Management Generally.

§ 3677. How Organized—Conditions and Liabilities.—Corporations for manufacturing, mining, milling, wharfing and docking, mechanical banking, mercantile, improvement and building purposes, or for the building, equipping and managing water flumes for the transportation of wood and lumber, or for the purpose of building, equipping and running railroads, or constructing canals or irrigation canals, or engaging in any other species of trade or business, may be formed according to the provisions of this chapter; such corporations and the members thereof being subject to all the conditions and liabilities herein imposed, and to none others: Provided, that no such corporation shall commence business or institute proceedings to condemn land for corporate purposes until the whole amount of its capital stock has been subscribed: And provided further, that the provisions of the foregoing proviso shall not apply to corporations engaged exclusively in loaning money on real estate, nor to corporations engaged exclusively in raising money from, and loaning or repaying it to, their own members, and which confine their loaning and business operations wholly to the counties of their principal place of business, respectively, and to the counties adjacent and adjoining thereto. [Cf. L. '66, p. 57, § 1; L. '67, p. 137, § 1; L. '69, p. 330, § 1; L. '73, p. 398, § 1; Cd. '81, § 2421; L. '86, p. 84, § 1; L. '91, p. 214, § 1; 1 H. C., § 1497; L. '95, p. 338, § 1.]

Cited in 1 Wash. 570, 571; 6 Wash. 136; 11 Wash. 253; 20 Wash. 357, 458; 21 Wash. 510; 29 Wash. 230; 36 Wash. 382, 383; 40 Wash. 439, 442; 44 Wash. 110; 51 Wash. 350; 53 Wash. 371, 538; 54 Wash. 371; 56 Wash. 214; 71 Wash. 501, 664; 76 Wash. 618, 619; 78 Wash. 522; 86 Wash. 450.

Superseded as to banks and trust companies. See notes following.
See supra, § 921 et seq., appropriation by private corporations.
See supra, § 3317, incorporation of banks.
See supra, § 3345–1, mutual savings banks.
See supra, § 3347, incorporation of trust companies.
See supra, § 3639, incorporation of cemetery associations.
See infra, § 3720, foreign corporations.
See infra, § 3740, social, charitable and educational societies.
See infra, § 3751–1, corporations sole.
See infra, § 3766–1, co-operative associations.
See infra, § 4972, electric light and power companies.
See infra, § 7110 et seq., boom companies.
See infra, § 7344, mining corporations.
See infra, § 8662, railway and other corporations.
See infra, § 9080, street and electric railway companies.

§ 3678. Provisions as to Formation of, Extend to Water Companies. The provisions of this chapter shall extend to and apply to all associations already formed under any law of this state [or] hereafter to be formed under the provisions of this act, for the purpose of supplying any cities or towns in this state, or the inhabitants thereof, with pure and fresh water. [L. '69, p. 340, § 29; L. '73, p. 408, § 27; Cd. '81, § 2447; 1 H. C., § 1521.]

Cited in 51 Wash. 390.
Water and water-power companies, see infra, § 9504 et seq.

§ 3679. Articles of Incorporation, Contents, etc.—Any two or more persons, who may desire to form a company for one or more of the purposes specified in section 3677, shall make and subscribe written articles of incorporation in triplicate, and acknowledge the same before any officer authorized to take the acknowledgment of deeds, and file one of such articles in the office of the secretary of state, and another in the office of the county auditor of the county in which the principal place of business of the company is intended to be located, and retain the third in the possession of the corporation. Said articles shall state the corporate name of the company, the objects for which the same shall be formed, the amount of its capital stock, the time of its existence, not to exceed fifty years: Provided, that this limit of existence shall not apply to any life, accident and health insurance company, the number of shares of which the capital stock shall consist, the number of trustees and their names, who shall manage the concerns of the company for such length of time (not less than two nor more than six months) as may be designated in such certificate, and the name of the city, town, or locality and county in which the principal place of business of the company is to be located. Amendments may be made to the articles of incorporation by a majority vote of its trustees and the vote or written assent of two-thirds of the capital stock of such corporation. If the written assent of two-thirds of the capital stock has not been obtained then the vote of said stock may be taken at any regular meeting of the

stockholders, or at any special meeting of the stockholders called for that purpose in the manner provided in the by-laws of such corporation for special meetings of the stockholders. The president and secretary of said corporation shall certify said amendments in triplicate under the seal of said corporation to be correct and file and keep the same as in the case of original articles and from the time of filing said amendments such corporation shall have the same powers and it and the stockholders thereof shall be subject to the same liabilities as if such amendments had been embraced in the original articles of incorporation. Nohting contained in this section shall be construed to cure or amend any defect existing in any original articles of incorporation in that such articles did not set forth the matters required to make the same valid at the time of filing, nor to cure or amend any defect in the execution thereof. The time of existence of such corporation shall not be extended by amendments beyond the time fixed in the original articles of incorporation:

Provided, that when valid articles of incorporation have heretofore been duly filed with the secretary of state and errors have been made in the duplicate filed with the county auditor, such defects may be cured by filing with said county auditor, a certified copy of the original articles filed with the secretary of state, and when said certified copy is filed, it shall have the same force and effect as though the duplicate had been filed with the county auditor at the same time the original was filed with the secretary of state. [L. '15, p. 272, § 1. Cf. L. '05, p. 27, § 1. Cf. L. '66, p. 57, § 2; L. '69, p. 330, § 2; L. 73, p. 398, § 2; L. '79, p. 155, §§ 1–3; Cd. '81, § 2422; 1 H. C., § 1498.]

Cited in 1 Wash. 131; 4 Wash. 687; 6 Wash. 137; 21 Wash. 510; 54 Wash. 371; 71 Wash. 501; 72 Wash. 475, 478; 78 Wash. 530; 86 Wash. 450.

§ 3680. Duplication of Corporate Names Prohibited.—Private corporations may be formed in the manner prescribed by the laws of this state governing corporations for any purpose for which individuals may lawfully associate. No corporation shall take the name of a corporation theretofore organized under the laws of this state, nor of any foreign corporation having complied with the laws of this state, nor one so nearly resembling the name of such other corporation as to be misleading. The secretary of state shall refuse to file said articles of incorporation of any association or corporation violating the provisions of this section. [L. '03, p. 124, § 1.]

Cited in 51 Wash. 620–622; 56 Wash. 694; 59 Wash. 434; 80 Wash. 650.

§ 3681. Change of Name—Procedure.—Whenever any corporation heretofore or hereafter organized under the laws of this state (including such as were organized under the laws of the territory of

Washington) shall execute and file in the office of the secretary of state and in the office of the county auditor of the proper county supplemental articles of incorporation changing its corporate name, such corporation shall file in the office of such county auditor, at the time of filing such supplemental articles or within ten days thereafter, a written notice, signed by its president, vice-president or secretary, setting forth its former corporate name and its corporate name as changed and stating that supplemental articles making such change of name have been filed in the office of the secretary of state and in the office of the county auditor of the county (naming it). It shall be the duty of the county auditor, on payment of the proper recording fee, to record such notice as deeds are recorded and to index such notice in the general index in his office under the former corporate name as grantor and under the changed corporate name as grantee. A like notice may at the option of such corporation be filed in the office of the county auditor of any other county, and the county auditor of such other county shall record and index the same in the manner hereinbefore provided. Corporations which have heretofore filed supplemental articles changing their corporate names shall file the notice herein provided for within six months after the taking effect of this act. [L. '05, p. 215, § 1.]

§ 3682. Copies of Articles as Evidence.—A copy of any certificate of incorporation filed in pursuance of this chapter, and certified by the auditor of the county in which it is filed, or his deputy, or by the secretary of state, shall be received in all the courts and places as prima facie evidence of the facts therein stated. [Cf. L. '66, p. 57, § 3; L. '69, p. 331, § 3; L. '73, p. 399, § 3; Cd. '81, § 2423; 1 H. C., § 1499.]

Cited in 21 Wash. 511; 62 Wash. 617; 71 Wash. 470.

§ 3683. Corporate Powers Enumerated.—When the certificate shall have been filed, the persons who shall have signed and acknowledged the same, and their successors, shall be a body corporate and politic in fact and in name, by the name stated in their certificate, and by their corporate name have succession for the period limited, and shall have power,—

1. To sue and be sued in any court having competent jurisdiction;
2. To make and use a common seal, and to alter the same at pleasure;
3. To purchase, hold, mortgage, sell, and convey real and personal property;
4. To appoint such officers, agents, and servants as the business of the corporation shall require, to define their powers, prescribe their duties, and fix their compensation;

5. To require of them such security as may be thought proper for the fulfillment of their duties, and to remove them at will; except that no trustee shall be removed from office unless by a vote of two-thirds of the stockholders, as hereinafter provided;

6. To make by-laws not inconsistent with the laws of this state or the United States;

7. The management of its property, the regulation of its affairs, the transfer of its stock, and for carrying on all kinds of business within the objects and purposes of the company as expressed in the articles of incorporation. [Cf. L. '66, p. 57, § 4; L. '69, p. 331, § 4; L. '73, p. 399, § 4; Cd. '81, § 2424; 1 H. C., § 1500.]

Cited in 8 Wash. 286; 17 Wash. 672; 19 Wash. 173; 49 Wash. 492; 65 Wash. 320, 321.

§ 3684. May Own Stock of Other Corporations.—That any corporation heretofore or hereafter organized under the laws of this state or of any other state or territory of the United States and doing business in this state shall have power and authority to subscribe for, acquire by purchase or otherwise and to own, hold, sell, assign and transfer shares of the capital stock of any other corporation and by its duly authorized officer or proxy to vote such shares at any and all stockholders' meetings of the corporation whose shares are so held, and to have and exercise all the rights, powers and privileges of any other stockholder, except that such corporate owner cannot be a member of the board of trustees. All existing holdings by any such corporation in the shares of the capital stock of any other corporation are hereby validated. [L. '05, p. 51, § 1.]

Cited in 56 Wash. 217.

See supra, § 3324, superseding this section as to banking corporations.

§ 3685. Certain Corporations Authorized to Hold Property.—All private corporations incorporated by the legislative assembly of the territory of Washington, prior to the tenth day of June, eighteen hundred and seventy-two, other than for religious purposes, be and they are hereby authorized to hold, acquire, own, and possess real and personal property to the extent and to such an amount as to said corporations may seem meet, anything in the acts incorporating said private corporations to the contrary notwithstanding. [L. '91, p. 73, § 1; 1 H. C., § 1501.]

§ 3686. Corporate Powers, How Exercised—By-laws, etc.—The corporate powers of a corporation shall be exercised by a board of not less than two trustees, who shall be stockholders in the company, and at least one of whom shall be a resident of the state of Washington, and a majority of them citizens of the United States, who shall, before entering upon the duties of their office, respectively take and subscribe to an oath, as provided by the laws of this state, and who

shall, after the expiration of the term of the trustees first elected, be actually elected by the stockholders, at such time and place, within this state, and upon such notice and in such manner, as shall be directed by the by-laws of the company; but all elections shall be by ballot, and each stockholder, either in person or by proxy, shall be entitled to as many votes as he may own, or represent by proxy, shares of stock, and the person or persons receiving the greatest number of votes shall be trustee or trustees: Provided, that nothing herein contained shall prevent any corporation, by their by-laws, limiting such bona fide shareholder to a single vote, or one vote for every full share of paid-up stock, or its equivalent in assessable stock, disregarding the number of shares of stock he may own. It shall be competent, at any time, for two-thirds of the stockholders of any corporation organized under this chapter to expel any trustee from office, and to elect another to succeed him. In all cases where a meeting of the stockholders is called for the purpose of expelling a trustee and electing his successor, such notice shall be given of the meeting as the by-laws of the company may require. Whenever any vacancy shall happen among the trustees by death, resignation or otherwise, except by removal and the election of his successor as herein provided, it shall be filled by appointment of the board of trustees. Every such corporation shall at all times keep at its principal place of business in this state an officer or officers, agent or agents, upon whom service of legal process may be made, in conformity with the law: Provided, that service of such process may be made at any time upon any resident trustee of such corporation. [Cf. L. '66, p. 58, § 5; L. '69, p. 332, § 5; L. '73, p. 400, § 5; Cd. '81, § 2425; 1 H. C., § 1502; L. '95, p. 61, § 1.]

Cited in 22 Wash. 200; 29 Wash. 230; 34 Wash. 220; 37 Wash. 287; 43 Wash. 375; 46 Wash. 164; 58 Wash. 68; 63 Wash. 71; 77 Wash. 162.

§ 3687. Not to be Dissolved Because Trustees were not Elected, etc. If it shall happen at any time that an election of trustees shall not be made on the day designated by the by-laws of the company, the corporation shall not, for that reason, be dissolved; but it shall be lawful on any other day to hold an election for trustees, in such manner as shall be provided for in the by-laws of the company, and all acts of the trustees shall be valid and binding upon the company until their successors are elected and qualified. [Cf. L. '66, p. 59, § 6; L. '69, p. 333, § 6; L. '73, p. 400, § 6; Cd. '81, § 2426; 1 H. C., § 1503.]

§ 3688. Decision of Majority as Quorum is Valid as Corporate Act. A majority of the whole number of trustees shall form a board for the transaction of business, and every decision of a majority of the persons duly assembled as a board shall be valid as a corporate act.

[L. '66, p. 59, § 7; L. '69, p. 333: § 7; L. '73, p. 401, § 7; Cd. '81, § 2427; 1 H. C., § 1504.]

Cited in 25 Wash. 496; 37 Wash. 287.

§ 3689. Notice of First Meeting, How to be Given.—The first meeting of the trustees shall be called by a notice, signed by one or more persons named as trustees in the certificate, setting forth the time and place of the meeting, which notice shall be delivered personally to each trustee, or published at least twenty days in some newspaper in the county in which the principal place of business of the corporation, or if no newspaper is published in the county, then in some newspaper nearest thereto in the state. [L. '66, p. 59, § 8; L. '69, p. 333, § 8; L. '73, p. 401, § 8; Cd. '81, 2428; 1 H. C., § 1505.]

§ 3690. Place of Meetings.—Meetings of the stockholders of a corporation shall be held at its principal place of business within this state. Meetings of the board of trustees or directors of corporations, organized and existing under the laws of this state, may be held at such place or places within or without the state as may be designated in the articles of incorporation or by-laws. In case the meetings of the board of directors or trustees of a corporation shall be held outside of the state of Washington, either the original or full and complete copies or duplicate of all proceedings had at such meeting or meetings certified by the secretary under the corporate seal shall be sent to and kept at the principal office or place of business of the corporation in this state and shall be part of the records of the corporation in this state. [L. '07, p. 205, § 1.]

§ 3691. Duty to File Statement.—Every corporation heretofore organized under the laws of the territory or state of Washington, and every corporation which may hereafter be organized under the laws of this state, shall, on or before the second Tuesday of January of each year, and at such other times as such corporations may elect so to do, file with the county auditor of the county in which such corporation has its principal place of business, a statement, sworn to by its president and attested by its secretary and sealed with its corporate seal, containing a list of all its officers and their respective titles of office, names and addresses, and the term of office for which they have been chosen. [L. '95, p. 355, § 1.]

Cited in 60 Wash. 549.

§ 3692. Corporations Hereafter Formed to File Statement.—Every corporation which shall be hereafter organized under the laws of this state shall, within thirty days after it shall have filed its certificate of incorporation with the county auditor of the county in which it has its principal place of business, file with such county auditor a statement, sworn to by its president and attested by its

secretary and sealed with its corporate seal, containing a list of all of its officers and their respective titles of office, names and address, and the term of office for which they have been chosen. [L. '95, p. 355, § 2.]

Cited in 60 Wash. 549.

§ 3693. Stock Personal Estate—Transfer of.—The stock of the company shall be deemed personal estate, and shall be transferable in such manner as shall be prescribed by the by-laws of the company; but no transfer shall be valid except between the parties thereto, until the same shall have been entered upon the books of the company, so as to show the names of the parties, by and to whom transferred, the numbers and designation of the shares, and the date of the transfer. [L. '66, p. 59, § 9; L. '69, p. 333, § 9; L. '73, p. 401, § 9; Cd. '81, § 2429; 1 H. C., § 1506.]

Cited in 6 Wash. 598; 31 Wash. 571; 54 Wash. 121, 635; 67 Wash. 82, 289; 76 Wash. 602.

See infra, § 9194, payment of inheritance tax as prerequisite to transfer.

§ 3694. Subscriptions, Assessments, Sale of Shares, etc.—The stockholders of any corporation formed under this chapter may, in the by-laws of the company, prescribe the times, manner, and amounts in which payments of the sums subscribed by them, respectively, shall be made; but in case the same shall not be so prescribed, the trustees shall have the power to demand and call in from the stockholders the sums by them subscribed, at such time and in such manner, payments or installments, as they may deem proper. In all cases notice of each assessment shall be given to the stockholders personally, or by publication in some newspaper published in the county in which the principal place of business of the company is located; and if none be published in such county, then in the newspaper nearest to said principal place of business in the state. If after such notice has been given, any stockholder shall make default in the payment of assessments upon the shares held by him, so many of said shares may be sold as will be necessary for the payment of the assessment upon all the shares held by him, her, or them. The sale of said shares shall be made as prescribed in the by-laws by the company, but shall in no case be made at the office of the company. No sale shall be made except at public auction, to the highest bidder, after a notice of four weeks, published as above directed in this section, and at such sale the person who shall pay the assessment so due, together with the expenses of advertising and sale for the smallest number of shares, or portion of a share, as the case may be, shall be deemed the highest bidder; Provided, that the amount of the capital stock of any bank incorporated under this act shall not be less than twenty-

five thousand dollars, to be divided into shares of one hundred dollars each, all of which shares shall be subscribed, and three-fifths of such capital stock shall be paid in before commencement of business, the remainder to be subject to the call of the trustees; and it shall be the duty of the directors of any such bank to file with their articles of incorporation their affidavit that three-fifths of the capital stock of such bank has been actually paid in. [Cf. L. '66, p. 60, § 10; L. '69, p. 333, § 10; L. '73, p. 401, § 10; Cd. '81, § 2430; L. '86, p. 85, § 2; 1 H. C., § 1507.]

Cited in 8 Wash. 678; 18 Wash. 11; 19 Wash. 99; 41 Wash. 667; 45 Wash. 117; 48 Wash. 268; 73 Wash. 149.

§ 3695. Executor may Vote, When.—Whenever any stock is held by a person as executor, administrator, guardian, or trustee, he shall represent such stock at all meetings of the company, and may vote accordingly as a stockholder. [L. '66, p. 60, § 11; L. '69, p. 334, § 11; L. '73, p. 402, § 11; Cd. '81, § 2431; 1 H. C., § 1508.]

Cited in 22 Wash. 178.

§ 3696. Pledge of Stock, Effect of.—Any stockholder may pledge his stock by a delivery of the certificate or other evidence of his interest, but may, nevertheless, represent the same at all meetings, and vote as a stockholder. [Cf. L. '66, p. 60, § 12; L. '69, p. 334, § 12; L. '73, p. 402, § 12; Cd. '81, § 2432; 1 H. C., § 1509.]

Cited in 6 Wash. 599, 602; 8 Wash. 369; 22 Wash. 177; 28 Wash. 662; 34 Wash. 12, 13.

§ 3697. Dividends—Capital Stock, How Reduced—Liability of Trustees.—It shall not be lawful for the trustees to make any dividend except from the net profits arising from the business of the corporation, nor divide, withdraw, or in any way pay to the stockholders, or any of them, any part of the capital stock of the company, nor to reduce the capital stock of the company, unless in the manner prescribed in this chapter, or the articles of incorporation or by-laws; and in case of any violation of the provisions of this section, the trustees under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large on the minutes of the board of directors at the time, or were not present when the same did happen, shall, in their individual or private capacities, be jointly or severally liable to the corporation, and the creditors thereof in the event of its dissolution, to the full amount so divided, or reduced, or paid out: Provided, that this section shall not be construed to prevent division and distribution of the capital stock of the company, which shall remain after the payment of all its debts upon the dissolution of the corporation or the expiration of its charter.

[L. '66, p. 60, § 13; L. '69, p. 334, § 13; L 73, p 402, § 13; Cd. '81, § 2433; 1 H C., § 1510.]

Cited in 19 Wash. 514; 32 Wash. 347; 37 Wash. 471; 38 Wash. 63; 44 Wash. 461; 56 Wash. 214; 67 Wash. 3; 71 Wash. 662; 74 Wash. 245; 76 Wash. 541; 85 Wash. 357.

§ 3698. Restrictions upon Issuing Notes, etc.—Liability.—No corporation organized under this chapter shall, by any implication or construction, be deemed to possess the power of issuing bills, notes, or other evidence of debt for circulation as money. Each and every stockholder shall be personally liable to the creditors of the company, to the amount of what remains unpaid upon his subscription to the capital stock, and not otherwise: Provided, that the stockholders of every bank incorporated under this act or the territory of Washington shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts and engagements of such association accruing while they remain such stockholders, to the extent of the amount of their stock therein at the par value thereof, in addition to the amount invested in such shares; and all such banking corporations shall file, on the first Monday in June, each year, with the state auditor, a report sworn to by its president, vice-president, or cashier, of the resources and liabilities, stating the amount of deposits, the aggregate of loans, and the amount upon each class of securities, the names and residence of the shareholders and number of their shares, the directors or officers for the time being, and any other matters affecting the safety of their deposits or the interest of their creditors; and such banking corporations shall have power to exercise, by its board of trustees, or duly authorized officers or agents, all such incidental powers as shall be necessary to carry on the business of banking by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits, buying and selling, exchange, coin and bullion, by loaning money on real estate or personal security; to accept and execute all trusts, fiduciary or otherwise, as may be committed to such bank or corporation, by any person, persons, or corporation, or by the order or direction of any court; and may do any other business pertaining to banking. [L. '11, p. 379, § 1. Cf. L. '66, p. 61, § 15; L. '69, p. 335, § 15; L. '73, p. 403, § 14; Cd. '81, § 2434; L. '86, p. 85, § 3; L. '88, p. 65, § 1; 1 H. C., § 1511.]

Cited in 12 Wash. 584; 19 Wash. 235, 513; 22 Wash. 196; 24 Wash. 381; 56 Wash. 214; 64 Wash. 300; 71 Wash. 662, 664; 78 Wash. 609; 80 Wash. 389.

See Art. XII, §§ 4 and 11, of the Constitution of the state, as to the liability of stockholders.

No corporation can issue any of its notes or other evidences of debt to circulate as money: Const., Art. XII, § 11.

See infra, §§ 6560, 6562, penalty for payment of wages in orders, etc.

§ 3699. Power to Buy and Issue Notes, etc.—All private corporations incorporated by the legislative assembly of the territory of Washington prior to the first day of January, eighteen hundred and sixty-two, other than corporations created for religious purposes, be and they hereby are authorized [and] empowered to issue notes, bonds, mortgages or other evidences of indebtedness and to secure the payment of the same by mortgage, trust deed or otherwise encumbering any real or personal property owned by said corporations. Said corporations shall have power to buy, sell or otherwise deal in notes, bonds and stock of other corporations and shall have power through their duly authorized officers to execute any and all instruments necessary to carry out the powers conferred upon said corporations by the provisions of this section. [L. '93, p. 279, § 1.]

§ 3700. Liability of Executor, etc., Holding Stock as Collateral.—No person holding stock as executor, administrator, guardian, or trustee, or holding it as collateral security or in pledge, shall be personally subject to any liability as a stockholder of the company; but the person pledging the stock shall be considered as holding the same, and shall be liable as a stockholder, and the estate and funds in the hands of the executor, administrator, or guardian or trustee shall be liable in like manner and to the same extent as the testator or intestate, or the ward or person interested in the trust fund would have been if he or she had been living and competent to act and hold the stock in his or her name. [L. '66, p. 62, § 17; L. '69, p. 335, § 17; L. '73, p. 403, § 15; Cd. '81, § 2435; 1 H. C., § 1512.]

Cited in 9 Wash. 491; 59 Wash. 146.

§ 3701. Books of Corporation to Show What.—It shall be the duty of the trustees of every company incorporated under this chapter to keep a book containing the names of all persons, alphabetically arranged, who are or shall be stockholders of the corporation, and showing the number of shares of stock held by them respectively, and the time when they became the owners of such shares, which book, during the usual business hours of the day, on every day excepting Sunday and legal holidays, shall be open for the inspection of stockholders and creditors of the company, at the office or principal place of business of the company; and any stockholder or creditor of the company shall have the right to make extracts from such book, or demand and receive from the clerk or other officer having the charge of such book a certified copy of any entry therein, or to demand and receive from any clerk or officer a certified copy of any paper placed on file in the office of the company; and such book and certified copy shall be presumptive evidence of the fact therein stated in any action or proceeding against the company or any one or more

of the stockholders. [L. '66, p. 62, § 18; L. '69, p. 336, § 18; L. '73, p. 403, § 16; Cd. '81, § 2436; 1 H. C., § 1513.]

Cited in 19 Wash. 513; 41 Wash. 670; 54 Wash. 635, 636; 58 Wash. 185, 189.

§ 3702. Official Acts—Misdemeanor as to Books and Papers.—If at any time the clerk or other officer having charge of such book shall make any false entry, or neglect to make any proper entry therein, or having the charge of any papers of the company shall refuse or neglect to exhibit the same, or allow the same to be inspected or extracts to be taken therefrom, or to give a certified copy of any entry, as provided in the preceding section, he shall be deemed guilty of a misdemeanor, and shall forfeit and pay to the injured party a penalty of not less than one hundred dollars nor more than one thousand dollars, and all damages resulting therefrom, to be recovered in any action of debt in any court having competent jurisdiction; and for neglecting to keep such book for inspection as aforesaid, the corporation shall forfeit to the people the sum of one hundred dollars for every day it shall so neglect, to be sued for and recovered in the name of the people in the superior court of the county in which the principal place of business of the corporation is located. [L. '66, p. 62, § 19; L. '69, p. 336, § 19; L. '73, p. 404, § 17; Cd. '81, § 2437; 1 H. C., § 1514.]

Cited in 36 Wash. 550; 58 Wash. 185, 189.

§ 3703. Officer's Misrepresentations to Stockholders or Persons Dealing in Stock—Penalty.—Any superintendent, director, secretary, manager, agent, or other officer of any corporation formed or existing under the laws of this state, or transacting business in this state, or any person pretending or holding himself out as such superintendent, director, secretary, manager, agent or other officer, who shall willfully subscribe, sign, indorse, verify or otherwise assent to the publication, either generally or privately, to the stockholders or to other persons dealing with such corporation [or its stock,] any willfully untrue or willfully and fraudulently, exaggerated report, prospectus, account, statement of operations, values, business profits, expenditures, or prospects, or other paper or document intended to produce or give, or having a tendency to produce or give, to the shares of stock in such corporation a greater value than they really possess, or with the intention of defrauding any particular person or persons, or the public or persons generally, shall be deemed guilty of an offense against the laws of the state of Washington, and, upon conviction thereof, shall be punished by imprisonment in the penitentiary, not less than one nor more than five years, or in the county jail not more than one year, or by a fine not exceeding two thousand dollars or by both. [L. '03, p. 141, § 1.]

§ 3704. Capital Stock, How Increased or Diminished.—Any company incorporated under this chapter may, by complying with the provisions herein contained, increase or diminish its capital stock to any amount which may be deemed sufficient and proper for the purposes of the corporation; but before any corporation shall be entitled to diminish the amount of its capital stock, if the amount of its debts and liabilities shall exceed the sum to which the capital is proposed to be diminished, such amount shall be satisfied and reduced so as not to exceed the diminished amount of the capital: Provided, that the deposits in any trust company or banking corporation shall not be included in ascertaining the debts and liabilities of such trust company or banking corporation for the purposes of this section: Provided further, that this act shall not relieve such trust company or banking corporation or the stockholders of any such trust company or banking corporation from liability, although contingent, or remote, incurred or entered into by such trust company or banking corporation prior to the reduction of its capital, including liability for deposits: Provided further, that before any banking corporation, or trust company, can reduce its capitalization, a notice, in writing, must be mailed to the last known postoffice address of its depositors setting forth the fact that the said banking corporation, or trust company, intends to decrease its capitalization, showing the amount of its capitalization and the amount to which it intends to decrease same; and proof of the mailing of such notices shall be made by affidavit of the party mailing the same, showing the names and addresses of the persons to whom mailed. [L. '99, p. 174, § 1. Cf. L. '66, p. 63, § 20; L. '69, p. 337, § 20; L. '73, p. 404, § 18; Cd. '81, § 2438; 1 H. C., § 1515.]

Cited in 32 Wash. 346; 38 Wash. 63; 67 Wash. 3.
See supra, § 3326, banking corporations.

§ 3705. Notice of Meeting Called to Increase or Diminish Stock.—Whenever it is desired to increase or diminish the amount of capital stock, a meeting of the stockholders shall be called, by a notice signed by at least a majority of the trustees, and published at least eight weeks in some newspaper published in the county where the principal place of business of the company is located, or if no newspaper is published in the county, then the newspaper nearest thereto in the state, which notice shall specify the object of the meeting, the time and place where it is to be held, and the amount to which it is proposed to increase or diminish the capital, and a vote of two-thirds of all the shares of the stock shall be necessary to increase or diminish the amount of capital stock. [L. '66, p. 63, § 21; L. '69, p. 337, § 21; L. '73, p. 404, § 19; Cd. '81, § 2439; 1 H. C., § 1516.]

Cited in 22 Wash. 200; 67 Wash. 3.

§ 3706. Certificate to be Made, Filed, etc.—Amount to be Specified. If, at a meeting so called, a sufficient number of votes have been given in favor of increasing or diminishing the amount of capital, a certificate of the proceedings showing a compliance with these provisions, the amount of capital actually paid in, the whole amount of debts and liabilities of the company, and the amount to which the capital stock is to be increased or diminished, shall be made out, and signed, and verified, by the affidavit of the chairman and secretary of the meeting, certified to by a majority of the trustees, and filed as required by section 3679, and when so filed, the capital stock of the corporation shall be increased or diminished to the amount specified in the certificate. [L. '66, p. 63, § 22; L. '69, p. 337, § 22; L. '73, p. 405, § 20; Cd. '81, § 2440; 1 H. C., § 1517.]

Cited in 67 Wash. 3.

§ 3707. Power of Trustees upon Dissolution of Corporation.—Upon the dissolution of any corporation formed under the provisions of this chapter, the trustees at the time of the dissolution shall be trustees of the creditors and stockholders of the corporation dissolved, and shall have full power and authority to sue for and recover the debts and property of the corporation by the name of the trustees of such corporation, collect and pay the outstanding debts, settle all its affairs, and divide among the stockholders the money and other property that shall remain after the payment of the debts and necessary expenses. [L. '66, p. 64, § 23; L. '69, p. 337, § 23; L. '73, p. 405, § 21; Cd. '81, § 2441; 1 H. C., § 1518.]

Cited in 28 Wash. 562; 49 Wash. 241.

§ 3708. Dissolution Proceedings—Publication of Notice—Order.—Any corporation formed under this chapter may dissolve and disincorporate itself by presenting to the superior judge of the county in which the office of the company is located a petition to that effect, accompanied by a certificate of its proper officers, and setting forth that at a meeting of the stockholders, called for the purpose, it was decided, by a vote of two-thirds of all the stockholders, to disincorporate and dissolve the corporation. Notice of the application shall then be given by the clerk, which notice shall set forth the nature of the application, and shall specify the time and place at which it is to be heard, and shall be published in some newspaper of the county once a week for eight weeks, or if no newspaper is published in the county, by publication in the newspaper nearest thereto in the state. At the time and place appointed, or at any other time to which it may be postponed by the judge, he shall proceed to consider the application, and if satisfied that the corporation has taken necessary preliminary steps and obtained the necessary vote to dissolve itself, and that all claims against the corporation are discharged, he

shall enter an order declaring it dissolved. [L. '66, p. 64, § 24; L. '69, p. 338, § 24; L. '73, p. 405, § 22; Cd. '81, § 2442; 1 H. C., § 1519.]

Cited in 18 Wash. 422; 25 Wash. 505; 28 Wash. 562; 34 Wash. 27; 49 Wash. 241; 66 Wash. 409.

§ 3708½. Removing Principal Place of Business—Notice.—Any corporation desiring at any time to remove its principal place of business into some other county in the state shall file in the office of the county auditor a certified copy of its certificate of incorporation. If it is desired to remove its principal place of business to some other city, town, or locality within the same county, publication shall be made of such removal at least once a week for four weeks in the newspaper published nearest to the city, town, or locality from which the principal place of business of such corporation is desired to be removed. The formation or corporate acts of any corporation hereafter formed under this chapter shall not be rendered invalid by reason of the fact that its principal place of business may not have been designated in its certificate of incorporation: Provided, that within three months from the passage of this chapter, such corporation shall cause publication to be made once a week for at least four weeks in the newspaper published nearest the city, town, or locality, and where the principal place of business of such corporation has been in fact located, designating the city, town, or locality and county where its principal place of business shall be located. On compliance with the provisions of this section in the several cases herein mentioned, the principal place of business of any corporation shall be deemed established or removed at, or to any designated city, town, or locality and county in the state. [L. '66, p. 65, § 26; L. '69, p. 339, § 26; L. '73, p. 406, § 24; Cd. '81, § 2444; 1 H. C., § 1520.]

Cited in 72 Wash. 476, 478.

§ 3709. Fees for Filing Articles of Incorporation.—Every corporation incorporated under the laws of this state, or of any state or territory in the United States or of any foreign state or county, required by law to file articles of incorporation in the office of the secretary of state, shall pay to the secretary of state a filing fee of twenty-five dollars. [L. '07, p. 270, § 1. Cf. L. '97, p. 134, § 1.]

Cited in 42 Wash. 677, 678; 61 Wash. 91.

§ 3710. For Amendatory Articles.—Every corporation, foreign or domestic, desiring to file in the office of the secretary of state articles amendatory or supplemental, or certificates of increase or decrease of capital stock, shall pay to the secretary of state a fee of ten dollars. [L. '07, p. 270, § 2. Cf. L. '97, p. 134, § 2.]

§ 3711. For Filing Appointment of Agent.—Every foreign corporation filing in the office of the secretary of state a certificate of the

appointment of an agent residing in this state, or a certificate of the revocation of such appointment of the resident agent, shall pay to the secretary of state a fee of five dollars. [L. '07, p. 270, § 3.]

§ 3712. For Certified Copies.—The fee for furnishing a certified copy of articles of incorporation, or articles amendatory or supplemental, or certificates of increase or decrease of capital stock, or certificate of appointment of resident agent, or certificate of revocation of appointment of resident agent, shall be five dollars. [L. '07, p. 271, § 4. Cf. L. '97, p. 134, § 3.]

Cited in 50 Wash. 488.

§ 3713. Recording Fees.—There shall be no charge for recording any of the documents mentioned in this act or for making or certifying to copies of same other than the fees in this act prescribed, unless the document to be recorded or the copy to be certified shall exceed twenty folios, in which case there shall be a further charge of fifteen cents per folio for all such excess. [L. '07, p. 271, § 5. Cf. L. '97, p. 134, § 4.]

"Act" in this section refers to §§ 3709–3715, 3716–3719.

§ 3714. Annual License Fee.—Every corporation incorporated under the laws of this state, and every foreign corporation having its articles of incorporation on file in the office of the secretary of state shall, on or before the first day of July of each and every year, pay to the secretary of state, for the use of the state, the following license fees: Every corporation having a capital stock, fifteen dollars. Every corporation failing to pay the said annual license fee, on or before the first day of July of each and every year, and desiring to pay the same thereafter, and before the first day of January next following, shall pay to the secretary of state, for the use of the state, in addition to the said license fees, the following further fee, as a penalty for such failure: The sum of two dollars and fifty cents: Provided, however, that building and loan companies paying special fees provided for in this [the] act under which same are incorporated shall not be required to pay the regular fee provided herein. [L. '07, p. 271, § 6. Cf. L. '97, p. 135, § 5.]

Cited in 22 Wash. 495; 32 Wash. 577; 42 Wash. 677, 678; 68 Wash. 99, 459; 73 Wash. 487; 81 Wash. 463.

§ 3715. Actions—Payment of Fee Condition Precedent—Prima Facie Evidence of Payment.—No corporation shall be permitted to commence or maintain any suit, action or proceeding in any court of this state, without alleging and proving that it has paid its annual license fee last due. A certificate of the payment of such annual license fee, or any duplicate of such certificate under the seal of the secretary of state, shall be prima facie evidence of such payment; and the secretary of state is hereby required to issue such duplicate

certificates, upon request, at a charge of twenty-five cents for each thereof. The state board of tax commissioners may institute suits to enforce the payment of any license fee, due from any corporation under this or any other law. Failure upon the part of any corporation to pay its annual license fee for a period of one year, from and after the date when such payment first became due, shall be prima facie evidence of the insolvency of such corporation, and the fact of such insolvency may be shown by the state or by any private person or corporation: Provided, that as to corporations now delinquent in the payment of their annual license fees for a period of one or more years, such presumption of insolvency shall not exist until after one year from the date of the passage of this act and the continuation of such delinquency. It shall be the duty of the secretary of state to strike from the records of his office the names of all incorporations which have neglected for a period of two years to pay their annual license fees; and any corporation thereafter organized may take and shall have the exclusive right to use the corporate name of any corporation so stricken from the records: Provided, that no corporate name shall be so stricken from the records for a period of one year, from the date of the passage of this act. [L. '07, p. 271, § 7.]

Cited in 50 Wash. 488; 51 Wash. 633, 634; 61 Wash. 91, 452, 548; 64 Wash. 378; 67 Wash. 296, 380; 68 Wash. 459; 71 Wash. 470, 663; 72 Wash. 524; 73 Wash. 487, 584; 81 Wash. 463; 84 Wash. 422.

"Act" in this section refers to §§ 3709–3715, 3716–3719.

§ 3715a. Striking Delinquent Corporations — Reinstatement. — Every corporation whose name has been, or shall hereafter be, stricken from the records of the office of the secretary of state in pursuance of law for failure to pay its annual license fee for two years is hereby authorized and permitted to apply to the secretary of state for reinstatement at any time after its name has been stricken from the records of the office of the secretary of state. Any corporation stricken from the records and dissolved, as provided in this chapter may at any time thereafter hold a meeting of stockholders, in the same manner as provided during its corporate existence, and pass such resolutions as may be necessary to close out its affairs and wind up the business of such corporation, and where such stricken and dissolved corporation has heretofore held such meetings of stockholders for the purpose of passing resolutions to wind up their affairs, such method of procedure is hereby validated and approved. [L. '11, p. 135, § 1; L. '09, Ex. Sess., p. 57, § 1.]

Cited in 61 Wash. 91; 67 Wash. 381, 382.

§ 3715b. Condition—Prepayment of Fees and Penalty.—Any corporation so applying for reinstatement shall at the time of its application pay to the secretary of state, for the use of the state, all license fees and penalties then due from it and the sum of one hun-

dred dollars as additional penalty: Provided, that this shall apply to the reinstatement of corporations, the names of which shall have been stricken at the present time, and hereafter whenever any corporation shall have its name stricken from the records by the secretary of state it shall, in applying for reinstatement, pay all license fees and penalties then due from it and the additional sum of twenty dollars for each and every year that its name has been stricken from the records, and upon the making of such application and such payment, it shall be the duty of the secretary of state to enter upon his records a notation that such corporation is reinstated. [L. '13, p. 135, § 2; L. '09, Ex. Sess., p. 57, § 2.]

Cited in 67 Wash. 381.

§ 3715c. Rights Restored.—Thereafter such corporation shall have and enjoy the same rights and powers as if its name had never been stricken from the records, and all things done by it in the exercise of its corporate powers before such reinstatement are hereby validated and confirmed. [L. '09, Ex. Sess., p. 57, § 3.]

§ 3715d. Dissolution for Nonpayment.—If, however, within the period named within which a corporation may make application to be reinstated such corporation shall not have made such application, the secretary of state shall enter upon his records a notation that such corporation is dissolved, and it shall thereupon be dissolved and the trustees of such corporation shall hold the title to the property of the corporation for the benefit of its stockholders and creditors to be disposed of under appropriate court proceedings. [L. '09, Ex. Sess., p. 57, § 4.]

Cited in 67 Wash. 381, 382; 70 Wash. 239, 679.

§ 3715e. Adoption of Name of Delinquent Corporation.—The name of no corporation which has been stricken from the records of the office of the secretary of state for nonpayment of its annual license tax shall be adopted by another corporation until the expiration of the time within which such delinquent corporation is allowed in which to apply for reinstatement, or while such application for reinstatement is pending. [L. '09, Ex. Sess., p. 58, § 5.]

§ 3716. Fee for Certifying to Corporation Laws.—The fee for furnishing and certifying to a printed compilation of the corporation laws of this state shall be five dollars. [L. '07, p. 272, § 8.]

§ 3717. Certain Corporations Excepted.—This act shall not apply to domestic corporations organized for religious, social, charitable or educational purposes, or to foreign corporations organized for like purposes, when not engaged in this state in the loaning of money or the conducting of any other business pursuits for profit. [L. '07, p. 272, § 9. Cf. L. '97, p. 135, § 6.]

"Act" in this section refers to §§ 3709–3715, 3716–3719.

§ 3718. Fees Due in Advance.—All fees provided for in this act are due in advance and shall be paid to the secretary of state before the services desired are performed. [L. '07, p. 272, § 10.]

See note to last section.

§ 3719. Disposition of Fees.—All fees received by the secretary of state under the provisions of this act shall be by him paid into the state treasury as provided by law. [L. '07, p. 273, § 11.]

See note to § 3717.

CHAPTER II.

Foreign Corporations.

§ 3720. Power of, to Do Business in This State.—Any corporation incorporated under the laws of any state or territory in the United States, or of any foreign country, state, or colony, for any of the purposes for which domestic corporations are authorized to be formed under the laws of this state, shall have full power and is hereby authorized to sue and to be sued in any court having competent jurisdiction, to acquire, purchase, hold, mortgage, sell, convey, or otherwise dispose of, in the corporate name, all real estate or personal property necessary or convenient to carry into effect the objects and purposes of its corporation, and also any interest in real estate, by mortgage or otherwise do [due] to or loans made by such foreign corporations within the boundaries of this state, either prior to or after the passage of this act, and generally do and perform every act and transact every kind of business within this state in the same manner and to the same extent as corporations incorporated and organized under the laws of this state are authorized to do under the laws of this state, by a compliance with all the conditions prescribed by the next two succeeding sections of this chapter: Provided, however, that this chapter shall not be [so] construed as to allow such foreign corporation to transact business within the state on more favorable conditions than are prescribel by law for a similar corporation organized under the laws of this state: And provided further, that no corporation, the majority of the capital stock of which is owned by aliens, other than those who in good faith have declared their intention to become citizens of the United States, shall acquire the ownership of any lands in this state other than lands containing valuable deposits of minerals, metals, iron, coal, or fireclay, and the necessary land for mills and machinery to be used in the development thereof, and the manufacture of the products therefrom, except where acquired under mortgage, or in good faith in the ordinary course of justice in the collection of debts: Provided, further, that no foreign corporation which is hereafter organized which has among its other powers the business of dealing in real estate, and buying and selling the same, and for the purpose of carrying on a

real estate brokerage business, shall be permitted to transact such business of buying and selling and dealing in real estate, and carrying on a brokerage business therein in this state; but this prohibition shall not extend to any other business for the transaction of which such corporation may be organized. [Cf. L. '71, p. 101, § 1; L. '75, p. 109, § 1; Cd. '81, § 2479; L. '86, p. 87, § 1; L. '90, p. 288, § 1; 1 H. C., § 1524.]

Cited in 4 Wash. 687; 5 Wash. 71, 437; 6 Wash. 490–493; 9 Wash. 143; 16 Wash. 167; 17 Wash. 444; 28 Wash. 424; 33 Wash. 550; 40 Wash. 537; 46 Wash. 490; 47 Wash. 118, 120; 48 Wash. 606; 51 Wash. 620; 76 Wash. 639; 80 Wash. 328.

"This act": §§ 3720–3722, 3725.

See supra, §§ 226, 228, subd. 1, service on foreign corporations.

For power to appropriate lands, compare L. '79, p. 148.

See infra, § 3729, penalty for violating this chapter.

§ 3721. Certified Copy of Charter, etc., to be Filed and Recorded. Such corporation shall cause to be filed and recorded in the office of the secretary of state a certified copy of its charter, articles of incorporation, memorandum of association, or certificate of incorporation, certified to by the officer who is the custodian of the same according to the laws of the state or territory, country, or colony, where such corporation is incorporated, or who is authorized to issue certificates of incorporation according to the laws of such state, territory, or foreign country or colony. The instruments herein required to be filed and recorded shall be attested by such certifying officer under his hand and seal of office, which attestation shall be prima facie proof of the facts therein stated, and of the genuineness of the certificate. If such officer has no official seal, his certificate shall state that fact over his signature, and thereupon the secretary of state, or of the territory, in case of corporations within the United States, and the consul general, consul, vice-consul, deputy consul, consular agent, or commercial agent of the United States, at or nearest to the place where such certificate is made, in the case of corporations not within the United States, shall certify under his hand and seal of office to the genuineness of the signature of the officer making the certificate, and to the fact that at the time of making such certificate the person making the same held the office described in the certificate. [L. '71, p. 101, § 2; L. '75, p. 109, § 2; Cd. '81, § 2480; L. '86, p. 87, § 1; L. '90, p. 289, § 2; 1 H. C., § 1525.]

Cited in 51 Wash. 620.

§ 3722. Appointment of Agent to be Filed and Recorded.—Such corporations shall also constitute and appoint an agent, who shall reside at the place in the state where the principal business of the corporation is to be carried on, to be designated as hereinafter required. Such appointment shall be in writing, signed by the president or chief officer of such corporation, and shall be attested by its

corporate seal, and shall contain the name of the agent, his place of residence and the place where the principal business of such corporation is to be carried on; and shall authorize such agent to accept service of process in any action or suit pertaining to the property, business or transactions of such corporation within this state in which such corporation may be a party. The signature of such president or chief officer, attested by the corporate seal to such written appointment, shall be sufficient proof of the appointment of such agent. Such appointment, when duly executed, shall be filed for record in the office of the secretary of state by such corporation, and shall be there recorded; and such corporation shall have and keep continually some resident agent, empowered as aforesaid during all the time such corporation shall conduct or carry on any business within this state, and service of any process, pleading, notice or other paper shall be taken and held as due service on such corporation. Such corporation may change its agent or its principal place of business, from time to time, by filing and recording with the secretary of state a new appointment, stating the change of such agent or the change in the principal place of business; and in the event such foreign corporation shall withdraw from this state and cease to transact business therein it shall continue to keep and maintain such agent within this state upon whom service of process, pleadings and papers may be made, until the statute of limitations shall have run against anyone bringing an action against said corporation, which accrued prior to its withdrawal from this state. In case said corporation shall revoke the authority of its designated agent after its withdrawal from this state and prior to the time when the statutes of limitations would have run against causes of action accruing against it, then in that event service of process, pleadings and papers in such actions may be made upon the secretary of state of the state of Washington, and the same shall be held as due and sufficient service upon such corporation. [L. '09, p. 72, § 1. Cf. L. '90, p. 290, § 3; 1 H. C., § 1526.]

Cited in 4 Wash. 688; 51 Wash. 620.

§ 3723. Penalty for Failure to File Copy of Charter and Appointment of Agent.—Any foreign corporation doing business in this state which shall fail to comply with the provisions of the two preceding sections, shall be subject to a penalty of two hundred and fifty dollars to be recovered in a civil action to be instituted by the attorney general in the name of the state of Washington, upon his being furnished with a sworn statement of facts sufficient to justify such action. [L. '99, p. 100, § 1.]

§ 3724. Disposition of Penalties.—All penalties so recovered shall be paid into the general fund of the state treasury. [L. '99, p. 101, § 2.]

§ 3725. Not to File or Record Certified Copies, When.—No corporation which has heretofore complied with the laws of the state or territory of Washington hitherto existing, regarding foreign corporations, and has kept a duly appointed agent within the boundaries of the state as heretofore required, shall be required to file for record, or cause to be recorded, the certified copies required by this act, or to execute or file for record, or cause to be recorded, a new appointment of agent as herein required. [L. '90, p. 290, § 4; 1 H. C., § 1527.]

"This act": See note to § 3720.
Compare L. '71, p. 102, § 3.

§ 3726. Assessor to Ascertain Names of Corporations, Agents, etc. It shall be the duty of each and every county assessor in this state to ascertain each and every year, at the time of the tax assessment of his county, the name of every foreign corporation doing business by agent or otherwise within his county, the nature of such business, and the name of the agent of each of such corporations, if any there be, together with such agent's place of address, and shall, within ten days from and after the compilation of such assessment, make out and deliver to the county auditor of his county a full and complete list of the names of such corporations doing business in his county, together with the nature of the business so carried on by each of such corporations, and the name of the resident agent of each of such corporations, if any there be, and the place of residence of each of such agents. [Cd. '81, § 2482; 1 H. C., § 1528.]

§ 3727. County Auditors to Report Names of Corporations, Agents, etc.—It shall be the duty of each and every county auditor in this state to make out and transmit to the secretary of state, within thirty days after the receipt by him from such county assessor of the lists provided in the last preceding section, a full, true, and concise statement of the names of such corporations, their place of business, the nature of business conducted by such corporations, and the name of each and every agent of each of such corporations, if any there be, and the places of residence of such agents. [Cd. '81, § 2483; 1 H. C., § 1529.]

§ 3728. Fees Allowed for Recording.—The fees for recording, under the provisions of this chapter, shall be the same as are allowed by law to the secretary of state for certified copies of papers on file in his office. [Cd. '81, § 2484; 1 H. C., § 1530.]

§ 3729. Agent is Guilty of Misdemeanor, When—How Punished.—Any agent of any foreign corporation, conducting or carrying on business within the limits of this state, for and in the name of such corporation, contrary to any of the provisions of this chapter, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding two hundred dollars, or by

imprisonment in the county jail for a term not exceeding three months, or by both such fine and imprisonment. [Cd. '81, § 2485; 1 H. C., § 1531.]

Cited in 40 Wash. 538.

§ 3730. Assessor is Guilty of Misdemeanor, When—How Punished.—Any county assessor failing to make out and deliver to the county auditor of his county a list, within the time and in the manner provided in section 3726, and any county auditor failing to make out and transmit to the secretary of state a statement, within the time and in the manner provided in section 3727, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding three hundred dollars. [Cd. '81, § 2486; 1 H. C., § 1532.]

CHAPTER III.

Educational, Religious, Social and Charitable Corporations and Associations.

§ 3731. Benevolent and Charitable Institutions—Articles must Show What.—Any two or more persons desirous of forming a corporation for a college, seminary, church, library, or benevolent, temperance, charitable or scientific society, shall make and subscribe written articles of incorporation in triplicate, and acknowledge the same before any officer authorized to take the acknowledgments of deeds, and file one of such articles in the office of the secretary of state, and another in the office of the county auditor of the county in which the principal place [of] business of the corporation is intended to be located, and retain the third in the possession of the corporation. Such articles shall specify,—

1. The corporate name and location and chief place of business of such corporation;

2. If a joint stock company, the amount of capital stock, and the amount constituting a share; if not a joint stock company, then the terms of admission to membership;

3. The object for which the corporation is formed;

4. By what officers the affairs of said corporation shall be managed, and when such officers are to be elected, or, if appointed, when and by whom such appointments are to be made. [Cf. L. '66, p. 67, § 1; L. '69, p. 331, § 1; L. '73, p. 409, § 1; Cd. '81, § 2450; 1 H. C., § 1638; L. '95, p. 348, § 1.]

See infra, § 3740 et seq., associations for same purposes.
See next chapter, corporations not for profit.

§ 3732. Powers of Such Corporations Enumerated.—When such articles shall have been filed as aforesaid, the persons who shall have signed and verified the same, and their successors, shall be a body

politic and corporate, with perpetual succession; they shall be capable, in law, of suing and being sued, pleading and being impleaded, answering and being answered, in all the courts of the state; they may have a common seal, alter and change the same at pleasure; acquire, mortgage, and sell property, personal and real, for the purpose of carrying out the objects of the corporation, and make by-laws, rules, and regulations, as they may deem proper and best for the welfare and the good order of the corporation; and may amend the articles of incorporation by supplemental articles, executed and filed the same as the original articles: Provided, that such by-laws, rules, and regulations be not contrary to the constitution and laws of the United States and the existing laws of the state. [L. '66, p. 68, § 2; L. '69, p. 342, § 2; L. '73, p. 409, § 2; Cd. '81, § 2451; L. '86, p. 86, § 1; 1 H. C., § 1639.]

§ 3733. Fraternal Societies as Bodies Corporate—Articles of, to Show What.—Any lodge, encampment of [or] other subordinate lodge of Free and Accepted Masons, Independent Order of Odd Fellows, Knights of Pythias, or other fraternal society, desiring to incorporate, shall make articles of incorporation in triplicate, and file one of such articles in the office of the secretary of state and another in the office of the county auditor of the county in which the meetings of such lodge, chapter or encampment are held; such articles shall be signed by the presiding officer and the secretary of such lodge, chapter or encampment, and attested by the seal thereof, and shall specify:

(1) The name of such lodge or other society, and the place of holding its meetings; (2) the name of the grand body from which it derives its rights and powers as such lodge or society; (3) the names of the presiding officer and the secretary having the custody of the seal of such lodge or society; (4) what officers shall join in the execution of any contract by such lodge or society to give it force and effect in accordance with the usages of such lodges or society. [L. '03, p. 118, § 1. Cf. L. '73, p. 410, § 3; Cd. '81, § 2452; 1 H. C., § 1640.]

§ 3734. Filing Fee.—The secretary of state shall file such articles of incorporation in his office and issue a certificate of incorporation to any such lodge or other society upon the payment of the sum of five dollars. [L. '03, p. 118, § 2.]

§ 3735. Powers—Not Subject to License Fees.—Such lodge or other society shall be a body politic and corporate with all the powers and incidents of a corporation upon its compliance with sections 3733 and 3734; Provided, however, that such fraternal corporation shall not be subject to any license fee or other corporate tax of commercial corporations. [L. '03, p. 118, § 3.]

§ 3736. Reincorporation.—Any lodge or society, or the members thereof, having heretofore attempted to incorporate as a body under the provisions of sections 3740–3751, such lodge or society may incorporate under its original corporate name by complying with the provisions of sections 3733 and 3734: Provided, that such lodge or society shall attach to and file with the articles of incorporation provided for in this act a certificate duly signed, executed and attested by the officers of the said corporation consenting to such reincorporation and waiving all rights of the original corporation to such corporate name. [L. '03, p. 119, § 4.]

"Act" includes this and the three preceding sections.

§ 3737. Degrees may be Conferred by Incorporated Colleges.—Any college or seminary hereafter incorporated by the provisions of this chapter, shall have power, and is hereby invested with authority, to confer the degrees usually conferred by such institution. [L. '66, p. 68, § 3; L. '69, p. 342, § 3; L. '73, p. 411, § 4; Cd. '81, § 2453; 1 H. C., § 1641.]

§ 3738. Corporations, Manner of Dissolving.—Any corporation desiring its dissolution may, by a three-fourths vote of all its members at some regular meeting, execute a surrender of all its corporate powers, and upon the filing of duplicate surrenders with the said auditor and secretary of state, the said corporation shall be dissolved to all intents and purposes. [L. '66, p. 68, § 4; L. '69, p. 342, § 4; L. '73, p. 411, § 5; Cd. '81, § 2454; 1 H. C., § 1642.]

§ 3739. Validating Defective Articles.—All instruments purporting to be articles of incorporation for a college, seminary, church, library, or benevolent, charitable, or scientific society, made and executed in accordance with the provisions of the foregoing sections of this chapter, except that the same have been acknowledged before an officer authorized by law to take the acknowledgment of deeds, and have not been sworn to by the trustees as by said laws required, or have been filed with the auditor of the county where the chief place of business of the corporation so purporting to be formed is located, instead of being recorded as by said laws required, or which are defective in both said respects, are hereby declared to be, and are hereby made to be, good and valid articles of incorporation; and the corporations formed, or attempted to be formed by virtue of said articles of incorporation, are hereby declared to be, and are hereby made, good and valid, and existing corporations, with the same and as full powers, rights and liabilities as they would have had if the said articles of incorporation had been executed and recorded as by said law required, and that all acts, deeds, and proceedings had or done by said corporations, or under said articles of incorporation, and all rights acquired as to both real and personal property, and all

obligations of every kind incurred by such corporations, are hereby made of the same force, effect and validity as if said articles of incorporation had been executed as required by law. [L. '95, p. 24, § 1.]

§ 3740. Social and Charitable Associations—Agreement of Association.—Two or more persons within this state who associate themselves together by an agreement in writing, as hereinafter described, with the intention of forming a corporation for any of the purposes hereinafter specified, upon complying with the provisions of sections 3743, 3744 and 3745 of this chapter, shall be and remain a corporation. [L. '95, p. 400, § 1.]

See, also, § 3731, supra.

§ 3741. Association, Objects of.—Such association may be formed for any educational, charitable, benevolent or religious purposes; for the prosecution of any antiquarian, historical, literary, scientific, medical, artistic, monumental or musical purpose; for supporting any missionary enterprise having for its object the dissemination of religious or educational instruction; for promoting temperance or morality in this state; or other charitable or social bodies of a like character and purpose; for the establishment and maintenance of social clubs, and of places for reading-rooms, libraries or social meetings. [L. '95, p. 400, § 2.]

§ 3742. Agreement to State What.—The agreement shall state that the subscribers thereto associate themselves with the intention of forming a corporation, the name of the corporation, the purposes for which it is formed, the town or city—which shall be in this state—in which it is located, and if it has a capital stock, the amount thereof, and the number and par value of its shares. The name shall be one not previously in use by any existing corporation, and shall be changed only as hereinafter provided. [L. '95, p. 400, § 3.]

§ 3743. Subscribers, First Meeting of.—The first meeting of the subscribers to such agreement shall be called by a notice signed by one or more thereof, stating the time, place and purpose of the meeting; a copy of which notice shall, seven days at least before the day appointed for the meeting, be given to each subscriber, or left at his usual place of business or place of residence, or deposited in the postoffice, postpaid, and addressed to him at his place of business or of residence. And whoever gives such notices shall make affidavit of his doings, which shall be recorded in the records of the corporation. [L. '95, p. 400, § 4.]

§ 3744. Temporary Secretary, Duties of.—At such first meeting, including any necessary or reasonable adjournment, an organization shall be effected by the choice by ballot of a temporary secretary,

and by the adoption of by-laws, and the election of a president, secretary, treasurer and a board of trustees, not less than three nor more than twenty-five in number, and such other officers as may be provided for by the by-laws. At such first meeting no person shall be eligible as an officer or trustee who has not subscribed to the agreement of the association, but any corporation now or hereafter organized under this act, may, by a by-law, increase or diminish the number of trustees, within the limits hereinbefore provided. The temporary secretary shall make and attest a record of the proceedings until the secretary has been chosen. [L. '95, p. 401, § 5; L. '05, p. 239, § 1.]

§ 3745. Certificate, Contents and Filing of—Agreement, Form of, etc.—The president, secretary and a majority of the trustees shall forthwith make, sign and swear to a certificate setting forth a true copy of the agreement of association, with the names of the subscribers thereto, the date of the first meeting and the successive adjournments thereof, if any, and shall file such certificate in the office of the county auditor of the county wherein the organization is effected and in the office of the secretary of state, who, upon payment of a fee of five dollars, shall cause the same to be recorded in a book to be kept for that purpose, and shall thereupon issue a certificate in the following form:—

STATE OF WASHINGTON.

Be it known that, whereas, (here the names of the subscribers to the agreement of association shall be inserted) have associated themselves with the intention of forming a corporation under the name of (here the name of the corporation shall be inserted), for the purpose (here the purpose declared in the agreement of association shall be inserted), with a capital of (here the amount of the capital stock shall be inserted, or if there is no capital stock this clause shall be omitted), and have complied with the provisions of the laws of this state in such case made and provided, as appears from the certificate of the president, secretary and a majority of the trustees of said corporation, recorded in this office; now, therefore, I (here the name of the secretary shall be inserted), secretary of the state of Washington do hereby certify that said (here the names of the subscribers to agreement of association shall be inserted), their associates and successors, are legally organized and established as and are hereby made an existing corporation, under the name of (here the name of the corporation shall be inserted), with the powers, rights, and privileges and subject to the limitations, duties and restrictions which by law appertain thereto.

Witness my official signature subscribed and the seal of the state of Washington hereunto affixed, this —— day of ——, in the year ——.

(In these blanks the day, month and year of execution of the certificate shall be inserted.)

The secretary shall sign the same and cause the seal of the state to be thereto affixed, and such certificate shall be conclusive evidence of the existence of such corporation. He shall also cause a record of such certificate to be made, and such corporation shall forthwith cause a certified copy of such record to be filed in the office of the auditor of the county wherein such corporation is located. [L. '95, p. 401, § 6.]

§ 3746. By-laws to Contain What.—The corporation may prescribe by its laws the manner in which, and the officers and agents by whom the purposes of its incorporation may be carried out. The corporation may hold real and personal estate, and may hire, purchase or erect suitable buildings for its accommodation, to be devoted to the purposes set forth in its agreement of association, and may receive and hold in trust, or otherwise, funds received by gift or bequest, to be devoted by it to such purposes. And for the purposes of the corporation shall have power to issue its promissory notes, bonds or other obligations, to be secured by mortgages on its real estate and other property in such manner as may be provided by its by-laws. The board of trustees shall have power to sell or dispose of the whole or any part of the property, either real or personal, which the corporation may from time to time own, and to acquire other property, but shall not sell or dispose of or purchase real estate unless authorized so to do by the vote of two-thirds of all the stock represented or two-thirds of the members present at a meeting called for that purpose, written notice of which shall have been given to all stockholders or members at least thirty days previous thereto by mail, in such manner as shall be provided by the by-laws, which two-thirds vote must comprise at least a majority of all the stock or of the members of the corporation. Such notice shall set forth in full the matter or proposition to be considered at such meeting. Voting by proxy shall be allowed at such meeting. [L. '95, p. 402, § 7; L. '07, p. 127, § 1.]

§ 3747. Beneficiaries.—The corporation organized for any purpose mentioned in section 3741 may, for the purpose of assisting widows, orphans or other persons depending upon deceased members, provide in its by-laws for the payment by each member of a fixed sum, to be held by such association until the death of a member occurs, and then to be forthwith paid to the person or persons entitled thereto; and such fund so held shall not be liable to attachment by garnishment or other process. And the associations may be formed under this act for the purpose of rendering assistance to such persons, and in the manner herein specified. [L. '95, p. 402, § 8.]

"Act" in this section refers to §§ 3740–3751.

§ 3748. Death Fund.—Any such beneficiary corporation or society may hold at any one time as a death fund, belonging to the beneficiaries of anticipated deceased members, an amount not exceeding one assessment from a general or unlimited membership, or an amount not exceeding in the aggregate one assessment from each limited class or division of its members: Provided, that nothing in this section shall be held to restrict such fund to less than ten thousand dollars. Such funds, while held in trust, shall be deposited in safe banking institutions, subject to sight drafts for distribution to the beneficiaries aforesaid. [L. '95, p. 403, § 9.]

§ 3749. Exempt from Operations of Insurance Laws.—The provisions of the general laws relative to life insurance companies shall not apply to such beneficiary corporations, associations and societies. [L. '95, p. 403, § 10.]

§ 3750. Not Retroactive—Pre-existing Societies may Adopt.—Certificate.—Nothing contained in this act shall affect the existence of any association or corporation heretofore formed under the provisions of any law in this state for any of the purposes mentioned in section 3741 of this chapter [and] any such corporation may, at a meeting called for the purpose, vote to adopt the provisions of this act, and upon so voting and complying with the provisions of this section shall have the powers and privileges and be subject to the duties and obligations of corporations formed under this act. After so voting the corporation may file with the secretary of the state a certificate signed and sworn to by its president, secretary, and a majority of its board of trustees, setting forth a copy of its articles of incorporation and of said vote, and the date of the meeting at which the vote was adopted, and the secretary of state, upon payment of a fee of five dollars, shall cause the same to be recorded, and shall issue a certificate in the following form:—

STATE OF WASHINGTON.

Be it known that, whereas, (here the names of the original incorporators shall be inserted) have formally associated themselves with the intention of forming a corporation under the name of (here the name of the incorporation shall be inserted) for the purpose (here the purpose declared in the original articles of incorporation shall be inserted), under the provisions of (here the designation of the statute under the provisions of which organization was effected, shall be inserted), with a capital of (here the amount of capital stock as it stands fixed at the date of the certificate shall be inserted; or if there is no capital stock this clause shall be omitted), and the provisions of the laws in this state in such case made and provided have been complied with, as appears from a certificate of the proper officers of

said corporation, recorded [in] this office; now, therefore, I (here the name of the secretary is to be inserted), secretary of the state of Washington, do hereby certify that said (here the name of the corporation shall be inserted) is legally organized and established as an existing corporation, with the powers, rights and privileges, and subject to the limitations, duties and restrictions which by law appertain thereto.

Witness my official signature hereunto subscribed and the seal of [the] state of Washington hereunto affixed, this —— day of ——, in the year ——. (In these blanks the day, month and year of execution of the certificate shall be inserted.)

This certificate shall be signed, sealed and recorded, and filed in the same manner, and shall have the same effect as the certificate provided in section 3745. [L. '95, p. 403, § 11.]

"This act" refers to §§ 3740–3751.

§ 3751. Agreement, Amendment to—Certificate. — Whenever it is desired to amend in any particular within the scope of this act, the provisions of the articles of agreement of any corporation organized or qualified under this act, such amendment or amendments shall be effected by the filing with the secretary of state of a certificate signed and sworn to by the president, secretary and a majority of the board of trustees, which certificate shall be authorized by a vote of at least two-thirds of the stock represented or members of the corporation present at a meeting called and held for that purpose, in the manner prescribed by the by-laws and the secretary of state shall, upon payment of a fee of five dollars, cause such certificate to be recorded, and shall issue a certificate in the following form:—

STATE OF WASHINGTON.

Be it known that, whereas, (here the name of the corporation shall be inserted), a corporation heretofore duly organized, has, in accordance with the provisions of the laws of this state in such case made and provided, amended its articles of agreement as follows: (here shall be inserted the nature of the amendment or amendments), as appears from a certificate of the proper officers of said corporation recorded in this office. Now, therefore, I (here the name of the secretary is to be inserted), secretary of the state of Washington, do hereby certify that such amendment (or amendments) ha— been duly adopted as, and now are, a part of the articles of agreement of said corporation.

Witness my official signature hereunto subscribed and the seal of the state of Washington hereunto affixed, this —— day of —— in the year ——. (In these blanks the day, month and year of execution of this certificate shall be inserted.)

This certificate shall be signed, sealed and recorded, and filed in the same manner and shall have the same effect as the certificate provided for in section 3745. [L. '95, p. 404, § 12; L. '07, p. 128, § 2.]

"Act" in this section refers to §§ 3740–3751.

§ 3751–1. Corporations Sole — Church and Religious Societies. — Any person, being the bishop, overseer or presiding elder of any church or religious denomination in this state, may, in conformity with the constitution, canons, rules, regulations or discipline of such church or denomination, become a corporation sole, in the manner prescribed in this act, as nearly as may be; and, thereupon, said bishop, overseer or presiding elder, as the case may be, together with his successors in office or position, by his official designation, shall be held and deemed to be a body corporate, with all the rights and powers prescribed in the case of corporations aggregate; and with all the privileges provided by law for religious corporations. [L. '15, p. 251, § 1.]

§ 3751–2. Corporate Powers.—Every corporation sole shall, for the purpose of the trust, have power to contract in the same manner and to the same extent as a natural person, and may sue and be sued, and may defend in all courts and places, in all matters and proceedings whatever, and shall have authority to borrow money and give promissory notes therefor, and to secure the payment of the same by mortgage or other lien upon property, real and personal; to buy, sell, lease, mortgage and in every way deal in real and personal property in the same manner as a natural person may, and without the order of any court; to receive bequests and devises for its own use or upon trusts, to the same extent as natural persons may; and to appoint attorneys in fact. [L. '15, p. 252, § 2.]

§ 3751–3. Filing Articles—Property Held in Trust.—Articles of incorporation shall be filed in like manner as provided by law for corporations aggregate, and therein shall be set forth the facts authorizing such incorporation, and declare the manner in which any vacancy occurring in the incumbency of such bishop, overseer or presiding elder, as the case may be, is required by the constitution, canons, rules, regulations or discipline of such church or denomination to be filed, which statement shall be verified by affidavit, and for proof of the appointment or election of such bishop, overseer or presiding elder, as the case may be, or any succeeding incumbent of such corporation, it shall be sufficient to file with the secretary of state and in the office of the county auditor of the county in which such bishop, overseer or presiding elder, as the case may be, resides, the original or a copy of his commission, or certificate, or letters of election or appointment, duly attested: Provided, all property held in such official

capacity by such bishop, overseer or presiding elder, as the case may be, shall be in trust for the use, purpose, benefit and behoof of his religious denomination, society or church. [L. '15, p. 252, § 3.]

§ 3751–4. Existing Corporations Sole.—Any corporation sole heretofore organized and existing under the laws of this state may elect to continue its existence under this title by filing a certificate to that effect, under its corporate seal and the hand of its incumbent, or by filing amended articles of incorporation, in the form, as near as may be, as provided for corporations aggregate, and from and after the filing of such certificate of amended articles, such corporation shall be entitled to the privileges and subject to the duties, liabilities and provisions in this title expressed. [L. '15, p. 253, § 4.]

CHAPTER IV.

Corporations not Formed for Profit.

§ 3752. Purpose. — Corporations may be formed under the provisions of this chapter for any lawful purpose except the carrying on a business, trade, avocation or profession for profit. [L. '07, p. 255, § 1].

§ 3753. Membership—No Capital Stock.—The incorporators and members of a corporation formed under the provisions of this chapter may be individuals, copartnerships or corporations. It shall have no capital stock, and shares therein shall not be issued. The interest of each incorporator or member shall be equal to that of any other, and no incorporator or member can acquire any interest which will entitle him to any greater voice, vote, authority or interest in the corporation than any other member. [L. '07, p. 256, § 2.]

§ 3754. Membership Assignable.—The corporation may issue membership certificates, which certificates shall be assignable under such provisions, rules and regulations as may be prescribed by the by-laws of the company. [L. '07, p. 256, § 3.]

§ 3755. Termination of Membership.—A membership in a corporation formed hereunder may be terminated by voluntary withdrawal, by expulsion and by death. Losses of membership through any such causes and the incidents thereof shall be governed by the by-laws of the company. [L. '07, p. 256, § 4.]

§ 3756. Organization—Articles.—Not less than five individuals, copartnerships, or corporations shall be required to form a corporation hereunder. Articles of incorporation shall be prepared, executed and acknowledged in triplicate; one copy shall be filed in the office of the secretary of state, another in the office of the county auditor of the county in which the principal place of business of the corporation is located, and the third retained in the possession of the corporation.

Such articles shall state the name of the corporation, the purposes for which it is formed, the place where its principal place of business will be, the term for which it is to exist, not exceeding fifty years, the number of the trustees thereof, and the names of the trustees who shall manage the affairs of the corporation for such length of time, not less than two months, nor more than six months, as may be designated in such articles, until the trustees shall be elected by the members. The formation of the corporation shall be complete upon the filing of the articles as herein provided. [L. '07, p. 256, § 5.]

§ 3757. By-laws—Adoption, Condition Precedent to Transaction of Business.—Before transacting any business or acquiring any property the members of the corporation must meet and adopt by-laws. The vote of a majority of all the members of the corporation shall be necessary to the adoption of such by-laws and when adopted the same must be written in a book to be kept by the corporation. The corporation may by its by-laws provide for the time, place and manner of calling and conducting its meetings, the number of trustees, the time of their election, their term of office, the mode and manner of their removal, the mode and manner of filling vacancies on the board caused by death, resignation, removal or otherwise, the power and authority of the trustees, the compensation of the trustees or of any officer, the mode and manner of conducting business, the mode and manner of conducting elections, the qualifications for membership, on what conditions there may be a succession of membership, the manner in which membership shall cease, the mode and manner of expulsion of a member, the termination of a member's interest in the corporate property upon the cessation of his membership, and whether he shall be remunerated therefor, and if so in what manner, the amount of membership fee, and the dues, installments of labor which each member may be required to pay or perform, if any, the charges which may be made for services rendered or supplies furnished the members of the corporation by it, the manner of collection or enforcement of membership fees, dues or charges, and the method of forfeiting the membership interest for nonpayment or nonperformance, the method, time and manner of permitting the withdrawal of a member if at all, and how his interest may be ascertained and payment made thereof, if the company decide that he should be reimbursed therefor, the formation of a surplus fund and the manner and proportions in which such surplus fund shall be distributed, either upon the order of the corporation or upon its dissolution, and generally, all such other matters as may be proper to carry out the purpose for which the corporation was formed. [L. '07, p. 257, § 6.]

§ 3758. Powers of Corporation. — Corporations formed under this chapter shall have power of succession by their corporate name for

fifty years, in such name may sue and be sued in any court, may make and use a common seal and alter the same at pleasure, may receive gifts and devises, may purchase, hold and convey real and personal property, as the purposes of the corporation may require, may appoint such subordinate agents or officers as the business may require, may demand assessments of members and sell or forfeit their interests in the corporation for default with respect to any lawful provision of the by-laws, may enter into any lawful contracts and incur obligations essential to the transaction of its affairs for the purpose for which it was formed, may borrow money and issue notes, bills or evidence of indebtedness, and may mortgage its property to secure the same as its by-laws may provide, and, generally, may do all things necessary or proper to carry out the purpose of its creation. [L. '07, p. 258, § 7.]

§ 3759. Change of Purposes.—The purpose or purposes for which a corporation is created hereunder may be altered, modified, enlarged, or diminished by the vote of two-thirds of all the members at a special meeting called for such purpose. Notice of which meeting shall be given in the same manner provided by the by-laws for the giving of notice for the election of trustees. [L. '07, p. 258, § 8.]

§ 3760. Amendment of By-laws.—The by-laws of the corporation shall prescribe the manner in which they may be amended. [L. '07, p. 258, § 9.]

§ 3761. Dissolution.—Any corporation formed under this chapter may be dissolved and its affairs wound up voluntarily by the written request of two-thirds of the members. Such request must be addressed to the trustees and specify reasons why the winding up of the affairs of the corporation is deemed advisable, and name three persons, members of the corporation, to act in liquidation. Upon the filing of such request with the trustees, and a copy thereof in the office of the secretary of state, and of the county auditor of the county where the principal place of business of the corporation is located, the power of the trustee[s] shall cease and the persons appointed shall proceed to wind up the corporation, realize upon its assets, pay its debts and divide the residue of the money among the members in the proportion to which each member is entitled under the by-laws. This shall be done within the time designated in such request or such further time as may be granted by writing signed by two-thirds of the members and filed in the office of the secretary of state and of the county auditor of the county where the principal place of business of the corporation is located. No receiver of such a corporation or of its property, or of any right therein, can be appointed by any court upon the application of any member save after judg-

ment of dissolution in an action brought by the state to forfeit its franchise. [L. '07, p. 258, § 10.]

§ 3762. Not to Engage in Business for Gain, etc.—Any corporation formed under the provisions of this chapter that shall engage in any business, trade, avocation or profession for gain or which shall enter into any agreement or combination in restraint of trade, or to fix or establish the price of any commodity, or to limit or regulate the production or distribution of any commodity, or which shall attempt to restrain trade, or fix or establish the price of any commodity, or limit or regulate the production or distribution of any commodity shall forfeit its right to exist as a corporation and judgment of dissolution may be entered in an action brought by the state to have such forfeiture declared. Nothing herein contained shall be construed to forbid such a corporation accumulating a surplus fund through membership fees and dues, or from charges made its members for services rendered or supplies furnished them by it, and the distribution of such fund among the members in the manner provided by the by-laws. [L. '07, p. 259, § 11.]

§ 3763. Existing Corporations may Reorganize Under Chapter.—Any corporation heretofore formed under any law of this state, the purpose or purposes for the creation of which is such that it might have been formed and carry on business hereunder, may avail itself of the privileges and incur the liabilities prescribed by this chapter upon a majority vote of all the members to the effect that it desires to reorganize hereunder, the result of such vote to be evidenced by a certificate executed by the president and secretary under the seal of the corporation and filed in the office of the secretary of state and of the county auditor of the county where the principal place of business of the corporation is located. Upon the filing of such certificate it shall be endowed with all the privileges and affected by all the liabilities prescribed hereunder, but the time of its existence fixed by its articles shall not be enlarged by such action. [L. '07, p. 259, § 12.]

§ 3764. Filing and License Fee.—All corporations formed under the provisions of this chapter shall pay to the secretary of state, for the use of the state, the same fee for filing its articles of incorporation and the same annual license fee, as is prescribed by law for other corporations having a capital stock. [L. '07, p. 260, § 13.]

CHAPTER V.

Patrons of Husbandry.

§ 3765. Manner of Incorporating a Grange.—Any grange of the Patrons of Husbandry, desiring hereafter to incorporate, may incor-

porate and become a body politic in this state by filing in the office of the secretary of state, and in the office of the county auditor of the county wherein such grange holds its meetings of business, a certificate or articles embodying,—

1. The name of such grange and the place of holding its meetings;

2. What elective officers the said grange will have; when such officers shall be elected; how and by whom the business of the grange shall be conducted and managed, and what officers shall join in the execution of any contract of such grange to give force and effect in accordance with the usages of the order of the Patrons of Husbandry. Such articles shall be subscribed by the master of such grange, attested by the secretary with the seal of the grange;

3. A copy of the by-laws of such grange shall also be filed in the said office of the secretary of state and the county auditor of the proper county;

4. The names of all such officers at the time of filing the application, and the time for which they may be respectively elected. When such articles shall have been filed, such grange shall be a body politic and corporate, with all the incidents of a corporation, subject, nevertheless, to the laws now in force or hereafter to be passed regulating corporations. [L. '75, p. 97, § 1; 1 H. C., § 1643.]

§ 3766. In What Pursuits Such Corporation may Engage.—Said grange may engage in any industrial pursuit, manufacturing, mining, milling, wharfing, docking, commercial, mechanical, mercantile, building, farming, equipping or running railroads, or generally engage in any species of trade or industry; loan money on security, purchase and sell on real estate; but when desiring to engage in either or any of the above pursuits or industries, said grange shall be subject to all the conditions, and liabilities imposed by the provisions of the general corporation laws, and in addition to the conditions to be performed as recited in the last preceding section, shall file additional articles with said secretary of state and the county auditor of the proper county, stating the object, business, or industry proposed to be pursued or engaged in, the amount of capital stock, the time of its existence, not to exceed fifty years; the number of shares of which the capital stock shall consist, and price per share, and the names of officers necessary to manage said business, and the places where said officers shall pursue the same. [L. '75, p. 97, § 2; 1 H. C., § 1644.]

§ 3766a. General Rights and Liabilities. — As a business corporation, said grange, after having complied with the provisions of the last preceding section, shall be to all intents and purposes a domestic corporation, with all the rights, privileges, and immunities allowed, and all the liabilities imposed, by the laws of the state relating to

corporations engaged in the same kinds of business. [L. '75, p. 98, § 3; 1 H. C., § 1645.]

CHAPTER VI.

Co-operative Associations.

§ 3766–1. Co-operative Associations — Who may Organize — Purposes.—Any number of persons, not less than five, may associate themselves together as a co-operative association, society, company or exchange for the transaction of any lawful business on the co-operative plan. For the purposes of this act the words "association," "company," "exchange," "society" or "union" shall be construed the same. [L. '13, p. 50, § 1.]

§ 3766–2. Articles — Contents. — Every association formed under this act shall prepare articles of association in writing, which shall set forth:

1. The name of the association.
2. The purpose for which it was formed.
3. Its principal place of business.
4. The term for which it is to exist which shall not exceed fifty years.
5. The amount of capital stock, the number of shares and the par value of each share. [L. '13, p. 50, § 2.]

§ 3766–3. Articles—Verification—Filing—When Legally Organized.—The original articles of associations organized under this act or a true copy thereof verified to be such by the affidavits of two of the signers thereof, shall be filed with the secretary of state. Whenever a certified copy of the same accompanied by a certificate of the secretary of state showing that the same has been filed in his office, is filed with the county auditor of the county in which is located the principal place of business of said association, the said association shall be deemed to be legally organized. [L. '13, p. 50, § 3.]

§ 3766–4. Filing Fees.—For filing articles of association organized under this act there shall be paid to the secretary of state the sum of twenty-five dollars and for the filing of an amendment of such articles there shall be paid the sum of ten dollars. For recording such articles of association or an amendment thereto, the county auditor shall charge the sum of fifteen cents for each one hundred words thereof, and fifteen cents for filing and indexing the same. [L. '13, p. 51, § 4.]

§ 3766–5. Trustees — Election — Duties — Election of Officers. — Every such association shall be managed by a board of not less than three trustees. The trustees shall be elected by and from the stockholders of the association at such time and for such term of office as the by-laws may prescribe, and shall hold office during the term

for which they were elected and until their successors are elected and qualified; but a majority of the stockholders shall have the power at any regular or special meeting, legally called for that purpose to remove any trustee or officer for cause, and fill the vacancy. The officers of every such association shall be a president, one or more vice-presidents, a secretary and a treasurer who shall be elected annually by the trustees. Each of said officers must be a member of the association. All elections shall be by ballot. [L. '13, p. 51, § 5.]

§ 3766–6. Amendments—How Adopted—Recording.—The articles of association may be amended by a majority vote of the stockholders at any regular stockholders' meeting or at any special stockholders' meeting called for that purpose, on twenty days' written notice being given to the stockholders. Said power to amend shall include the power to increase or diminish the amount of capital stock and the number of shares: Provided, the amount of the capital stock shall not be diminished below the amount of the paid-up capital stock at the time such amendment is adopted. Within thirty days after the adoption of an amendment to its articles of association, the association shall cause a copy of such amendment adopted to be recorded in the office of the secretary of state and of the county auditor of the county where its principal place of business is located. [L. '13, p. 51, § 6.]

§ 3766–7. Business Authorized to be Conducted—Lawful Business Defined.—An association created under this act, being for mutual welfare, the words "lawful business" shall extend to every kind of lawful effort for business, agricultural, dairy, mercantile, mining, manufacturing or mechanical business, on the co-operative plan. [L. '13, p. 52, § 7.]

§ 3766–8. Stock—Issues—Limit—Vote.—No stockholder in any such association shall own more than one-fifth of the stock of the association, except as hereinafter provided. No stockholder at any meeting shall be entitled to more than one vote. [L. '13, p. 52, § 8.]

§ 3766–9. Subscription of Stock in Other Associations.—At any regular meeting or any regularly called special meeting at which at least a majority of all the stockholders shall be present, or represented, an association organized under this act may by a majority vote of the stockholders present or represented, subscribe for shares and invest its reserve fund or any part thereof in the capital stock of any other co-operative association. [L. '13, p. 52, § 9.]

§ 3766–10. Purchasing Business of Other Associations—Payment—Stock Issued.—Whenever an association organized under this act shall purchase any stock of another association or the interest or any part thereof of any person or persons, firm or partnership en-

gaged in any lawful business as defined in section 3766–7, it may pay for the same in whole or in part by issuing to the selling association or person, firm or partnership, shares of its capital stock to an amount which at par value, would equal the fair market value of the stock or interest so purchased and in such case the transfer to the association of such stock or interest so purchased at such valuation shall be equivalent to payment in cash for the shares of stock so issued. [L. '13, p. 52, § 10.]

§ 3766–11. Certificates of Stock—When Held in Trust—Issued.—In case the cash value of such stock or interest so purchased exceeds one-fifth of the par value of the purchasing association, the trustees of the purchasing association are authorized to hold the shares in excess of one-fifth of the par value of the purchasing association, in trust for the vendor and dispose of the same to such person or persons and within such time as may be mutually agreed upon by the parties in interest, and shall pay the proceeds thereof as currently received to the former owners thereof. Certificates of stock shall not be issued to any subscriber until fully paid for, but the by-laws of the association may allow subscribers to stock to vote as stockholders: Provided, that one-fifth of the stock subscribed for has been paid for by such subscriber. [L. '13, p. 53, § 11.]

§ 3766–12. Stockholders may Vote by Mail.—At any regular, called, general or special meeting of the stockholders, a written vote received by mail from any absent stockholder and signed by him may be read in such meeting and shall be equivalent to a vote of each of the stockholders so signing: Provided, he has been previously notified in writing of the exact motion or resolution upon which such vote is taken and a copy of same is forwarded with and attached to the vote so mailed by him. [L. '13, p. 53, § 12.]

§ 3766–13. Earnings—Apportionment.—The trustees shall apportion the net earnings by first paying dividends on the paid-up capital stock at a rate not exceeding eight per cent per annum; then setting aside not less than ten per cent nor more than twenty-five per cent of the remainder annually of the net profits for a reserve fund and the remainder of said net profits by dividends proportioned upon the amount of business transacted with said association and proportioned upon the wages and salaries of employees: Provided, that nonshareholders shall only be entitled to one-half as much dividends from said net profits as shareholders: And provided further, that no dividend shall be paid out or declared on any business transacted with the association by any person, persons, firm or corporation engaged in the buying, selling or handling of agricultural products for profit or to any sale to said association by any person or persons, firm or corporation engaged as a wholesaler or jobber in

the distribution of manufactured products. Dividends remaining uncalled for six months after the same have been declared shall revert to the association. [L. '13, p. 53, § 13.]

§ 3766–14. Distribution of Dividends.—The profits or net earnings of such association shall be distributed to those entitled thereto at such time and in such manner not inconsistent with this act as its by-laws shall prescribe, which shall be as often as once a year. [L. '13, p. 54, § 14.]

§ 3766–15. Annual Reports — Contents — Filing. — Every association organized under the terms of this act shall, annually on or before the first day of March of each year, make a report to the secretary of state; such report shall contain the name of the company, its principal place of business in this state and a general statement as to its business, showing the total amount of business transacted, the amount of capital stock subscribed for and paid in, the number of stockholders, the total expenses of operation, the amount of its indebtedness or liability and its profits and losses. [L. '13, p. 54, § 15.]

§ 3766–16. Co-operative Associations Heretofore Organized—May Adopt Provisions of This Act.—All co-operative associations heretofore organized and doing business under prior statutes, or which have attempted to so organize and do business shall have the benefit of all the provisions of this act and be bound thereby on filing with the secretary of state signed and sworn to by the president and secretary, manager or other officer managing said business, to the effect that said co-operative company or association has by a majority vote of its stockholders decided to accept the benefits of and to be bound by the provisions of this act. No association organized under this act shall be required to do or perform anything not specifically required herein in order to become an association or to continue its business as such. [L. '13, p. 54, § 16.]

§ 3766–17. Use of Term "Co-operative" Limited to Associations Under This Act.—No corporation or association organized or doing business for profit in this state shall be entitled to use the term "co-operative" as a part of its corporate or other business name or title, unless it has complied with the provisions of this act; and any corporation or association violating the provisions of this section may be enjoined from doing business under such name at the instance of any stockholder or any association legally organized hereunder. [L. '13, p. 55, § 17.]

§ 3766–18. When to Do Business—Liability.—No co-operative association organized under the provisions of this act shall be permitted to do business until three-fourths of the capital stock shall have been subscribed for and one-fourth of the capital stock of said

association shall have been paid in to said association. The liability of each stockholder shall be limited to the amount remaining unpaid on his subscription to the capital stock of said association. [L. '19, p. 55, § 18.]

§ 3766–19. May Pass By-laws.—Any association formed under this act may pass by-laws to govern itself in the carrying out of the provisions of this act which are not inconsistent with the provisions of this act. [L. '13, p. 55, § 19.]

§ 3766–20. Constitutionality.—If any section or part of a section of this act shall for any cause be held unconstitutional such fact shall not affect the remainder of this act. [L. '13, p. 55, § 20.]

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COUNTIES.

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CHAPTER I.

Boundaries of Counties.

For boundaries of the state of Washington, see Const., Art. XXIV, § 1.

Existing counties recognized as legal subdivisions: Const., Art. XI, § 1.

Washington Territory set off from Oregon, see Organic Act, § 1898.

Section 1952, Organic Act, continued in force the laws of Oregon in Washington Territory existing prior to March 2, 1853. These laws were repealed by the act of January 31, 1856: Laws W. T., 1856, p. 7.

The county boundaries existing at the time Washington Territory was severed from Oregon remained the boundaries thereof until altered by subsequent legislation: See Barton's Hand Book 1893–94, pp. 144–152.

Counties formerly existing.—Boise (L. '63, p. 3); Ferguson (L. '63, p. 4); Idaho (L. '62, p. 3); Missoula (L. '61, p. 7); Nez Perces (L. '62, p. 4); Shoshone (L. '62, pp. 4, 13).

§ 3767. Adams County.—Adams county shall be and consist of all the territory of Whitman county bounded as follows, to wit: Beginning at the northwest corner of township fourteen north, range twenty-eight east of the Willamette Meridian; running thence north to the fourth standard parallel; thence east to the Columbia River Guide Meridian; thence north to the fifth standard parallel; thence east on said parallel to the line between the ranges thirty-eight and thirty-nine; thence south on said line to where it intersects the Palouse River in township sixteenth; thence down said river to where the line between townships fourteen and fifteen crosses said river; thence west on said line to place of beginning. [L. '83, p. 93, § 1; H. C., § 1.]

§ 3768. Asotin County.—All that portion of Garfield county situated within the state of Washington, and included within the following limits, shall be constituted and known as the county of Asotin, viz.: Commencing at a point in the channel of Snake River on the township line between ranges forty-four and forty-five; thence running south to the northwest corner of section thirty, township eleven north, range forty-five east, of the Willamette Meridian; thence west

six miles; south one mile; west two miles; south one mile; west one mile to the northwest corner of section three in township ten north, of range forty-three east, of the Willamette Meridian; thence south eighteen miles; thence west three miles; thence south to the Oregon line; thence east on said line to the mid-channel of Snake River; thence down the mid-channel of Snake River to the place of beginning. [L. '83, p. 96, § 1; 1 H. C., § 2.]

§ 3769. Benton County.—All those portions of the counties of Yakima and Klickitat described as follows, to wit: Beginning at the point of intersection of the middle of the main channel of the Columbia River with the township line between township thirteen, north range twenty-three east, and township thirteen, north range twenty-four east, Willamette Meridian; thence running south along the township lines, being the line between range twenty-three east and range twenty-four east to the line between Yakima county and Klickitat county; thence south along the township lines along the line between ranges twenty-three east and twenty-four east, to the point of intersection with the middle of the main channel of the Columbia River, or to its intersection with the lines between the states of Washington and Oregon; thence northeasterly, northerly and northwesterly and westerly along the middle of the main channel of the Columbia River and up said stream, following the line between Klickitat county and the state of Oregon, and the county of Walla Walla and the line between Yakima county and Walla Walla county, Franklin county and Douglas county, to the places of beginning,—shall be and hereby is created and established as the county of Benton. [L. '05, p. 185, § 1.]

§ 3770. Chehalis County.—Chehalis county shall be and consist of all that territory commencing at the northeast corner of Pacific county; thence west to the sea coast; thence northerly along said coast, including Gray's Harbor, to the mouth of Queet's Creek or River; thence east thirty-six miles to the northwest corner of Mason county; thence south to the northeast corner of township number eighteen north, range seven west; thence east fourteen miles to the southeast corner of section thirty-two, in township number nineteen north, range four west; thence south six miles to the southeast corner of section thirty-two in township number eighteen north, range four west; thence east two miles to the southeast corner of section thirty-four, same township; thence south to a point due east of the northeast corner of Pacific county; thence west to the place of beginning. [L. '54, p. 472; L. '60, p. 444; L. '64, p. 74; L. '67, p. 49; L. '69, p. 296; L. '73, p. 482; 1 H. C., § 3.]

See § 3780–1, infra, name changed to Grays Harbor county.

§ 3771. Chelan County.—All those portions of the counties of Kittitas and Okanogan described as follows, to wit: Beginning at the point of intersection of the middle of the main channel of the Columbia River with the fifth standard parallel north, thence running west along said fifth standard parallel north to the point where said fifth standard parallel north intersects the summit of the main divide between the waters flowing northerly and easterly into the Wenatchee and Columbia rivers, and the waters flowing southerly and westerly into the Yakima River, thence in a general northwesterly direction along the summit of said main divide between the waters flowing northerly and easterly into the Wenatchee and Columbia rivers and the waters flowing southerly and westerly into the Yakima River, following the course of the center of the summit of the watershed dividing the said respective waters, to the center of the summit of the Cascade Mountains; at the eastern boundary line of King county; thence north along the east boundary line of King, Snohomish and Skagit counties to the point upon the said east boundary of Skagit county, where said boundary is intersected by the watershed between the waters flowing northerly and easterly into the Methow River and the waters flowing southerly and westerly into Lake Chelan; thence in a general southeasterly direction along the summit of the main divide between the waters flowing northerly and easterly into the Methow River and the waters flowing westerly and southerly into Lake Chelan and its tributaries; following the course of the center of the summit of the watershed dividing said respective waters, to the point where the seventh standard parallel north intersects said center of the summit of said watershed; thence east along the said seventh standard parallel north to the point of intersection of the middle of the main channel of the Columbia River with said seventh standard parallel north; thence down the middle of the main channel of the Columbia River to the point of beginning, shall be and hereby is created and established as the county of Chelan. [L. '99, p. 148, § 1.]

§ 3772. Clallam County.—Clallam county shall be and consist of all that territory commencing at the northwest corner of Jefferson county at a point opposite the middle of the channel between Protection Island and Diamond Point on the west of Port Discovery Bay; then following up the middle of said channel to a point directly east of the mouth of Eagle Creek; thence west to the mouth of Eagle Creek; thence one mile west from the mouth of said creek; thence south to the north boundary line of township twenty-seven north, range two west; thence west to the seacoast; thence following up the said coast to Cape Flattery and to the Strait of Juan de Fuca; thence easterly along the coast of said Strait of Juan de Fuca to the

place of beginning. (Spelled "Clalam" and "Clalm" in early laws.) [L. '54, p. 472; L. '67, p. 45; L. '69, p. 292; L. '69, p. 297; 1 H. C., § 4.]

§ 3773. Clarke County.—Clarke county shall be and consist of all that territory commencing at the Columbia River opposite the mouth of Lewis River; thence up Lewis River to the forks of said river; thence up the north fork of Lewis River to where said north fork of Lewis River intersects the township line between townships four and five east; thence due south to the Columbia River; thence with the main channel of said river to the place of beginning. [L. '54, p. 473; L. '55, pp. 42, 43; L. '67, p. 48; L. '69, p. 295; L. '71, p. 153; L. '73, p. 561; 1 H. C., § 5.]

§ 3774. Columbia County.—Columbia county shall be and consist of all that territory commencing at a point in the middle of the channel of Snake River, where the range line between ranges thirty-six and thirty-seven east of the Willamette Meridian intersects said point; thence south on said range line to the northwest corner of township number nine north, range thirty-seven east; thence east on the north boundary line of township number nine north, range thirty-seven east, to the northeast corner of said township; thence south on the line between ranges thirty-seven and thirty-eight east of the Willamette Meridian, to the northeast corner of township number six north, range thirty-seven east; thence along the north boundary line of township number six north, range thirty-eight east, to the northeast corner of said township; thence due south to the line dividing the state of Washington from the state of Oregon; thence due east on said dividing line to the range line between ranges forty-one and forty-two east; thence north on range line to the corner of sections thirteen, eighteen, nineteen and twenty-four, township ten north, ranges forty-one and forty-two east; thence west three miles; thence north three miles; thence west one mile; thence north one mile; thence west one mile; thence north three miles; thence west one mile; thence north to the southwest corner of township twelve north, range forty-one east; thence west on township line six miles; thence north on range line between ranges thirty-nine and forty to a point in the mid-channel of Snake River; thence down the mid-channel of said river to the place of beginning. [L. '75, p. 173; L. '79, p. 226; L. '81, p. 175; 1 H. C., § 6.]

§ 3775. Cowlitz County.—Cowlitz county shall be and consist of all that territory commencing at the Columbia River opposite the mouth of Lewis River; thence up Lewis River to the forks of said river; thence up the north fork of Lewis River to where said north fork of Lewis River intersects the township line between townships four and five east; thence north to the line between townships ten and

eleven north; thence west to the first section line east of the township line between townships four and five west; thence south on said line to the Columbia River, and up Columbia River to the place of beginning. [L. '54, p. 471; L. '55, p. 39; L. '67, p. 48; L. '69, p. 295; L. '71, p. 153; L. '73, p. 561; 1 H. C., § 7.]

§ 3776. Douglas County.—All that portion of the county of Lincoln described as follows, to wit: Beginning at the point where the Columbia Guide Meridian intersects the Columbia River on the northern boundary of Lincoln county, and thence running south on said Columbia Guide Meridian to the township line between townships number sixteen and seventeen; thence running west on said township line to the range line between ranges twenty-seven and twenty-eight; thence south on said range line to the section line between sections twenty-four and twenty five in township fourteen north, range twenty-seven east; thence west on said section line to the mid-channel of the Columbia River; thence up said channel of said river to the place of beginning,—shall be known and designated as the county of Douglas. [L. '83, p. 95; 1 H. C., § 8.]

Grant county from this territory, see infra, § 3780.

§ 3777. Ferry County.—All that portion of the state of Washington described as follows, to wit: Commencing at the point where the boundary line between Stevens and Okanogan counties intersect the Columbia River, thence up the mid-channel of the Columbia River to the mouth of Kettle River, thence up the mid-channel of Kettle River to the boundary line between the United States and British Columbia, thence westerly along the said boundary line to the intersection thereof with the said boundary line between Stevens and Okanogan counties, thence southerly along the said boundary line to the place of beginning, shall be and hereby is created and organized as the county of Ferry, and so named in honor of the Honorable Elisha P. Ferry, the first governor of the state. [L. '99, p. 26, § 1.]

§ 3778. Franklin County.—Franklin county shall be and consist of all that territory of Whitman county bounded as follows, to wit: Beginning at a point where the mid-channel of the Snake River intersects that of the Columbia River, and running thence up the Columbia River to a point where section line between sections twenty-one and twenty-eight, townships fourteen north, range twenty-seven east, Willamette Meridian, state of Washington, strikes the main body of the Columbia River, on the west side of the island; thence east on said section line to township line between ranges twenty-seven and twenty-eight east; thence north on said range line to north boundary of township fourteen; thence east on said north boundary of township fourteen to the Palouse River; thence down said river to the mid-

channel of Snake River; thence down said Snake River to place of beginning. [L. '83, p. 87; 1 H. C., § 9.]

§ 3779. Garfield County.—Garfield county shall be and consist of all that territory commencing at a point in the mid-channel of Snake River on township line between ranges thirty-nine and forty; thence on said line south to the southwest corner of township twelve, range forty; thence east on township line six miles; thence south to the southwest corner of section seven, township eleven north, of range forty-one east; thence east one mile; thence south three miles; thence east one mile; thence south one mile; thence east one mile; thence south three miles; thence east three miles; thence south on township line to the Oregon line; thence due east on said line six miles to the southwest corner of Asotin county; thence northerly following the westerly boundary of Asotin county to a point where the same intersects the mid-channel of Snake River; thence down the said mid-channel of Snake River to the point of beginning. [L. '81, p. 175; L. '83, p. 96; 1 H. C., § 10.]

§ 3780. Grant County.—All of that portion of Douglas county, and state of Washington, described as follows, to wit: Beginning at the southeast corner of township seventeen north, range thirty east of the Willamette Meridian, thence running west on the township line between townships sixteen and seventeen to the range line between ranges twenty-seven and twenty-eight, thence south on said range line to the section line between sections twenty-four and twenty-five in township fourteen north, range twenty-seven east, thence west on said section line to the mid-channel of the Columbia River; thence up said channel of said river to a point, thence at right angles to the course of said channel to the meander corner of section thirteen of township twenty north, range twenty-two east Willamette Meridian, and section eighteen, township twenty north, range twenty-three east Willamette Meridian, thence north along the range line between ranges twenty-two and twenty-three to the northwest corner of section eighteen, township thirty-one north, range twenty-three east Willamette Meridian, thence east one mile to the southeast corner section seven, township twenty-one, range twenty-three east; north one mile to the northwest corner section eight, township twenty-one, range twenty-three east; east one mile to the southeast corner section five, township twenty-one, range twenty-three east; north one mile to the northeast corner section five, township twenty-one, range twenty-three east; east one mile to the northeast corner section four, township twenty-one, range twenty-three east; north one mile to the southeast corner section twenty-eight, township twenty-two, range twenty-three east; east one mile to the southeast corner section twenty-seven, township twenty-two, range twenty-three east; north two miles to the northeast corner

section twenty-two, township twenty-two, range twenty-three east; east one mile to the southeast corner section fourteen, township twenty-two, range twenty-three east; north one mile to the southeast corner section eleven, township twenty-two, range twenty-three east; east one mile to the southeast corner section twelve, township twenty-two, range twenty-three east; north two miles to the northwest corner section six, township twenty-two, north range twenty-four east; east sixteen miles to the northeast corner section three, township twenty-two, north range twenty-six east; north six miles to the northeast corner section three, township twenty-three, north range twenty-six east; east one mile to the northeast corner section two, township twenty-three, north range twenty-six east; north one mile to the northeast corner section thirty-five, township twenty-four, north range twenty-six east; east one mile to the southeast corner section twenty-five, township twenty-four, north range twenty-six east; north one mile to the southeast corner section twenty-four, township twenty-four, north range twenty-six east; east one mile to the southeast corner section eighteen, township twenty-four, north range twenty-seven east; north one mile to the southeast corner section eighteen, township twenty-four, north range twenty-seven east; east one mile to the southeast corner section seventeen, township twenty-four, north range twenty-seven east; north one mile to the southeast corner section eight, township twenty-four, north range twenty-seven east; east one mile to the southeast corner section nine, township twenty-four, north range twenty-seven east; north one mile to the southeast corner section four, township twenty-four, north range twenty-seven east; east one mile to the southeast corner section three, township twenty-four, range twenty-seven east; north one mile to the northeast corner section three, township twenty-four, range twenty-seven east; east three miles to the southeast corner section thirty-one, township twenty-five, north range twenty-eight east; north one mile to the south-east corner of section thirty, township twenty-five, north range twenty-eight east; east one mile to the southeast corner of section twenty-nine, township twenty-five, north range twenty-eight east; north three miles to the southeast corner of section eight, township twenty-five, north range twenty-eight east; east one mile to the south-east corner of section nine, township twenty-five, north range twenty-eight east; north four miles to the southeast corner of section twenty-one, township twenty-six, north range twenty-eight east; east one mile to the southeast corner of section twenty-two, township twenty-six, north range twenty-eight east; north one mile to the southeast corner of section fifteen, township twenty-six, north range twenty-eight east; east one mile to the southeast corner of section fourteen. township twenty-six, north range twenty-eight east; north two miles to the southeast corner of section two, township twenty-six, north range

twenty-eight east; east one mile to the southeast corner of section one, township twenty-six, north range twenty-eight east; north two miles to the southeast corner of section twenty-five, township twenty-seven, north range twenty-eight east; east one mile to the southeast corner of section thirty, township twenty-seven, north range twenty-nine east; north six miles to the southeast corner of section thirty, township twenty-eight, north range twenty-nine east; east one mile to the southeast corner of section twenty, township twenty-eight, north range twenty-nine east; north one mile to the southeast corner of section twenty, township twenty-eight, north range twenty-nine east; east two miles to the southeast corner of section twenty-two, township twenty-eight, north range twenty-nine east; north one mile to the southeast corner of section fifteen, township twenty-eight, north range twenty-nine east; east one mile to the southeast corner of section fourteen, township twenty-eight, north range twenty-nine east; north two miles to the southeast corner of section two, township twenty-eight, north range twenty-nine east; east one mile to the southeast corner of section one, township twenty-eight, north range twenty-nine east; north one mile to the northeast corner of section one, township twenty-eight, north range twenty-nine east; thence east along township line between townships twenty-eight and twenty-nine to the mid-channel of the Columbia River; thence up said channel of said river to the point where the Columbia Guide Meridian intersects said channel; thence running south on said Columbia Guide Meridian to the place of beginning, which said described territory shall constitute the county of Grant. [L. '09, p. 19, § 1.]

Through an error, the description of these boundaries does not close, but the intent is evident.

Cited in 72 Wash. 325.

§ 3780–1. Grays Harbor County.—That the name of Chehalis county be, and the same is, hereby changed to Grays Harbor county. [L. '15, p. 250, § 1.]

See § 3770, supra, boundaries of Chehalis county.

§ 3781. Island County.—The boundaries of Island county shall include all of the islands known as Whidby, Camano, Smith's Deception and Ure's and shall extend into the adjacent channels to connect with the boundaries of adjoining counties as defined by statute. [L. '63, p. 28, relocating county seat; L. '67, p. 46; L. '68, p. 68; L. '69, p. 292; L. '77, p. 425; L. '91, p. 217; 1 H. C., § 11.]

§ 3782. Jefferson County.—Jefferson county shall be and consist of all that territory commencing at the middle of the channel of Admiralty Inlet due north of Point Wilson; thence westerly along the Strait of Fuca to the north of Protection Island, to a point opposite

the middle of the channel between Protection Island and Diamond Point on the west of Port Discovery Bay; thence following up the middle of said channel to a point direct east of the mouth of Eagle Creek; thence west to the mouth of Eagle Creek; thence one mile west from the mouth of said creek; thence south to the summit of the Olympic range of mountains, it being the southeast corner of Clallam county, on the north boundary line of township twenty-seven north, range two west; thence west to the Pacific Ocean; thence southerly along the coast to the mouth of Queets; thence east to the township line dividing ranges six and seven west; thence north on said township line to the sixth standard parallel; thence east to the middle of the channel of Hood's Canal; thence northerly along said channel to the middle of the channel of Admiralty Inlet; thence northerly following the channel of said inlet to a point due north of Point Wilson and place of beginning. [L. '54, p. 470; L. '58, p. 52; L. '67, p. 45; L. '68, p. 80, creating Quillehuyte Co.; L. '69, p. 292; L. '77, p. 406; L. '69, p. 297, repealing law creating Quillehuyte Co.; 1 H. C., § 12.]

See boundaries of Mason county.

§ 3783. King County.—King county shall be and consist of all the territory commencing where the fifth parallel line strikes the mainland near the head of Commencement Bay; thence east along said parallel line to the middle of the main channel of White River; thence up the middle of the main channel of White River to the forks of White River and Green Water; thence up the main channel of Green Water to the summit of the Cascade Mountains; thence northerly along said summit to the southeast corner of township number twenty-seven north, range eleven east, it being a point due east of the northeast corner of township twenty-six, range four east; thence west to Admiralty Inlet; thence southerly along the main channels of Admiralty Inlet, Colvo's Passage and Commencement Bay, to the fifth standard parallel and place of beginning. [L. '54, p. 470; L. '67, p. 46; L. '69, p. 293; 1 H. C., § 13.]

The boundary between Pierce and King counties has been changed by annexation proceedings, under § 3812 et seq., infra.

§ 3784. Kitsap County.—Kitsap county shall be and consist of all that territory commencing in the middle of Colvo's Passage at a point due east of the meander post between sections nine and sixteen, on west side of Colvo's Passage, in township number twenty-two north, range two east; thence west on the north boundary line of sections sixteen, seventeen and eighteen, to the head of Case's Inlet; thence north along the east boundary of Mason county through the center of townships twenty-two and twenty-three, range one west, to the north line of said townships number twenty-three; thence continue

due west to the middle of the channel of Hood's Canal; thence along said channel to the middle of the main channel of Admiralty Inlet; thence following said channel up to the middle of Colvo's Passage; thence following the channel of said passage to the place of beginning. [L. '58, p. 51; L. '67, p. 46; L. '69, p. 293; L. '77, p. 406; 1 H. C., § 14.]

§ 3784½. Kittitas County.—The following limits shall be known as the county of Kittitas, viz.: Commencing at a point where the main channel of the Columbia River crosses the township line between township fourteen and fifteen north, of range number twenty-three east, of the Willamette Meridian, and running thence west on the said township line to the range line between ranges eighteen and nineteen east; thence north on said range line six miles, or to the township line between the townships fifteen and sixteen north; thence west on the said township line to the range line between ranges seventeen and eighteen east; thence north to the township line between townships sixteen and seventeen north; thence west along said township line and a line prolonged due west to the Nachess River; and thence northerly along the main channel of the Nachess River to the summit of the Cascade Mountains, or to the eastern boundary of Pierce county; thence north along the eastern boundaries of Pierce and King counties to the point where the east boundary of King county intersects the summit of the main divide between the waters flowing northerly and easterly into the Wenatchee and Columbia rivers and the waters flowing southerly and westerly into the Yakima River; thence in a general southeasterly direction along the summit of said main divide between the waters flowing northerly and easterly into the Wenatchee and Columbia rivers and the waters flowing southerly and westerly into the Yakima River, following the course of the center of the summit of the watershed dividing the said respective waters, to the fifth standard parallel north; thence east along the fifth standard parallel north to the middle of the main channel of the Columbia River; thence down the main channel of the Columbia to the place of beginning. [L. '83, p. 90; L. '86, p. 168; 1 H. C., § 15; L. '99, p. 148, § 1.]

§ 3785. Klickitat County.—Klickitat county shall be and consist of all that territory commencing at a point mid-channel of the Columbia River opposite the mouth of the White Salmon [River]; thence up the said channel of said White Salmon River as far north as the southern boundary of township four north of range ten east of Willamette Meridian; thence due west on said township line to range nine east of Willamette Meridian; thence north following said range line till it intersects the south boundary of Yakima county (projected); thence east along the north boundary of township number six north until said line intersects the range line between range twenty-three east and range twenty-four east; thence south along said range

line to the Columbia River; thence down the Columbia River, mid-channel, to the place of beginning. (Spelled "Clickitat" in early laws.) [L. '60, p. 420; L. '61, p. 59; L. '67, p. 49; L. '68, p. 60; L. '69, p. 296; L. '73, p. 57; L. '81, p. 187; 1 H. C., § 17; L. '05, p. 185, § 1.]

§ 3786. Lewis County.—The boundary lines of Lewis county shall be as follows, to wit: Beginning at the northwest corner of section eighteen, in township number fifteen north, range five west; thence south along the west boundary of range five west to the southwest corner of township eleven north, range five west; thence east along south boundary of township eleven north to the summit of the Cascade Range; thence northerly along said summit to the head of Nisqually River; thence westerly down the channel of said river to a point two miles north of the line between townships fourteen and fifteen north; thence west to the northwest corner of section twenty-six, in township fifteen north, range four west; thence north two miles to the northwest corner of section fourteen, in township fifteen north, range four west; thence west to place of beginning. [L. '61, p. 33; L. '67, p. 48; L. '69, p. 295; L. '79, p. 213; L. '88, p. 73; 1 H. C., §§ 18, 19.]

§ 3787. Lincoln County.—All that portion of Spokane county, state of Washington, described as follows: Beginning at the point in township number twenty-seven north, where the Colville Guide Meridian between ranges thirty-nine and forty east, Willamette Meridian, intersects the Spokane River, and running thence south along said meridian line to the township line between townships numbered twenty and twenty-one north; thence west along said township line to its intersection with the Columbia Guide Meridian between ranges numbered thirty and thirty-one east, Willamette Meridian; thence north along said meridian line to a point where the same intersects the mid-channel of the Columbia River; thence up said river in the middle of the channel thereof to the mouth of the Spokane River; thence up said Spokane River, in the middle of the channel thereof, to the place of beginning—shall be known and designated as the county of Lincoln. [L. '83, pp. 89, 95; 1 H. C., § 20.]

§ 3788. Mason County.—Mason county shall be and consist of all that territory commencing in middle of the main channel of Puget Sound where it is intersected by the mid-channel of Case's Inlet; thence westerly along the mid-channel of Puget Sound, via Dana's Passage, into Totten's Inlet, and up said inlet to its intersection by section line between sections twenty-eight and twenty-nine, in township nineteen north, range three west, of the Willamette Meridian; thence south to the southwest corner of section thirty-three in said township nineteen north, three west, thence west along the township line dividing townships eighteen and nineteen, twenty miles, to the

township line dividing ranges six and seven west, of the Willamette Meridian, which constitutes a part of the east boundary line of Chehalis county; thence north along said township line to the sixth standard parallel; thence east along said parallel line to the middle of the channel of Hood's Canal; thence southerly along said mid-channel to a point due west of the intersection of the shore line of said Hood's Canal by the township line between townships twenty-three and twenty-four; thence east along said township line to the line dividing sections three and four in said township twenty-three north, one west, of the Willamette Meridian; thence south along said section line to the head of Case's Inlet; thence south by the mid-channel of said inlet to the place of beginning. [L. '54, p. 470, defining Sawamish Co.; L. '54, p. 474; L. '60, p. 458; L. '61, pp. 30, 56; L. '63, p. 7; L. '64, p. 71, changing name to Mason Co.; L. '67, p. 45; L. '69, p. 293; L. '77, p. 406; 1 H. C., § 21.]

§ 3789. Okanogan County.—All of that part of Stevens county beginning at the intersection of the forty-ninth parallel with the range line between ranges thirty-one and thirty-two east, and from thence running in a southerly direction on said range line to the intersection of the said range line with the Columbia River, and thence down said river to the seventh standard parallel north; thence west along the seventh standard parallel north to the watershed between the waters flowing northerly and easterly into the Methow River and the waters flowing southerly and westerly into Lake Chelan; thence in a general northwesterly direction along the summit of the main divide between the waters flowing northerly and easterly into the Methow River and the waters flowing westerly and southerly into Lake Chelan and its tributaries; following the course of the center of the summit of the watershed dividing said respective waters to the point where the same intersects the east boundary of Skagit county and the summit of the Cascade Mountains; thence northerly with said summit to the forty-ninth parallel, and thence on the said parallel to the place of first beginning,—shall be and constitute the county of Okanogan. [L. '88, p. 70; 1 H. C., § 22; L. '99, p. 148, § 1.]

§ 3790. Pacific County.—Pacific county shall be and consist of all that territory commencing at the mid-channel of the Columbia River at the point of intersection of the line betwen ranges eight and nine west; thence north along said line to the north boundary of township ten north; thence east along said boundary to the line between ranges five and six west; thence north along the west boundary of range five west to the northwest corner of section eighteen in township number fifteen north, range five west; then west to the seacoast; thence southerly, including Shoalwater Bay, to Cape Disappointment; thence up mid-channel of the Columbia River to the place of beginning.

[L. '54, p. 471; L. '60, p. 429; L. '67, p. 49; L. '69, p. 296; L. '73, p. 538; L. '79, p. 213; 1 H. C., § 23.]

§ 3790–1. Pend Oreille County.—Pend Oreille county shall be and consist of all that portion of Stevens county bounded and described as follows, to wit:

Beginning at the southeast corner of section 36 in township 30 north, range 42 east of the Willamette Meridian, which is a point on the boundary line between Stevens and Spokane counties; thence running north, along the east line of said township 30 north, range 42 east of the Willamette Meridian, to the northeast corner of section 1, in said township 30; thence west to the southeast corner of section 34 in township 31 north, range 42 east of Willamette Meridian; thence north, along the west line of sections 34, 27 and 22 of said township 31, north, range 42 E. W. M.; thence north on a line from said northwest corner of section 22 in said township 31 to a point on the north line of said township 31, midway between the northeast corner and the northwest corner of said township 31, which line will be the west line of sections 15, 10 and 3 of said township 31, when the same are surveyed; thence to the center point on the south line of township 32, north range 42 east of Willamette Meridian; thence north on the north and south center line of said township 32, which line will be the west line of sections 34, 27, 22, 15, 10, and 3 of said township 32 when the same shall be surveyed, to the north line of said township 32; thence to the center point on the south line of township 33 north, range 42 east of Willamette Meridian; thence north, on the north and south center line of township 33 north of range 42 east of Willamette Meridian, which line will be the west line of sections 34, 27, 22, 15, 10 and 3 of said township 33, when the same shall be surveyed, to the north line of said township 33; thence to the center point on the south line of township 34 north, range 42 east of Willamette Meridian; thence north on the north and south center line of said township 34, which line will be the west line of sections 34, 27, 22, 15, 10 and 3 of said township 34 when the same shall be surveyed, to the north line of said township; thence to the center point on the south line of township 35 north, range 42 east of Willamette Meridian; thence north, on the north and south center line of township 35 north, range 42 east Willamette Meridian, which line will be the west line of sections 34, 27, 22, 15, 10 and 3 of said township 35 when the same shall be surveyed to the north line of said township 35; thence to the southwest corner of section 34 in township 36 north, range 42 east of Willamette Meridian; thence north, along the west line of sections 34, 27, 22, 15, 10 and 3 to the northwest corner of section 3 of said township 36; thence west along the south line of township 37 north, range 42, and township 37 north, range 41, east of the Willam-

ette Meridian, to the center point on the south line of said township 37 north, range 41 east of the Willamette Meridian, which point will be the southwest corner of section 34 in said township 37 north, range 41 east of the Willamette Meridian, when the same shall be surveyed; thence north along the north and south center line of said township 37 north, range 41 east of the Willamette Meridian, which line will be the west line of sections 34, 27, 22, 15, 10 and 3 of said township when the same shall be surveyed, to the north line of said township 37; thence east, along the south line of township 38 north, range 41 east of the Willamette Meridian to the southeast corner of said township 38 north, range 41 east of the Willamette Meridian; thence to the southwest corner of section 31 in township 38 north, range 42 east of Willamette Meridian; thence north, along the west line of said township 38, to the northwest corner of said township 38; thence east along the north line of said township 38, to the center point on the south line of township 39, north range 42 east of Willamette Meridian, which point will be the southwest corner of section 34 of said township 39 when the same shall be surveyed; thence north along the north and south center line of said township 39, which line will be the west line of sections 34, 27, 22, 15, 10 and 3 of said township 39, when the same shall be surveyed, to the north line of said township 39; thence east along the south line of township 40, north, range 42, east of Willamette Meridian to the southeast corner of said township 40; thence north, along the east line of said township 40, to the international boundary line; thence east along said international boundary line, to the intersection of the state line between the states of Washington and Idaho with said international boundary line; thence south along said state line, to the southeast corner of section 31, township 30 north, range 46 east of Willamette Meridian, being a point on the boundary line between the counties of Stevens and Spokane in said state of Washington; thence west along said boundary line between said counties of Stevens and Spokane, to said southeast corner of section 36, township 30 north, range 42 east of Willamette Meridian, the place of beginning, is hereby detached from Stevens county and created into a new county, to be known and designated as Pend Oreille county, by which name it shall have corporate succession and possess corporate powers, and be subject to the corporate liabilities conferred by law upon counties of the state of Washington. [L. '11, p. 98, § 1.]

§ 3791. Pierce County.—Pierce county shall be and consist of all that territory commencing at the mouth, mid-channel, of the Nisqually River; thence following the main channel of said river to its head; thence due east to the summit of the Cascade Mountains; thence northerly along said summit to the head of Green Water;

thence westerly down said river to its confluence with White River; thence down the main channel of White River to the intersection of the fifth standard parallel; thence west along said line to the head of Commencement Bay; thence northerly along the main channel of said bay to the south entrance of Colvo's Passage; thence down the channel of said passage to the northeast corner of section sixteen, in township number twenty-two north, range two east; thence west to the northeast corner of section sixteen, in township number twenty-two north, range one west; thence southerly along the channels of Case's Inlet and Puget Sound, to the middle of the mouth of the Nisqually River and place of beginning. [L. '55, p. 43; L. '59, p. 59; L. '67, p. 47; L. '69, p. 294; 1 H. C., § 24.]

The boundary between Pierce and King counties has been changed by annexation proceedings, under § 3812 et seq., infra.

§ 3792. San Juan County.—San Juan county shall be and consist of all that territory commencing in the Gulf of Georgia at the place where the boundary line between the United States and the British possessions deflects from the forty-ninth parallel of north latitude; thence following said boundary line through the Gulf of Georgia and Canal De Haro to the middle of the Strait of Fuca; thence easterly through Fuca Straits along the center of the main channel between Blunt's Island and San Juan and Lopez Islands to a point easterly from the west entrance of Deception Pass, until opposite the middle of the entrance to the Rosario Straits; thence northerly through the middle of Rosario Straits and through the Gulf of Georgia to the place of beginning. [L. '73, p. 461; L. '77, p. 425; 1 H. C., § 25.]

§ 3793. Skagit County.—Skagit county shall be bounded as follows, viz.: Commencing at mid-channel of the Rosario Straits where the dividing line between townships thirty and thirty-seven intersects the same; thence east on said township line to the summit of the Cascade Mountains; thence south along the summit of said mountain range to the eighth standard parallel; thence west along said parallel to the center of the channel or deepest channel of the nearest arm of Puget Sound and extending along said channel to the east entrance of Deception Pass; thence through said pass to the center of the channel of Rosario Straits; thence northerly along said channel to the place of beginning. [L. '83, p. 97; 1 H. C., § 26.]

§ 3794. Skamania County.—Skamania county shall be and consist of all that territory commencing on the Columbia River at a point where range line number four east strikes said river; thence north to the north boundary of township number ten north; thence east to a point due north of the mouth of White Salmon; thence south to the township line dividing townships six and seven; thence west to the northwest corner of Klickitat county; thence south along the west

boundary of said county to the Columbia River; thence along the mid-channel of said river to the place of beginning. [L. '54, p. 472; L. '67, p. 49; L. '69, p. 296; L. '79, p. 213; L. '81, p. 187; 1 H. C., § 27.]

§ 3795. Snohomish County.—Snohomish county shall be and consist of all that territory commencing at the southwest corner of Skagit county; thence east (along the eighth standard parallel) to the summit of the Cascade Mountains; thence southerly along the summit of said Cascade Mountains to the northeast corner of King county, it being a point due east of the northeast corner of township number twenty-six north of range four east; thence due west along the north boundary of King county to Admiralty Inlet; thence northerly along the channel of said inlet to the entrance of Port Susan, including Gedney Island; thence up the main channel of Port Susan to the mouth of the Steilaguamish River; thence northwesterly through the channel of the slough at the head of Camano Island, known as Davis Slough; thence northerly to the place of beginning. [L. '61, p. 19; L. '62, p. 107; L. '67, p. 44; L. '69, p. 291; L. '77, p. 426; 1 H. C., § 28.]

§ 3796. Spokane County.—Spokane county shall be and consist of all that territory commencing at the northeast corner of Lincoln county; thence up the mid-channel of the Spokane River to the Little Spokane River; thence north to the township line between townships twenty-nine and thirty; thence east to the boundary line between Washington and Idaho; thence south on said boundary line to the fifth standard parallel; thence west on said parallel to the Colville Guide Meridian; thence north on said meridian to the place of beginning. [L. '58, p. 51; L. '60, p. 436; L. '64, p. 70; L. '79, p. 203; 1 H. C., § 29.]

§ 3797. Stevens County.—Stevens county shall be and consist of all that territory commencing at the point of intersection of the forty-ninth parallel of latitude and the boundary line between Washington and Idaho; thence west with said parallel to the mid-channel of the Kettle River; thence down the mid-channel of the Kettle River to the Columbia River; thence down the mid-channel of said river to the Spokane River; thence up the mid-channel of the Spokane River to the Little Spokane River; thence north to the township line between townships twenty-nine and thirty; thence east to the boundary line between Washington and Idaho; thence north on said line to the forty-ninth parallel of latitude and place of beginning. [L. '63, p. 6; L. '64, p. 70; L. '67, p. 50; L. '69, p. 297; L. '79, p. 203; L. '88, p. 70; 1 H. C., § 30; L. '99, p. 26, § 1.]

See § 3790–1, Pend Oreille county, from this territory.

§ 3798. Thurston County.—Thurston county shall be and consist of all that territory commencing at the southeast corner of section

thirty-two in township number nineteen north, range four west; thence east on township line to the southeast corner of section thirty-two in township number nineteen north, range three west; thence north to the middle of the channel of Totten's Inlet; thence along said channel to the waters of Puget Sound, intersecting the line in channel of Puget Sound west of the southern portion of Squaxen Reservation; thence following said channel to the mouth of the Nisqually River; thence up mid-channel of said river to a point where it strikes the north boundary of Lewis county; thence due west to the northwest corner of section twenty-six in township number fifteen north, range four west; thence north to the southeast corner of section thirty-four in township number eighteen north, range four west; thence west on the township line to the southeast corner of section thirty-two; thence north on the section line to the southeast corner of section thirty-two in township number nineteen north, range four west, and place of beginning. [L. '60, p. 458; L. '63, p. 7; L. '67, p. 47; L. '69, p. 294; L. '73, p. 482; 1 H. C., § 31.]

§ 3799. Wahkiakum County.—Wahkiakum county shall be and consist of all that territory commencing at the southeast corner of Pacific county, on the Columbia River; thence up mid-channel of said river to the southwest corner of Cowlitz county; thence north to the northwest corner of Cowlitz county; thence west on the northern boundary of township ten north to the line between ranges eight and nine west; thence south to the place of beginning. [L. '54, p. 474; L. '67, p. 48; L. '69, p. 295; L. '79, p. 213; 1 H. C., § 32.]

§ 3800. Walla Walla County.—Walla Walla county shall be and consist of all that territory commencing at a point where the boundary line between Washington and Oregon intersects the Columbia River; thence up the main channel of the Columbia to the mouth of the Snake River; thence up the main channel of said river to where the range line between ranges thirty-six and thirty-seven intersects said point; thence south on said range line to the northwest corner of township number nine north, range thirty-seven east; thence east on the north boundary line of township number nine north, range thirty-seven east, to the northeast corner of said township; thence south on the line between ranges thirty-seven and thirty-eight east, of the Willamette Meridian, to the northeast corner of township number six north, range thirty-seven east; thence along the north boundary line of township number six north, range thirty-eight east, to the northeast corner of said township; thence due south to the line dividing the state of Washington from the state of Oregon; thence due west on said dividing line to the place of beginning. [L. '54, p. 472; L. '58, p. 51; L. '67, p. 50; L. '68, p. 60; L. '69, p. 297; L. '75, p. 133; L. '79, p. 226; 1 H. C., § 33.]

§ 3801. Whatcom County.—Whatcom county shall be and consist of all that territory commencing on the forty-ninth parallel at the point dividing the American and British possessions in the Gulf of Georgia; thence along said boundary line to where it deflects at the north entrance to the Canal De Haro; thence along the northeasterly boundary of San Juan county to the ninth standard parallel (or the northwest corner of Skagit county); thence due east along said parallel to the summit of the Cascade Mountains; thence northerly along the summit of said mountains to the forty-ninth parallel of north latitude; thence west along said parallel to the place of beginning. [L. '54, p. 475; L. '59, p. 60; L. '67, p. 44; L. '58, p. 53; L. '69, p. 291; L. '77, p. 426; 1 H. C., § 34.]

§ 3802. Whitman County.—Whitman county shall be and consist of all that territory commencing at a point where the range line between ranges thirty-eight and thirty-nine east intersects the fifth standard parallel, being the northeast corner of Adams county; thence east on said parallel to the boundary line between Idaho and Washington; thence south on said boundary line to the mid-channel of Snake River; thence down the mid-channel of Snake River to its intersection with the mid-channel of the Palouse River; thence north along the mid-channel of the Palouse River to the point where the same intersects the range line between ranges thirty-eight and thirty-nine east; thence north along said range line to the place of beginning. [L. '71, p. 134; L. '75, p. 189; L. '83, pp. 87, 93; 1 H. C., § 35.]

§ 3803. Yakima County.—Yakima county shall be and consist of all that territory commencing at the northwest corner of township number six north of range number twelve east; thence east along the north boundary of township number six north until said line intersects the range line between range twenty-three east and range twenty-four east; thence north along said range line to the Columbia River; thence north up the mid-channel of said river to the southeast corner of Kittitas county; thence along the southern boundary of Kittitas county to the summit of the Cascade Range; thence southerly to the southeast corner of Lewis county; thence west along the line of said county to the northeast corner of Skamania county; thence (along the east line of Skamania county to the line between townships six and seven north; thence east along said line) to the place of beginning. [L. '67, p. 50; L. '68, p. 60; L. '69, p. 296; L. '73, p. 571; L. '86, p. 168; 1 H. C., § 36; L. '05, p. 185, § 1.]

CHAPTER II.

Change of Boundaries.

§ 3804. Suit to Establish Boundary Lines.—Whenever the boundary line between two or more adjoining counties in this state shall be in dispute, or shall have been lost by time, accident or any other cause, or shall have become obscure or uncertain, one or more of said counties, in its corporate name, may bring and maintain suit against such other adjoining county or counties, in equity, in the superior court of this state, and such court as a court of equity shall hear and determine all such suits, and by decree establish the location of such boundary line or lines. [L. '97, p. 204, § 1.]

See Const., Art. XI, § 3; Const., Art. II, § 28, subd. 18.

§ 3805. Before Whom Tried.—Said suit shall be tried before a judge of the superior court who is not a resident of a county, a party to such suit, or of a judicial district embracing any such county. [L. '97, p. 204, § 2.]

§ 3806. Residents of Disputed Territory may Intervene.—A majority of the voters living in the territory embracing such disputed, lost, obscure or uncertain boundary line may, by petition, duly verified by one or more of them, intervene in said suit, and thereupon said court shall have jurisdiction and power, in locating and establishing said boundary line or lines, to strike or transfer from one county to another a strip or portion of such territory not exceeding two miles in width. [L. '97, p. 204, § 3.]

§ 3807. "Territory" Defined.—The term "territory," as used in this chapter, shall be held and construed to mean and include that part or section of said counties lying along said line and within one mile on either side thereof. [L. '97, p. 204, § 4.]

§ 3808. Boundaries, etc., Questions of Fact.—The boundaries of such territory, the number of voters living therein, and the sufficiency of such petition are questions of fact to be determined by said court. [L. '97, p. 204, § 5.]

§ 3809. Court may Move Boundary Line, etc.—The court shall have power to move or establish such boundary line on any government section line or subdivisional line thereof, of the section in or through which said disputed, lost, obscure or uncertain boundary line may be located, or if such boundary line is in unsurveyed territory, then the court shall have power to move or establish such boundary line so it will conform to extensions of government section lines already surveyed in that vicinity. [L. '97, p. 204, § 6.]

§ 3810. Practice.—The practice, proceedings, rules of evidence, and appeals to the supreme court as in civil actions, is preserved under this chapter. [L. '97, p. 205, § 7.]

§ 3811. Copies of Decree to be Furnished Certain Officials.—The clerk of the court in whose office a decree is entered under the provisions of this chapter, shall forthwith furnish certified copies thereof to the secretary of state, and to the auditors of the counties, which are parties to said suit; and said secretary of state, and said county auditors, shall file and record said copies of said decree in their respective offices. [L. '97, p. 205, § 8.]

§ 3812. Petition and Notices of Election—Requisites of.—Where a port, harbor, inlet, bay, or mouth of river shall be embraced within two adjoining counties, and upon the shore of said harbor, bay, inlet, or mouth of river an incorporated city shall have been or may hereafter be located, and the harbor of the said city shall lie in such two counties, and it shall become necessary, in order to place the said harbor or port within the limits of one county, or to extend the corporate limits of such city, to embrace the full extent of said shore line of such harbor, port, or bay, and the waters of said harbor, together with a strip of the adjacent and contiguous upland territory not exceeding three miles in width (to be measured back from high-water mark) and six miles in length, and not being at a greater distance in any part of said strip from the courthouse in the county seat of the county to which said territory is proposed to be annexed, as said county seat and courthouse are now situated, than the distance of ten miles—in all such cases, when a majority of the qualified electors living upon any territory in any county of this state within which said harbor shall partly be embraced shall desire to have such territory stricken from the county of which it shall then be a part, and added to and made a part of the county contiguous thereto, they may present a petition describing with proper certainty the bounds and area of such territory, with the reasons for making such application, to the board of county commissioners of the county in which such territory shall be, who shall proceed to ascertain if such petition contains the requisite number of petitioners, who shall be bona fide residents of the territory sought to be stricken off and transferred to the contiguous county, and if satisfied that the petition is signed by a majority of the bona fide electors of such territory, and that there will remain in the county from which such territory is taken more than four thousand inhabitants, the said board shall make an order that a special election shall be held within the limits of the territory described in the petition, upon a date to be named in the said order. Notices of such election shall contain a description of the territory proposed to be transferred, the names of the counties from and to which such transfer is intended to be made, and shall be posted and published as required for general elections. [L. '91, p. 330, § 1; 1 H. C., § 2467.]

See infra, § 3826 et seq., new county constructed out of old—debts and property.

§ 3813. Conduct of Election, etc.—The said election shall be conducted in all respects as general elections are conducted under the law governing general elections, so far as they may be applicable, except that there shall be triplicate returns made, one to each of the respective county auditors, another to the office of the secretary of state. The ballots used at such election shall contain the words "For transferring territory," or "Against transferring territory." The votes shall be canvassed, as by law required, within twenty days, and if three-fifths of the votes cast in said territory at such election are "For transferring territory," the territory described in such petition shall become a part of and be added to and made a part of the county contiguous thereto, and within thirty days after the canvass of the returns of the elections held under the provisions of this chapter the governor shall issue his proclamation of the change of said county lines. [L. '91, p. 331, § 2; 1 H. C., § 2468.]

§ 3814. Proceedings not to be Disturbed by Change.—All assessments and collection of taxes, and all judicial or other official proceedings commenced prior to the said governor's proclamation transferring such territory of the contiguous county, shall be continued, prosecuted, and completed in the same manner as if no such transfer had been made. [L. '91, p. 332, § 3; 1 H. C., § 2469.]

§ 3815. Certain Officers to Continue.—All township, precinct, school, and road district officers within such transferred territory shall continue to hold their respective offices within the county to which they may be transferred until their respective terms of office expire, and until their successors are elected and qualified. [L. '91, p. 332, § 4; 1 H. C., § 2470.]

§ 3816. Liability for Existing Debts.—Every county which shall thus be enlarged from territory taken from another county shall be liable for a just proportion of the existing debts of the county from which such territory shall have been stricken, which such proportion of indebtedness shall be paid by the county to which such territory shall have been transferred at such time and in such manner as may be agreed upon by the boards of county commissioners of both counties interested: Provided, that the county to which such territory may be transferred and attached shall not be liable for any portion of the debt of the county from which such territory has been taken, incurred in the purchase of any county property, or the construction of any county building then in use or under construction, which shall fall within and be retained by the county from which such territory shall have been taken. [L. '91, p. 332, § 5; 1 H. C., § 2471.]

§ 3817. Appraisement of Property and Indebtedness.—The county auditors of the respective counties interested in the transfer of territory, as in this chapter provided, are hereby constituted a board of appraisers and adjusters, to appraise the property, both real and personal, owned by the county from which such territory shall have been taken, and to adjust the indebtedness of such county with the county to which such territory shall have been transferred, in proportion to the amount of taxable property within the territory taken from the one county and transferred to the other. [L. '91, p. 332, § 6; 1 H. C., § 2472.]

§ 3818. Arbitration of Differences.—If the board of appraisers and adjusters provided for in this chapter shall not agree on any subject, value, or settlement as herein stated, they shall choose a third man from an adjoining county to settle their differences, and the decision thus arrived at shall be final. [L. '91, p. 333, § 7; 1 H. C., § 2473.]

§ 3819. Expense of Proceedings.—The expense of proceedings and election provided for in this chapter shall be paid by the county to which the territory shall be attached, after such election. [L. '91, p. 333, § 8; 1 H. C., § 2474.]

§ 3820. Transcript of Records, etc.—The county auditor of the county to which any territory may be transferred and attached under the provisions of this chapter is hereby authorized and empowered to take transcripts of all records, books, papers, etc., on file in the office of the county auditor of the county from which said territory has been transferred, which may be necessary to perfect the records of the county to which such territory may be attached, and for this purpose he shall have access to the records of the county from which such territory is stricken, free of cost. [L. '91, p. 333, § 9; 1 H. C., § 2475.]

§ 3821. Construction—Limitations.—Nothing in this chapter shall be construed to authorize the annexing of territory of one county to a neighboring county where the territory proposed to be annexed, or any part thereof, is at a greater distance than ten miles from the courthouse in the county seat of the county to which said territory is proposed to be annexed, as said courthouse is now located, nor to authorize the annexation of any territory at a greater distance than three miles from high-water mark of tide water, but such annexation shall be strictly confined within said limits. [L. '91, p. 333, § 10; 1 H. C., § 2476.]

This section was repealed by Laws of 1903, chapter 121, p. 229, § 2; but the latter act was repealed by Laws of 1905, chapter 34, p. 58, § 1.

CHAPTER III.

General Rights, Duties and Powers.

§ 3822. Powers of Counties as Bodies Corporate.—The several counties in this state shall have capacity as bodies corporate to sue and be sued in the manner prescribed by law; to purchase and hold lands within its own limits; to make such contracts, and to purchase and hold such personal property, as may be necessary to its corporate or administrative powers, and to do all other necessary acts in relation to all the property of the county. [L. '54, p. 329, § 1; Cd. '81, § 2653; 1 H. C., § 2437.]

Cited in 7 Wash. 8; 8 Wash. 237; 27 Wash. 630; 37 Wash. 16; 38 Wash. 106.

See Art. XI, § 11, of the Const., police power to enforce sanitary regulations.

See Art. XI, § 9, of the Const., limitation forbidding the release or discharge of state taxes levied for state purposes.

§ 3823. Corporate Name of County.—The name of a county, designated in the law creating it, is its corporate name, and it must be known and designated thereby in all actions and proceedings touching its corporate rights, property, and duties. [Cd. '81, § 2654; 1 H. C., § 2438.]

Cited in 8 Wash. 237.

See supra, §§ 950, 951, actions by and against.

See notes to last section.

§ 3824. Powers—How Exercised.—Its powers can only be exercised by the county commissioners, or by agents or officers acting under their authority or authority of law. [Cd. '81, § 2655; 1 H. C., § 2439.]

Cited in 22 Wash. 413.

§ 3825. Conveyance of Land to Counties.—Every conveyance of lands, or transfer of other property, made in any manner for the use of such county, shall have the same force and effect as if made to said county in its proper and corporate name. [L. '54, p. 329, § 2; Cd. '81, § 2656; 1 H. C., § 2440.]

§ 3826. Division of County, Effect of.—Whenever a new county shall be, or shall have been, organized over territory which shall have been included within the limits of any other county or counties, the new county shall be liable for a reasonable proportion of the debts of the county from which it was taken, and entitled to its proportion of the property of the county. [L. '54, p. 330, § 1; Cd. '81, § 2657; 1 H. C., § 2441.]

Cited in 72 Wash. 325, 328.

See supra, § 3804 et seq., changing county lines.

§ 3827. Apportionment of Indebtedness.—The auditor of the old county shall give the auditor of the new county reasonable notice to meet him on a certain day at the county seat of the old county, or at some other convenient place, to settle upon and fix the amount which the new county shall pay. In doing so, they shall not charge either county with any share of debts arising from the erection of public buildings, or out of the construction of roads or bridges which shall be and remain, after the division, within the limits of the other county, and of the other debts they shall apportion to each county such a share of the indebtedness as may be just and equitable, taking into consideration the population of such portion of territory so forming a part of the said counties while so united, and also the relative advantages derived from the old county organization. [L. '54, p. 330, § 2; Cd. '81, § 2658; 1 H. C., § 2442.]

Cited in 72 Wash. 325, 328.

§ 3828. Disagreement Between Auditors—Third Person.—In case the two auditors cannot agree, they shall call a third person, not a citizen of either county, or in any other manner interested, whose decision shall be binding. In case they cannot agree upon such third person, they shall each name one and decide by lot which it shall be. [L. '54, p. 330, § 3; Cd. '81, § 2659; 1 H. C., § 2443.]

§ 3829. Payment of Indebtedness.—The auditor of the county indebted upon such decision shall give to the auditor of the other county his order upon the treasurer for the amount to be paid out of the proper fund, as in other cases, and also make out a transfer of such property as shall be assigned to either county. [L. '54, p. 330, § 4; Cd. '81, § 2660; 1 H. C., § 2444.]

§ 3830. Survey of Boundary—Costs of.—All common boundaries and common corners of counties not adequately marked by natural objects or lines, or by surveys lawfully made, must be definitely established by surveys jointly made by the surveyors of all the counties affected thereby, and approved by the board of county commissioners of such counties, or by a survey made by the surveyor general, on application by the board of county commissioners of any county affected thereby. The cost of making such surveys must be apportioned equally among the counties interested, and the board of county commissioners must audit the same, and the amounts must be paid out of the general county fund. [Cd. '81, § 2661; 1 H. C., § 2445.]

§ 3831. Collection of Taxes Levied—Apportionment.—When a county is divided or the boundary is altered, all taxes levied before the division was made or boundaries changed, must be collected by the officers of the county in which the territory was situated before

the division or change. And the auditor or auditors of the county or counties so divided or having boundaries changed, shall apportion the amount of the real property taxes so collected after division or change of boundary to the old county or counties and the new county or counties, in the ratio of the assessed value of such property situated in the territory of each county or counties respectively, and the old county that may have been divided or whose boundaries may have been changed, shall retain all of the personal property taxes on the said tax-rolls, as compensation for cost of collection of the entire taxes: Provided, that in such accounting neither county shall be charged with any debt or liability then existing incurred in the purchase of any county property, or in the purchase or construction of any county buildings then in use or under construction, which shall fall within and be retained by the county: Provided further, that this shall not be construed to affect the rights of creditors: And provided further, that any such county property or buildings shall be the property of and owned by the county wherein the same is situated. In case the auditors of the interested counties are not able to agree upon the proportion to be awarded to each county, the same shall be determined by the judge of the superior court of the district in which all of the interested counties are situated, if they be in one district, and have one common judge, and if not, by the judges sitting en banc of the judicial district in which each and any of the said counties may be situated. Said auditors shall make said apportionment within sixty days after the creation of any new county or the changing of boundaries of any old county, and if they do not, within said time, agree upon said apportionment, thereafter either or any county affected may petition the judge or judges of any court given jurisdiction by this act, and upon ten days' notice to any other county affected, the same may be brought on for hearing and summarily disposed of by said judge or judges, after allowing each side an opportunity to be heard. [L. '09, p. 150, § 1. Cf. Cd. '81, § 2662; 1 H. C., § 2446.]

§ 3831-1. Buildings for County and City—Joint Construction.—Where the county seat of any county in this state shall be within the corporate limits of any incorporated city such county and city may contract one with the other for the joint purchase, acquisition, leasing, ownership, control and disposition of land and other property suitable as a site for a county courthouse and city hall and for the joint construction, ownership, control and disposition of a building or buildings thereon for the use by such county and city as a county courthouse and city hall. Any such county or city now owning a site or any interest therein, or a site with buildings thereon, may, upon such terms as shall appear fair and just to the board of county

commissioners of such county or to the city council or commission of such city, contract with reference to the joint ownership, acquisition, leasing, control, improvement and occupation of such property as herein provided. [L. '13, p. 272, § 1.]

§ 3831-2. Contract—Terms.—All contracts made in pursuance hereof shall be for such period of time and upon such terms and conditions as shall be agreed upon. Such contract shall fully set forth the amount of money to be contributed by such county and city towards the acquisition of such site and the improvement thereof and for the manner in which such property shall be improved and the character of the building or buildings to be erected thereon. Such contract may provide for the amount of money to be contributed annually by such county and city for the upkeep and maintenance of such property and the building or buildings thereon, or it may provide for the relative proportion of such expense which such county and city shall annually pay. Such contract shall specify the parts of such building or buildings which shall be set apart for the exclusive use and occupation of such county and city. [L. '13, p. 272, § 2.]

§ 3831-3. Funds.—The money to be contributed by such county or city may be raised by a sale of the bonds of such county or city, or by general taxation as now or hereafter authorized by law. Any such county or city now possessing funds or having funds available for a county courthouse or city hall from the sale of bonds or otherwise, is herewith authorized to contract for the expenditure of such funds as herein provided. [L. '13, p. 273, § 3.]

§ 3831-4. Approval of Contract.—Such contract shall be made only after a proper resolution of the board of county commissioners of such county and ordinance of such city duly passed specifically authorizing the same. Such contract when made shall be binding upon such county or city during the life of the same or until the same be modified or abrogated by mutual consent evidenced by a proper resolution and ordinance of such county and city. [L. '13, p. 273, § 4.]

§ 3831-5. Joint Armory Sites.—Any city or county in the state of Washington is hereby authorized and empowered to expend money from its or their current expense funds in payment in whole or in part for an armory site whenever the legislature of the state of Washington shall appropriate money for or authorize the construction of an armory within such city or county for use of such organization or organizations of the National Guard of Washington, as may be stationed within such city or county. [L. '13, p. 273, § 1.]

§ 3831-6. Warrants Declared Valid.—All warrants and obligations heretofore issued or incurred by any county in the state of Wash-

ington for the purchase of, or in payment for, any armory site upon which an armory building may have been constructed with the aid, in whole or in part, of appropriations of the legislature of the state of Washington, are hereby declared legal and valid. [L. '13, p. 275, § 1.]

CHAPTER IV.

Removal of County Seats.

§ 3832. Petition for.—Whenever the inhabitants of any county of this state desire to remove the county seat of the county from the place where it is fixed by law or otherwise, they shall present a petition to the board of county commissioners of their county praying such removal, and that an election be held to determine to what place such removal must be made: Provided, that the petition for removal shall set forth the names of the towns or cities to which such county seat is proposed to be removed. [L. '90, p. 318, § 1; H. C., § 2458.]

Cited in 8 Wash. 66, 483; 12 Wash. 423, 434; 81 Wash. 360.

See Const., Art. II, § 28, subd. 18, limitation on special legislation for changing county seats.

See Const., Art. XI, § 2, requiring a three-fifths vote at a general election, and prohibition against further submission until four years have intervened.

§ 3833. Question—How Submitted.—If the petition is signed by qualified electors of the county equal in number to at least one-third of all the votes cast in the county at the last preceding general election, the board must, at the next general election of county officers, submit the question of removal to the electors of the county. [L. '90, p. 318, § 2; 1 H. C., § 2459.]

Cited in 8 Wash. 66, 483; 81 Wash. 360.

§ 3834. Election—Notice of—How Conducted.—Notice of such election, clearly stating the object, shall be given, and the election must be held and conducted, and the returns made, in all respects in the manner prescribed by law in regard to elections for county officers. [L. '90, p. 318, § 3; 1 H. C., § 2460.]

Cited in 8 Wash. 483; 81 Wash. 360.

§ 3835. Manner of Voting.—In voting on the question, each elector must vote for or against the place named in the petition, plainly designating same on his ballot. [L. '90, p. 318, § 4; 1 H. C., § 2461.]

Cited in 8 Wash. 483; 81 Wash. 360.

§ 3836. Notice of Result.—When the returns have been received and compared, and the results ascertained by the board, if three-fifths of the legal votes cast by those voting on the proposition are in favor of any particular place, the board must give notice of the

result by posting notices thereof in all the election precincts in the county. [L. '90, p. 318, § 5; 1 H. C., § 2462.]

Cited in 8 Wash. 66; 16 Wash. 276; 81 Wash. 360.

§ 3837. Removal to Take Place, When.—In the notice provided for in the last section, the place selected to be the county seat of the county must be so declared from a day specified in the notice not more than ninety days after the election. After the day named in the notice the place chosen is the seat of the county; and it shall be the duty of the several county officers, whose offices are required by law to be kept at the county seat, to remove their respective offices, files, records, office fixtures, furniture, and all public property pertaining to their respective offices to said county seat. [L. '90, p. 318, § 6; 1 H. C., § 2463.]

Cited in 16 Wash. 276; 81 Wash. 360.

§ 3838. Statement of Result to be Filed—Notice.—Whenever any election has been held as provided for in the preceding sections of this chapter, the statement made by the board of county commissioners, showing the result thereof, must be deposited in the office of the county clerk, and whenever the board gives the notice prescribed by the last preceding section, they must transmit a certified copy thereof to the secretary of state. [L. '90, p. 319, § 7; 1 H. C., § 2464.]

Cited in 81 Wash. 360.

§ 3839. Failure of Election—Effect of.—When an election has been held and no one place receives three-fifths of all the votes cast at such election on such question, the former county seat shall remain the county seat, and no second election must be held within four years thereafter. [L. '90, p. 319, § 8; 1 H. C., § 2465.]

Cited in 81 Wash. 360.

§ 3840. Successive Removals, Restriction upon.—When the county seat of a county has been removed by a popular vote of the people of the county, it may be again removed, from time to time, in the manner provided by this chapter: Provided, no two elections to effect such removal be held within four years. [L. '90, p. 319, § 9; 1 H. C., § 2466.]

Cited in 5 Wash. 493; 81 Wash. 360.

CHAPTER V.

Sale or Disposal of County Property.

§ 3841. Commissioners may Sell and Convey, How.—Whenever it shall appear to the board of county commissioners of any county in this state that it is for the best interests of such county and the people thereof that any part or parcel, or portion of such part or

parcel, of the property, whether real, personal, or mixed, belonging to said county should be sold, it shall be the duty of such board, and they are hereby authorized and empowered, to sell and convey such property, under the limitations and restrictions and in the manner hereinafter provided. [L. '91, p. 145, § 1; 1 H. C., § 3059.]

Cited in 33 Wash. 575.

See infra, § 3848 et seq., sale of escheated property.

See infra, § 9272, resale of lands acquired by county at tax sale.

§ 3842. Notice of Sale—Hearing.—The board of county commissioners so desiring to sell shall first give notice of their intention to make such sale, by publication at least once a week for the term of four weeks in three different newspapers of such county, if there are three published in such county, and also place a notice in a conspicuous place in the courthouse for the same length of time. Such notice so published shall particularly designate and describe the property or portion thereof which it is proposed to sell, and shall contain full notice that the board of county commissioners will meet on a certain day and hour of such day at their usual place of meeting to hear and determine the advisability of making such sale: Provided, that such meeting shall be held at a time not more than one week after the expiration of the time hereinbefore designated for the publication of the notice of such meeting. The board shall at such meeting hear evidence and take testimony, should any be offered, as to the propriety and advisability of making such proposed sale, and any taxpayer in the county, either in person or by counsel, shall have the right to be heard for or against such proposition: Provided, that the board may limit the number to be heard to not less than three on either side, for or against the proposed sale. [L. '91, p. 145, § 2; 1 H. C., § 3060.]

§ 3843. Finding of Board, and Record Thereof.—The board shall within three days after such meeting make their findings as to the propriety and advisability of making such sale and their determination thereon, which said finding and determination shall be spread upon their minutes and be made matter of record. [L. '91, p. 146, § 3; 1 H. C., § 3061.]

§ 3844. Effect of Determination—Notice of Sale.—If the findings and determination of the board shall be against such sale, all proceedings in that regard shall then and there terminate without further action or order; but if the board shall find and determine in favor of such sale, they shall then enter an order on their minutes directing the auditor of the county to give notice that such sale will be made, and the auditor shall give such notice in the manner prescribed in section 3842, of this chapter: Provided, that such sale shall not be made in less than thirty nor more than forty-five days from the date of the

first publication of notice thereof; and such notice shall designate the hour and day when such sale shall take place. And the sale shall be made by the sheriff by public auction and at the door of the court-house of the county, to the highest and best bidder. Such sale may be postponed by the board of commissioners, but in no case for longer than thirty days. [L. '91, p. 146, § 4; 1 H. C., § 3062.]

§ 3845. Terms of Sale.—If the property to be sold be personal or mixed, or both, the sale thereof shall be for cash, in case such property be real, then the sale thereof shall be on such terms as the board may designate: Provided, that any and all deferred payments shall be secured by such good and sufficient means as may to the board seem necessary; but no conveyance of the property so sold shall be made until full payment be made therefor: Provided, that in any case where any building, bridge, or other structure belonging to any county in this state shall have been torn down or destroyed, either by accident or by order of the board of county commissioners of such county, said board of county commissioners shall by order entered on their journal, determine the advisability of selling all or any part of the material which was formerly a part of the building, bridge or other structure so destroyed or torn down, or other personal property of any kind whatever, not exceeding two hundred dollars ($200) in value, and if it be determined that such sale is advisable the board may make such sale, either with or without public notice, and in such manner as the board may determine will be most beneficial to the county. The proceeds of such sale shall be paid by the purchaser to the county treasurer who shall issue his receipt therefor to the purchaser, and which receipt shall be evidence of the title of the purchaser. [L. '15, p. 22, § 1. Cf. L. '91, p. 146, § 5; 1 H. C., § 3063.]

§ 3845½. Validating Sales of Materials.—That any sale of property made in accordance with the terms of the proviso contained in the preceding section between the date of the approval by the governor of this act and the time when this act goes into effect, which is made in all respects in accordance with the terms of this act, shall be, and the same is, hereby approved and confirmed and this section shall be printed in any revision of the code of the state of Washington. [L. '15, p. 23, § 2.]

§ 3846. Receipt of Proceeds—Conveyance.—The county treasurer shall attend at such sale and receive all proceeds of the same, and on full and entire payment he shall make, execute, and deliver to the purchaser of the property so sold a deed for the same, which deed shall fully set out all the proceedings had in relation to the said sale of the property therein described, and shall be attested by the county auditor, and when so executed and delivered it shall vest all the title

which the county had in the property so sold in the grantee. [L. '91, p. 147, § 6; 1 H. C., § 3064.]

§ 3847. Application of Various Provisions.—The provisions of this chapter shall be held to apply to all property now owned by any county in this state and to all property hereafter acquired by any county. [L. '91, p. 147, § 7; 1 H. C., § 3065.]

§ 3848. Sale of Escheated Property.—The county commissioners of the several counties of this state be, and they are hereby authorized and empowered to sell and convey at public sale, for cash or on credit, in such manner as they may deem advantageous, any real estate or other property, which may have escheated to the county by operation of law. [L. '83, p. '57, § 1.]

This and the two following sections appear to be impliedly repealed by §§ 1358, 1362, supra, at least in so far as it relates to real estate, which now escheats to the state, under § 1356.

See supra, § 1364, subd. 8, and § 1341.

See infra, § 6610, state board of land commissioners to accept and control lands escheated to state.

See infra, § 6635–4, agent to handle escheated lands.

See infra, § 7141 et seq., disposition of lost or unclaimed property.

See infra, §§ 7146, 7147, disposition of unclaimed moneys.

See infra, § 7515–10, escheats of absentees.

§ 3849. Time, When to be Made.—No such sale shall be made before the expiration of five years after the property has vested in the county. [L. '83, p. 57, § 2.]

See notes to last section.

§ 3850. Conveyance, How Made.—In case of a sale, a conveyance shall be executed to the purchaser, by the chairman of the board of county commissioners, and the county auditor, attested by his seal of office. Such conveyance shall refer to the order of the board directing such sale and shall be deemed to convey all the estate, right, title and interest of the county in and to the property sold. [L. '83, p. 57, § 3.]

§ 3851. Leases of County Property.—The board of county commissioners of any county in this state, wherever it shall appear that it is for the best interests of such county and the people thereof, that any part, parcel or portion of the real property and its appurtenances to said county belonging, should be leased for a year or term of years, are hereby authorized and empowered to lease such property under the limitations and restrictions and in the manner hereinafter provided. [L. '01, p. 183, § 1.]

See infra, § 9274, lease of mining claim acquired at tax sale.

§ 3852. Application in Writing—Deposit—Forfeiture.—Any person or persons desiring to lease any of such lands shall make application in writing to the board of county commissioners of such

county; each application shall be accompanied with a deposit of not less than ten dollars or such other sum as the county commissioners may require, not to exceed twenty-five dollars; such deposit shall be in the form of a certified check or certificate of deposit on some bank in said county, or may be paid in cash. In case the lands so applied for shall be leased at the time they are offered, then such deposit shall be returned to such applicant by the board of county commissioners, but if the party making such application shall fail or refuse to comply with the terms of his application and to execute such lease, then such deposit shall be forfeited to the county, and the board of county commissioners shall pay the said deposit over to the county treasurer, who shall place the same to the credit of the current expense fund of the county. [L. '01, p. 183, § 2.]

§ 3853. Notice of Intention to Lease—Contents.—When, in the judgment of the board of county commissioners, it is found desirable to lease the land applied for, they shall first give notice of their intention to make such lease by publishing a notice in a newspaper of general circulation within the county where such property is situated, for at least once a week for the term of three weeks, and shall also post a notice of such intention in a conspicuous place in the courthouse in said county for the same length of time; such notice so published and posted shall designate and describe the property which is proposed to be leased, together with the improvements thereon and appurtenances thereto, and shall contain a notice that the board of county commisisoners will meet at the county courthouse on a day and at an hour, in such notice designated, for the purpose of leasing said property which day and hour for such leasing shall be at a time not more than a week after the expiration of the time required by this act for the publication of the notice of such meeting. [L. '01, p. 183, § 3.]

§ 3854. Lease—Term.—At the day and hour designated in such notice or at any subsequent time to which such meeting may be adjourned by said board of county commissioners, but not more than thirty days after the day and hour designated for the meeting in said published notice, the board of county commissioners may, at their discretion, lease the property in such notice described for a term of years and upon such terms and conditions as to the said board of county commissioners shall seem just and right in the premises; but for no longer term in any one instance than ten (10) years, and no renewal of a lease once executed and delivered shall be had, except by a re-leasing and reletting of said property according to the terms and conditions of this act: Provided, that where a county owns property within the corporate limits of any city or town suitable for municipal purposes, or for commercial buildings, or owns property

suitable for manufacturing or industrial purposes, the board of county commissioners may lease same for said purposes for any period not to exceed thirty-five years. Where property is leased for municipal purposes or for commercial buildings or manufacturing or industrial purposes the lessee therein shall prior to the execution of such lease file with said board of county commissioners general plans and specifications of the building or buildings to be erected thereon for such purposes. All leases when executed shall provide that the same shall be canceled by failure of the lessee to construct such building or buildings or other improvements for such purposes within two years from date of such lease, and in case of failure so to do the lease and all improvements thereon, including the rentals paid, shall thereby be forfeited to the county. No change or modification of said plans shall be made unless same be first approved by the board of county commissioners. If at any time during the life of said lease the lessee shall fail to use the same for the purposes leased, without first obtaining permission in writing from the board of county commissioners so to do, said lease shall be forfeited. Any lease made for a longer period than ten (10) years shall contain provisions requiring the lessee to permit the rentals for every five-year period thereafter, or part thereof, at the commencement of such period, to be readjusted and fixed by the board of county commissioners. In the event that the lessee and said board of county commissioners cannot agree upon the rentals for said five-year period, the lessee shall submit to have said disputed rentals for said subsequent period adjusted by arbitration. The lessee shall pick one arbitrator and the board of county commissioners one, and the two so chosen shall select a third. No board of arbitrators shall reduce the rentals below the sum fixed or agreed upon for the last preceding period. All buildings, factories or other improvements made upon property leased under this proviso shall belong to and become property of such county, unless otherwise stipulated, at the expiration of the lease. No lease so made shall be assigned without such assignment being first authorized by resolution of said board of county commissioners and the consent in writing of at least two (2) members of said board indorsed on such leases and all leases when drawn shall contain this provision. [L. '13, p. 552, § 1. Cf. L. '01, p. 184, § 4; L. '03, p. 70, § 1.]

"Act" in this section, refers to §§ 3851–3857.

§ 3855. Objections must be in Writing—Publication.—Any person may appear at such meeting of the county commissioners, designated in said notice, or any adjourned meeting thereof, and make objection to the leasing of such property, which objection shall be stated in writing, and in passing upon such objection the board of county com-

missioners shall, in writing, briefly give their reasons for accepting or rejecting the same, and such objections, and the reasons for accepting or refusing the same shall, by said board of county commissioners, be published in the next subsequent weekly issue of the newspaper in which said notice of hearing was published. [L. '01, p. 184, § 5.]

§ 3856. Applicable to all Property—Highest Bidder.—The provisions of this act shall be held to apply to all property now owned by any county in this state and to all property hereafter acquired by any county in this state, and any lease executed under this act, shall be considered as a vested and binding contract between the county owning such property and the lessee in said lease named, and no lease shall be made except to the highest responsible bidder for the rental of such county property at the time of hearing set forth in the notice of intention to lease. [L. '01, p. 185, § 6.]

"Act" in this section, refers to §§ 3851–3857.

§ 3857. Lease to be in Duplicate—Contents.—Upon the decision of the board of county commissioners to lease the lands applied for, a lease shall be executed in duplicate to the lessee by the chairman of the board of county commissioners and the county auditor attested by his seal of office which lease shall also be signed by the lessee; such lease shall refer to the order of the board directing such lease, with a description of the lands conveyed, the periods of payment, and the amounts to be paid for each period. [L. '01, p. 185, § 7.]

§ 3858. County Dedication of Lands for Streets and Alleys.—That the boards of county commissioners of the several counties of this state be and they are hereby authorized and empowered to dedicate to public use land for public streets and alleys in any incorporated city or town within their respective counties through lands belonging to the several counties of this state. [L. '03, p. 136, § 1.]

§ 3859. Recording Copy of Order.—That whenever the board of county commissioners of any county in this state shall deem it for the best interests of the public that any land belonging to the said county in any incorporated city or town thereof should be dedicated to the public use for streets or alleys, they shall make and enter an order upon their records, designating the land so dedicated, and shall cause a certified copy of such order and dedication so entered upon their records to be recorded in the auditor's office of the county in which the land is situated, and from and after the entry of such order of dedication and the recording thereof as herein provided, such lands shall be thereby dedicated to the public use. [L. '03, p. 136, § 2.]

CHAPTER VI.

County Officers, Terms of Office, Courtrooms, etc.

§ 3860. Tenure of Office.—The official term of district, county, and precinct officers shall be for the term of two years, or until their successors are duly elected and qualified; and their term of office shall begin the first [second] Monday in January next, following the day of election, and continue two years, or until their successors are duly elected and qualified. [L. '67, p. 7, § 4; L. '71, p. 35, § 3; L. '77, p. 330, § 2; Cd. '81, § 3153; L. '86, p. 101, § 2; 1 H. C., § 324.]

See Const., Art. XXVII, §§ 1, 14.

See infra, § 3869 et seq., terms of county commissioners.

§ 3861. Officer must Complete Business to End of Term.—It shall be the duty of all officers in this act named to complete the business of their respective offices, to the time of the expiration of their respective terms, and in case any officer, at the close of his term, shall leave to his successor official labor to be performed which it was his duty to perform, he shall be liable to his successor for the full value of such services. [L. '90, p. 315, § 43; 1 H. C., § 325.]

See infra, § 4006.

See infra, § 8763, validating sheriff's deeds.

§ 3862. Offices for County Officials.—The boards of county commissioners of the several counties of the state shall provide a suitable furnished office for each of the county officers in their respective courthouses. [Cf. L. '54, p. 422, § 15; L. '69, p. 306, § 15; Cd. '81, § 2677; 1 H. C., § 282; L. '93, p. 185, § 1.]

§ 3863. Closed Saturday Afternoon — Summer Months.—All elective and appointive officers of counties of the first class and all elective and appointive officers in cities of the first class are permitted to close any branch or branches of their respective offices at 1 o'clock P. M. on Saturday of each week, during the months of June, July, August and September. [L. '09, p. 638, § 1.]

§ 3864. County to Furnish Courthouse and Incidental Expenses.—The county in which the court is held shall furnish the courthouse, a jail or suitable place for confining prisoners, books for record, stationery, lights, wood, attendance, and other incidental expenses of the courthouse and court. [L. '63, p. 425, § 11; L. '69, p. 421, § 10; Cd. '81, § 2111; 1 H. C., § 3055a.]

§ 3865. To Provide Suitable Place for Holding Court.—Until proper buildings are erected at a place fixed upon for the seat of justice in any county, it shall be the duty of the county commissioners to provide some suitable place for holding the courts of such county. [L. '54, p. 423, § 23; Cd. '81, § 2688; 1 H. C., § 285.]

CHAPTER VII.

County Commissioners.

§ 3867. Election—Quorum.—There shall be established in each organized county in this state a board of county commissioners, to consist of three qualified electors, to be elected by the qualified electors at the general election in eighteen hundred and eighty-two and biennially thereafter [as hereinafter provided], and two of said board of commissioners shall constitute a quorum to do business. [Cf. L. '54, p. 420, § 1; Cd. '81, § 2663; 1 H. C., § 265.]

Cited in 77 Wash. 503.

See Const., Art. XI, § 5, creation of.

See infra, § 4032 et seq., compensation of county commissioners. The words "biennially thereafter" should read "and thereafter as hereinafter provided" to conform to the following sections.

§ 3868. Division into Commissioners' Districts.—The board of county commissioners of each county in this state, heretofore divided and numbered as provided by law into three districts in such manner so as to leave one or more fractional voting precincts in any of said districts, shall, at their first session after this act goes into effect, or within three months thereafter, redistrict all of such commissioners' districts in the manner provided herein. Such districts shall comprise as nearly as possible one-third of the population of the county: Provided, however, that the territory comprised in any voting precincts of such districts shall remain compact, and shall not be divided by the lines of said districts. The lines of the districts provided for by this section shall not be changed oftener than once in four years and only when a full board of commissioners is present. Counties hereafter organized shall be divided into districts in the manner provided herein, and shall be designated and known as districts numbered 1, 2 and 3. [L. '90, p. 317, §§ 1, 2; 1 H. C., § 266; L. '93, p. 63, § 2.]

§ 3869. Terms of Office.—The county commissioners to be elected at the next general election after the taking effect of this act, in each of the organized counties of this state, shall be elected for the following terms of office, to wit: The commissioner elected from district number 1 shall serve four years, and the commissioners elected from districts number 2 and 3 shall serve two years each. [L. '91, p. 116, §§ 1, 2; 1 H. C., § 267.]

Cited in 9 Wash. 531; 68 Wash. 18; 81 Wash. 19.

"This act" embraces the above and the next five succeeding sections.

§ 3870. In Districts Numbered 2 and 3.—At the next general election thereafter there shall be a commissioner elected from the districts number 2 to serve four years, and a commissioner elected

from districts number 3 to serve two years. [L. '91, p. 116, § 3; 1 H. C., § 269.]

Cited in 9 Wash. 531.

§ 3871. In Districts Numbered 3 and 1.—At the next general election thereafter there shall be a commissioner elected from the districts number 3 to serve four years, and a commissioner elected from districts number 1 to serve two years. [L. '91, p. 117, § 4; 1 H. C., § 270.]

Cited in 9 Wash. 531.

§ 3872. Rule of Succession.—The terms of office of county commissioners thereafter elected shall be in accordance with the above provisions, the commissioner elected to serve the long term to be elected successively from the three districts in each county in their numerical order, commencing with district number 1. [L. '91, p. 117, § 5; 1 H. C., § 271.]

Cited in 81 Wash. 19.

§ 3873. Elected by Electors of Entire County.—One county commissioner shall be elected from among the qualified electors of each of said districts by the qualified electors of the county, and the person receiving the highest number of votes for the office of commissioner for the district in which he resides shall be declared duly elected from that district. [L. '91, p. 117, § 6; 1 H. C., § 272; L. '93, p. 62, § 1; L. '95, p. 267, § 1.]

§ 3874. Nominations by Districts.—The qualified electors of each county commissioner district, and they only, shall nominate from among their own number, candidates for the office of county commissioner of such commissioner district to be voted for at the following general biennial election. Such candidates shall be nominated in the same manner as candidates for other county and district offices are nominated, except as above provided. [L. '09, p. 845, § 1.]

§ 3875. Term of Appointee.—Whenever it shall become necessary to elect or appoint a commissioner to fill any vacancy occasioned by death, resignation, or otherwise, the person so elected or appointed shall hold his office for the unexpired term for which his predecessor was elected, and until his successor is elected and qualified. [Cf. L. '54, p. 420, § 2; Cd. '81, § 2665; 1 H. C., § 275.]

See Const., Art. XI, § 6, as to filling vacancies.

§ 3876. Oath.—Before any commissioner shall enter upon the duties of his office, he shall take and subscribe an oath or affirmation before some person authorized to administer the same, faithfully to discharge the duties of a commissioner of the county in which he resides, and deposit the same with the clerk of the board of county

commissioners of his county, to be by him filed in his office: [L. '54, p. 420, § 4; Cd. '81, § 2666; 1 H. C., § 276.]

§ 3877. Bond of Commissioners.—Each county commissioner in this state, before he enters upon the duties of his office, shall give a bond to the county, with at least two sureties thereon, in the amount hereinafter specified; which bond and the sureties thereon shall be approved by the clerk of the superior court of the proper county. The said bond, when so approved, shall be filed and recorded by said clerk in his office. Said bond shall be payable to the county, and the same shall be conditioned that such commissioner shall well and faithfully discharge the duties of his office, and not approve, audit or order paid any illegal, unwarranted or unjust claim against the county for personal services: Provided, that the county commissioners heretofore elected, and who shall have already entered upon the duties of their office, shall have ninety days from and after the day this act goes into effect in which to make and file their bonds. The amount for which said bonds shall be given is as follows:—

In counties of the first, second, third, fourth and fifth classes, twenty thousand dollars ($20,000);

In counties of the sixth, seventh, eighth, ninth and tenth classes, fifteen thousand dollars ($15,000);

In counties of the eleventh, twelfth, thirteenth, fourteenth and fifteenth classes, ten thousand dollars ($10,000);

In counties of the sixteenth, seventeenth, eighteenth, nineteenth and twentieth classes, seven thousand five hundred dollars ($7,500);

In counties of the twenty-first, twenty-second, twenty-third and twenty-fourth classes, five thousand dollars ($5,000);

In counties of the twenty-fifth, twenty-sixth, twenty-seventh, twenty-eighth and twenty-ninth classes, two thousand dollars ($2,000). [L. '93, p. 177, § 7.]

§ 3878. Quarterly Sessions.—The board of county commissioners in the several counties in this state shall hold regular sessions at the seat of justice of their respective counties, commencing on the first Mondays of January, April, July and October, at each of which they may transact any business which may be required or permitted by law, and may adjourn from time to time as they may deem expedient or desirable in order to properly transact the business of such county. [Cf. L. '54, p. 420, § 5; Cd. '81, § 2667; 1 H. C., § 277; L. '93, p. 252, § 1.]

See infra, § 3930, duty to count money in treasury quarterly.

The next section was enacted one day prior to the above section.

§ 3879. Limitation of Time of Sessions.—The board of county commissioners in the several counties in this state may hold regular sessions at the county seat of their respective counties commencing

on the first Mondays of February, May, August and November, at each of which they may transact any business which may be required by law, but counties so desiring may omit the February and August terms: Provided always, that the number of days (on) which the county commissioners may hold regular sessions in counties of the fourteenth, fifteenth, sixteenth, seventeenth, eighteenth and nineteenth classes shall not exceed thirty days in the aggregate in any one year: And provided always, that the number of days (on) which the county commissioners may hold regular sessions in counties of the twentieth, twenty-first, twenty-second, twenty-third and twenty-fourth classes shall not exceed twenty-five days in the aggregate in any one year: And provided always, that the number of days which the county commissioners may hold regular sessions in counties of the twenty-fifth, twenty-sixth, twenty-seventeenth, twenty-eighth and twenty-ninth classes shall not exceed twenty days in the aggregate in any one year. [L. '93, p. 175, § 1.]

§ 3880. Special Sessions.—The said board of county commissioners are hereby authorized to hold extra sessions when the business of the county may require the same, which extra sessions may be by adjourned terms from any regular term, the order therefor being entered on record in the minutes of such regular term of which it is a continuation, or by ten days' notice from two of the commissioners to the third, or by the written consent of the three commissioners filed with the county auditor: Provided, that due notice be given of the time of holding the term and the business to be transacted. [Cf. L. '54, p. 420, § 7; L. '69, p. 304, § 7; Cd. '81, § 2669; 1 H. C., § 279.]

This section is not in harmony with the next section.

§ 3881. Extra Sessions.—The county commissioners in any and all of the classes of counties may hold extra sessions when the business of the county requires it, but shall receive no pay or compensation therefor, unless ordered as hereinafter provided by the superior court holding terms in the county where such extra sessions are held: Provided, that the provisions of this section shall not be construed as affecting the present law regarding the meeting of the board of commissioners for the purpose of equalizing the taxes of the various counties in this state. [L. '93, p. 175, § 2.]

See last section and notes. "Section" interpolated for "act."

§ 3882. Chairman of Board—Powers of.—The county commissioners aforesaid, at their first session after the biennial election, shall elect one of their number to preside at the meetings of the board, and he shall sign all documents requiring the signature of the board, and the signature of such person as chairman of the board of county commissioners shall be as legal and binding as if the whole board had affixed their names: Provided, that in case such chairman shall be

absent at any meeting of the board, all documents requiring the signature of the board shall be signed by both members present. [Cf. L. '54, p. 421, § 14; Cd. '81, § 2676; 1 H. C., § 273.]

§ 3883. Clerk of the Board.—The auditor of the county shall be the clerk of the board of county commissioners, and attend their meetings and keep a record of their proceedings. [Cf. L. '54, p. 420, § 6; Cd. '81, § 2668; 1 H. C., § 278.]

Cited in 28 Wash. 83.

§ 3884–1. Compensation for Extra Services—Allowance by Court. Whenever a member of the board of county commissioners of any county shall have a claim for compensation for per diem and expenses for attendance upon any special or extra session of the board of county commissioners of which he is a member or a claim for compensation for extra services or expenses incurred as such commissioner such claim shall be verified by him and after being approved by a majority of the board of county commissioners of such county shall be filed with the clerk of the superior court and be approved by the superior judge of such county or any superior judge holding court in such county. If the judge so approve it or any part thereof the same shall be certified by the clerk under the seal of his office and be returned to the county auditor who shall draw a warrant therefor: Provided, the superior judge may make such investigation as he shall deem necessary to determine the correctness of such claim and may, after such investigation, approve or reject any part of such claim: Provided further, the superior court shall not be required oftener than once in each month to pass upon any such claims and the court may fix a time in each month by general order filed with the clerk of the board of county commissioners on or before which such claims must be filed with the clerk of the superior court. [L. '11, p. 337, § 1.]

§ 3888. Mileage, How Computed.—County commissioners in counties of the eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth. twentieth, twenty-first, twenty-second, twenty-third, twenty-fourth, twenty-fifth, twenty-sixth, twenty-seventh, twenty-eighth and twenty-ninth classes, may charge and receive mileage as hereinafter stated and not otherwise.

First: For attendance on any regular session of the board of county commissioners, ten cents per mile for each mile traveled in going to and returning from the county seat:

Provided, that only one such trip shall be charged for at each regular session.

Second: For attendance upon extra sessions of said board, and for other necessary traveling on county business, such mileage not exceeding ten cents per mile for each mile traveled, as may be allowed

or ordered by the superior court of the proper county under the provisions of this act. [L. '93, p. 177, § 8; L. '05, p. 230, § 1.]

§ 3889. Postponement of Action, When.—When two only of the members shall be present at the meeting of the board, and a division shall take place on any question, the matter under consideration shall be postponed to the next subsequent meeting. [L. '54, p. 421, § 9; L. '69, p. 304, § 9; Cd. '81, § 2671; 1 H. C., § 280.]

§ 3890. General Powers and Duties.—The several boards of county commissioners are authorized and required,—

1. To provide for the erection and repairing of courthouses, jails, and other necessary public buildings for the use of the county;

2. To lay out, discontinue, or alter county roads and highways within their respective counties, and do all other necessary acts relating thereto according to law, except within the limits of incorporated cities and towns, where, by the terms of the acts of incorporation, jurisdiction over the roads in the limits of said incorporations is vested in the corporate authorities thereof;

3. To license and fix the rates of ferriage; to grant grocery and other licenses authorized by law to be by them granted;

4. To fix the amount of county taxes to be assessed according to the provisions of law, and cause the same to be collected as prescribed by law;

5. To allow all accounts legally chargeable against such county not otherwise provided for, and to audit the accounts of all officers having the care, management, collection, or disbursement of any money belonging to the county or appropriated to its benefit;

6. To have the care of the county property and the management of the county funds and business, and in the name of the county to prosecute and defend all actions for and against the county, and such other powers as are or may be conferred by law. [Cf. L. '54, p. 421, § 11; L. '67, p. 51, § 11; L. '69, p. 305, § 11; Cd. '81, § 2673; 1 H. C., § 281.]

Cited in 1 Wash. 536; 2 Wash. 32, 126; 17 Wash. 639; 19 Wash. 574; 21 Wash. 649, 650; 22 Wash. 413; 25 Wash. 205; 27 Wash. 630; 36 Wash. 652; 38 Wash. 106, 107, 108; 39 Wash. 694; 40 Wash. 504, 547; 45 Wash. 592; 46 Wash. 272; 47 Wash. 358, 359; 50 Wash. 357; 54 Wash. 590; 57 Wash. 622; 64 Wash. 235; 68 Wash. 183; 76 Wash. 581.

§ 3890½. Funds from Forest Reserves—Expenditure for Schools and Roads.—County commissioners of the respective counties to which the money [received from the federal government from forest reserves] is distributed are hereby authorized and directed to expend said money for the benefit of the public schools and public roads thereof, and not otherwise. [L. '07, p. 406, § 2.]

Duty of state treasurer to distribute such money to the counties within the forest reserves: See infra, § 9026a.

§ 3891. Commissioners not to be Concerned in Contracts.—No county commissioner shall, directly or indirectly, be concerned in any contract wherein the county is a party, under the penalty of two hundred dollars, to be recovered by an action at law for the use of the county, and such commission [commissioner] shall forfeit any compensation he must receive on such contract. [Cf. L. '54, p. 423, § 21; Cd. '81, § 2686; 1 H. C., § 286; L. '95, p. 190, § 1.]

§ 3892. Power to Fill Vacancies.—In all cases of vacancy occurring in any of the county offices in this state, either by death, resignation, or otherwise, it shall be the duty of the county commissioners of the county in which such vacancy occurs, at the first session thereafter, or as soon thereafter as practicable, to appoint a suitable elector of the proper county to fill such vacancy; such officer to remain in or hold the office to which he may have been appointed until the first general election after his appointment. [L. '67, p. 57, § 28; Cd. '81, § 2689; 1 H. C., § 287.]

Cited in 37 Wash. 273.
See next section.
See Const., Art. XI, § 6, power to fill vacancies.

§ 3893. Vacancy in Precinct Offices.—Whenever a vacancy occurs in any county or precinct office, except when otherwise provided by law, it shall be filled by appointment by the board of county commissioners at the first regular or special session of their board after that vacancy occurs: Provided, that if the commissioners be not apprised of the vacancy at their first session after the vacancy occurs, it may be filled at any subsequent session of their board. [Cd. '81, § 3065.]

See Const., Art. XI, § 6.
This section seems to govern precinct officers. See last section for county offices.

§ 3894. May Compound Debt Due County, When.—The county commissioners of their respective counties shall have power to compound and release in whole or in part any debt due to their county, when in their opinion the interest of their county will not be prejudiced thereby, except in cases where they or either of them are personally interested. [Cf. L. '54, p. 422, § 20; Cd. '81, § 2681; 1 H. C., § 289.]

Cited in 1 Wash. 537; 3 Wash. 498; 22 Wash. 698.
See Const., Art. XI, § 9, no commutation authorized for state taxes.

§ 3895. May Order Convicts to Work.—The county commissioners in their respective counties may order all persons who shall be confined in the county jails of their respective counties, convicted of any crime or misdemeanor, to work on the roads of their respective counties, under the direction of the sheriff; but such convicts shall not be

put to labor at a greater distance from the jail or place of confinement than five miles: Provided, that if any such convict shall refuse to perform such labor he shall be kept in close confinement on bread and water. The sheriff having the custody of such convicted persons may, to secure them from escape, attach a ball and chain to said convicts. [L. '67, p. 56, § 24; Cd. '81, § 2685; 1 H. C., § 290.]

This section is in part superseded by the next two sections: See, also, § 2279, supra.

See supra, §§ 1933, 2209, fines how worked out.

See infra, § 8494, prisoners compelled to work when and how.

§ 3896. Same.—The board of county commissioners of any county, may in their discretion, order the sheriff to cause all persons under sentence of imprisonment in the county jail, except females and persons incapable of performing manual labor, to be put to work and perform labor on the public roads and highways within such counties. [L. '07, p. 55, § 1.]

Cited in 60 Wash. 629.

As to repeal of this section, see § 2304, the force of which is doubtful. See note to preceding section.

See § 2279, supra.

§ 3897. Supervision of Work of Convicts.—All work done by prisoners as herein provided shall be under the direction of the county commissioners: Provided, that when the work is done on any of the roads or highways leading to and within the corporate limits of any incorporated city or town it shall be done according to the directions of the proper authorities of such city or town. [L. '07, p. 55, § 2.]

As to repeal of this section, see § 2304, the force of which is doubtful. See note to § 3895.

§ 3898. Transcribing Mutilated Records.—It shall be the duty of the county commissioners of any county in this state, when any of the county records of their county become so mutilated that the handling of the same becomes dangerous to the public safety of said records, and in the judgment of said county commissioners it may become necessary to order the transcribing of said records at a sum not exceeding eight cents per folio of one hundred words, in books to be provided for that purpose by said county. [L. '93, p. 23, § 1.]

§ 3899. Auditor to Certify.—The books containing the records so transcribed shall be certified by the county auditor under whose direction said transcribing was done, as being a true copy of the original book in the same number and class. [L. '93, p. 24, § 2.]

§ 3900. Original Records Preserved.—All the original record books shall after the transcribing thereof be filed away in the auditor's office and only be used in case of contest on the correctness of the transcribed records. [L. '93, p. 24, § 3.]

§ 3901. Legalizing Former Transcripts.—All the records heretofore transcribed by order of any board of county commissioners in this state shall be and are hereby declared the legal records of said county the same as if transcribed under the provisions of sections 3898–3900. [L. '93, p. 24, § 4.]

§ 3902. Seal of Commissioners — Evidence. — The county commissioners of each county shall have and use a seal for the purpose of sealing their proceedings, and copies of the same, when signed and sealed by the said county commissioners and attested by their clerk, shall be admitted as evidence of such proceedings in the trial of any cause in any court in this state; and until such seal shall be provided, the private seal of the chairman of such board of county commissioners shall be adopted as a seal. [Cf. L. '54, p. 421, § 10; Cd. '81, § 2672; 1 H. C., § 294.]

See infra, § 3934, seal of the county commissioners' court.

§ 3903. Examination of Accounts, etc.—At the July session, the board of county commissioners shall examine and compare the accounts and statements of the county auditor and county treasurer, aside from the regular settlement with such treasurer, and shall enter upon their record a summarized statement of the receipts and expenditures of the preceding year. At the January, April, July and October sessions, the board of county commissioners, together with the auditor, shall count the funds in the county treasury, and ascertain whether it contains the proper amount of funds. [Cf. L. '54, p. 422, § 16; Cd. '81, § 2678; 1 H. C., § 295; L. '93, p. 252, § 2.]

§ 3904. Power to Administer Oaths. — The county commissioners are authorized and empowered to administer all oaths or affirmations necessary in discharging the duties of their office, and have the same power as justices of the peace to commit for contempt any witness refusing to testify before them. [Cf. L. '54, p. 423, § 22; L. '69, p. 308, § 26; Cd. 581, § 2687; 1 H. C., § 296.]

§ 3905. Record of Proceedings.—The board of county commissioners shall cause to be recorded, in a book to be kept for that purpose, all their proceedings and determinations touching all matters properly cognizable before them; and all books, accounts, vouchers, papers, and accounts touching the business or property of the county shall be carefuly kept by the clerk, and open to the inspection of every person. [L. '54, p. 421, § 13; Cd. '81, § 2675; 1 H. C., § 297.]

Cited in 22 Wash. 346; 23 Wash. 130; 28 Wash. 83.

§ 3906. Reduction of County Expenses.—It shall be the duty of every board of county commissioners to reduce the expenditures of their respective counties to the lowest practicable sum consistent with law. [L. '93, p. 427, § 1.]

§ 3907. Limitations on. — No deputies or assistance of any kind shall be allowed to any officer or person receiving compensation from a county unless the same is necessary. No higher compensation shall be allowed for any deputy of, or assistance for, such officer or person than is necessary. No other expenditure for or connected with such officer or person, or his office or employment, or the performance of his official duties, or any of them, than shall be necessary. In case the payment of any fee or fees is required for the performance of any duty of such officer or person, the total amount allowed and expended by any board of county commissioners for, on account of, or connected with such person or officer, his office or employment, and the performance of the duties thereof, including the salary allowed by law to such officer or person, shall not exceed the amount of the legal fees collected on account of such officer or employment and the performance of the duties thereof: Provided, however, that the provisions of this section shall not apply to the office of county attorney: Provided further, that the fees properly chargeable to counties shall be included in the total of the earnings of such officer. [L. '93, p. 427, § 2.]

See note to § 6535, infra.

§ 3908. Employment of Special Attorneys. — It shall be unlawful for any board of county commissioners in any county of this state to employ, contract with or pay any special attorney or counsel to perform any duty which the attorney general or any prosecuting attorney is authorized or required by law to perform, unless the contract of employment of said special attorney or counsel shall have been first reduced to writing and approved by the superior judge of said county or a majority of the judges thereof, in writing indorsed thereon: Provided, this section shall not prohibit the appointment of deputy prosecuting attorneys in the manner provided by law. [L. '05, p. 50, § 1.]

Power to employ attorneys, see supra, § 3890, and infra, § 3961, and note.

§ 3909. Appeals—When and How Taken.—Any person may appeal from any decision or order of the board of county commissioners to the superior court of the proper county. Such appeal shall be taken within twenty days after such decision or order, and the party appealing shall within said time serve notice on the county commissioners that the appeal is taken, which notice shall be in writing and shall be delivered to at least one of the county commissioners personally, or left with the clerk of the board, the party appealing shall, within ten days after the service of the notice of appeal give a bond to the county with one or more sureties, to be approved by the clerk of the board, conditional for the payment of all costs which shall be adjudged against him on such appeal in the superior court. The prac-

tice regulating appeals from and writs of certiorari to justice's courts shall, so far as the same may be applicable, govern in matters of appeal from the decision or order of the board of county commissioners. Nothing herein contained shall be so construed as to prevent a party having a claim against any county in this state from enforcing the collection thereof by civil action in any court of competent jurisdiction, after the same may have been presented and disallowed in whole or in part by the board of county commissioners of the proper county: Provided, that such action be brought within three months after such claim has been acted upon by such board. [Cf. L. '54, p. 423, § 24; L. '79, pp. 143, 144; Cd. '81, § 2695; 1 H. C., § 298; L. '93, p. 291, § 1.]

Cited in 4 Wash. 101; 5 Wash. 713; 8 Wash. 237; 11 Wash. 578; 12 Wash. 446; 14 Wash. 270; 19 Wash. 574; 21 Wash. 649; 23 Wash. 128; 25 Wash. 204; 43 Wash. 139; 54 Wash. 353; 67 Wash. 314; 72 Wash. 253.

See supra, § 164, limitations.
See supra, § 1001 et seq., certiorari or writ of review.
See supra, § 1013, mandamus.
See supra, § 1910 et seq., appeals from justices' courts.
See supra, § 3822, counties may sue and be sued.
See infra, § 5751, costs on appeal from commissioners on question of improvements.

CHAPTER VIII.

County Blanks and Printing.

§ 3910. State Auditor to Compile Uniform Blanks.—The state auditor, with the aid and advice of the attorney general, shall compile the forms for all public blanks used in the counties of this state in conformity with the general statutes thereof. The various blanks for each county shall be uniform throughout the state. [L. '97, p. 47, § 1.]

§ 3911. Material Provided by the State. — The material used in said blank forms and the printing and binding thereof shall be provided for by the state printing board in the same manner and under the same rules and regulations as other public printing is now provided for under the general statutes of this state. [L. '97, p. 48, § 2.]

"The state printing board" is obsolete.

§ 3912. Contracting for Public Printing. — In all counties where two or more weekly newspapers are published, it shall be the duty of the county commissioners, at their May [April] meeting each year, to let the advertising and official publication of all notices to the publisher thereof who is the best and lowest responsible bidder: Provided, that in all cases the county commissioners shall consider the question of circulation in awarding the county printing contract, with [a] view to giving said printing the widest publicity; and no newspaper shall be eligible as a competitor, nor shall a contract be let to any newspaper, unless the same shall have been established

for at least six months, and has a general and bona fide circulation throughout the county in which it is published: And provided further, that in counties where there is no newspaper published, the commissioners of such county, shall cause the printing of said county to be done in some newspaper in the state, of general circulation in the county, have [having] no resident newspaper, and the newspaper to which such contract is let, shall be designated as the official newspaper of the county: Provided, that the county commissioners shall require a bond, in double the amount involved in the contract, for the correct and faithful performance of the work: Provided further, that the term of the successful bidder shall not commence until the first of July succeeding the May [April] term. [Cf. L. '73, p. 478, § 1; Cd. '81, § 2692; L. '86, p. 108, § 1; 1 H. C., § 2936.]

Cited in 5 Wash. 713, 714; 8 Wash. 168, 171; 14 Wash. 344.
See §§ 3878, 3879, supra, quarterly sessions of the board.
See infra, § 9257, publication of delinquent tax list.

§ 3913. County Auditors to Advertise for County Printing. — It shall be the duty of the county auditor, at least five weeks before, and not more than eight weeks before the meeting of the county commissioners at the May term, to advertise for proposals for the public printing, for the term of one year, which advertisement shall be inserted for four (4) successive weeks in the official newspaper of the county, or if there be no official newspaper, then in some newspaper adjacent to said county, having a general circulation in said county, as provided in section 3912: Provided, that the county commissioners shall not be compelled in any event to accept any bid for a greater price than one dollar per square, nonpareil, for first insertion, straight matter, and fifty cents per square for each subsequent insertion: And provided further, that the county auditor, when calling for bids shall state how the matter shall be set, in what kind of type, solid or leaded. [L. '07, p. 565, § 1. Cf. L. '73, p. 478, § 2; Cd. '81, § 2693; L. '86, p. 108, § 2; 1 H. C., § 2937.]

Cited in 5 Wash. 714; 28 Wash. 80.

§ 3914. Legal Notices—Duties of Officers as to. — It shall be the duty of all county officers, where the printing is contracted for in accordance with the provisions of this chapter, to cause all legal notices to be advertised in the paper designated by the county commissioners. [L. '73, p. 478, § 3; Cd. '81, § 2694; 1 H. C., § 2938.]

Cited in 14 Wash. 344.

CHAPTER IX.

County Auditors.

§ 3915. Election.—There shall be elected at each general election in each county in this state one county auditor, who shall have the qualification of an elector, and who shall continue in office for the term of two years, and until his successor is elected and qualified; said county auditor shall be ex-officio clerk of the board of county commissioners, and recorder of deeds and other instruments in writing, which by law are to be recorded in and for the county for which he may be elected. The election of said officer shall be conducted and the returns made in the manner and form prescribed by the law regulating elections. [L. '54, p. 424, §§ 1–3; Cd. '81, § 2707; 1 H. C., § 179.]

Cited in 15 Wash. 640.

The proviso in the above section is omitted as repealed by implication by §§ 4932, 4933, infra.

See infra, § 4032 et seq., salaries of auditors specified.

See infra, § 8790, recording of instruments.

See infra, § 8814, registrar of land titles.

§ 3916. Oath and Bond.—Every auditor, within fifteen days after receiving his certificate of election, and before he shall enter upon the discharge of the duties of his office, shall take and subscribe an oath before an officer authorized to administer the same, faithfully and impartially to perform the duties of his office, as prescribed by law, to the best of his abilities; which oath shall be indorsed on the back of his certificate of election, recorded in a book kept for that purpose in his office, and filed in the office of the clerk of the superior court of the county for which he may be elected. He shall also give a bond to his county, with good and sufficient sureties, in the penal sum of not less than three thousand dollars, the amount to be fixed and the sureties to be approved by the county commissioners of his county, conditioned that he will faithfully and impartially fulfill the duties of his office. [Cf. L. '54, p. 424, § 4; Cd. '81, § 2708; 1 H. C., § 180.]

Cited in 4 Wash. 235, 237.

See infra, § 8328, approval and filing of bond.

§ 3917. Duties as Clerk of Board of County Commissioners.—The county auditor, as clerk of the board of county commissioners, must,—

1. Record all the proceedings of the board;

2. Make full entries of all their resolutions and decisions on all questions concerning the raising of money for and the allowance of accounts against the county;

3. Record the vote of each member on any question upon which there is a division, or at the request of any member present;

4. Sign all orders made and warrants issued by order of the board for the payment of money;

5. Record the reports of the county treasurer of the receipts and disbursements of the county;

6. Preserve and file all accounts acted upon by the board;

7. Preserve and file all petitions and applications for franchises, and record the action of the board thereon;

8. Record all orders levying taxes; and

9. Perform all other duties required by law or any rule or order of the board. [Cd. '81, § 2709; 1 H. C., § 181.]

Cited in 1 Wash. 509; 15 Wash. 436, 640; 59 Wash. 12.

See infra, § 9200, clerk of board of equalization.

§ 3918. Duties in Auditing Bills, etc.—He shall audit all claims, demands and accounts against the county which by law are chargeable to said county, except such cost or fee bills as are by law to be examined or approved by some other judicial tribunal or officer. Such claims as it is his duty to audit shall be presented to the board of county commissioners for their examination and allowance. For claims allowed by the county commissioners, as also for cost bills and other lawful claims duly approved by the competent tribunal designated by law for their allowance, he shall draw a warrant on the county treasurer, made payable to the claimant or his order, bearing date from the time of and regularly numbered in the order of their issue, and he shall carefully keep proper warrant books, and when a warrant is issued the stub shall be carefully retained, upon which shall be recorded the number, date, name of payee, amount, nature of claims or services briefly stated and by whom allowed. He shall also retain all original bills and indorse thereupon claimant's name, nature of claim, the action had and if warrant be issued, dating and numbering said voucher or claim the same as the warrant. Nothing herein contained shall prevent claimants, at the time of issuing said warrants, from having the same broken, or issued in smaller warrants by the said auditor, using two or more warrants in lieu of one. In all such cases, however, when broken warrants are issued, the auditor issuing the same is required to preserve as many stub entries as he issues broken warrants, noting upon such stub the claim for which issued, the same as in other cases, together with a note of the number of broken warrants which aggregate the amount of the entire claim allowed: Provided, no single warrant shall be issued for a greater amount than five hundred dollars: Provided, further, that the above restrictions shall not apply to warrants issued when there is cash on hand in the county treasury to pay the same on presentation. All claims of the county auditor against the county for services shall be audited and allowed by the board of county commissioners as other claims are audited and allowed. Said warrants shall in all respects be audited, approved, issued, numbered, registered and paid the same

as any other county warrant. The words "county warrant," as herein designated, shall be synonymous with "county order" or "county scrip." In this as well as in all other laws of this state, such terms are convertible, and shall be considered to mean one and the same thing. [Cf. L. '54, p. 425, § 5; L. '69, p. 310, § 5; Cd. '81, § 2710; 1 H. C., § 182; L. '93, p. 280, § 1.]

Cited in 2 Wash. 433; 17 Wash. 641; 18 Wash. 160, 610; 21 Wash. 649; 35 Wash. 44; 46 Wash. 272, 273; 70 Wash. 244.

§ 3919. Restrictions on Issuance of Warrants.—No county auditor or clerk of the board of county commissioners shall issue any county warrant within less than ten days from and after the date of the allowance of such warrant. [L. '93, p. 76, § 2.]

Cited in 9 Wash. 601; 14 Wash. 382; 20 Wash. 47; 30 Wash. 631.

§ 3920. Shall Settle Accounts.—The auditor must examine and settle the accounts of all persons indebted to the county, or holding moneys payable into the county treasury, and must certify the amount to the treasurer, and upon the presentation and filing of the treasurer's receipt therefor, give to such person a discharge, and charge the treasurer with the amount received by him. [Cd. '81, § 2711; 1 H. C., § 183.]

§ 3921. Account Current to be Kept With County Treasurer.—He shall keep an accurate account current with the treasurer of the county and shall charge him with all moneys received as shown by his receipts issued, and shall credit him with all disbursements on account of moneys paid out according to the record of the settlements of said treasurer with the board of county commissioners. [Cf. L. '54, p. 425, § 6; Cd. '81, § 2712; 1 H. C., § 184; L. '93, p. 281, § 2.]

§ 3922. To Render Statement to State Auditor.—Immediately after the completion of the annual settlement of the treasurer with the board of county commissioners of each county, the county auditor shall make out and transmit to the state auditor a full and complete verified statement of the state fund account with the county for the past fiscal year. Said statement shall show—

1. The total amount of tax levy for the current year as returned on the original assessment-roll;

2. The amount of the supplemental taxes levied by the treasurer;

3. The amount collected from delinquent tax-rolls of previous years, since last report;

4. The amount of errors, double assessments and rebates allowed on settlement of treasurer with the board of county commissioners;

5. The amount paid to state treasurer since the last annual settlement, and all such other credits as the county may be entitled to receive in abatement of state taxes;

6. The balance of delinquent tax account for the current year.

Said statement shall be verified by the certificate and official seal of the county auditor. The state auditor, upon receipt of such verified statement, shall proceed from the data furnished to balance up the county's account with the state for the current year, and credit the delinquent tax accounts of previous years, respectively, as shown to have been collected. [Cd. '81, § 2571; 1 H. C., § 185; L. '93, p. 281, § 3.]

§ 3923. To Publish Exhibit of County Finances.—He shall, immediately after the July settlement between the county treasurer and the county commissioners, make out a full and complete exhibit of the finances of the county. Such exhibit shall be made out immediately after the July term of said board of county commissioners, and the county auditor shall cause the same to be published in some newspaper, if any is printed within the county; if not, he shall post the same in a conspicuous place in his office. [Cf. L. '67, p. 130, § 1; Cd. '81, § 2713; 1 H. C., § 186; L. '93, p. 282, § 4.]

§ 3924. What Exhibit must Show.—Such exhibit shall show—

1. The amount of taxes assessed in the county the preceding year for state, county, road, bridge, school and other purposes;
2. The amount of taxes collected on such assessment;
3. The amount of money received from other sources;
4. The amount received into the treasury;
5. The amount still due and not collected;
6. The number of orders issued, the several purposes for which they were issued, the amount for each purpose, and the total amount;
7. The total amount of orders redeemed;
8. The amount of outstanding orders;
9. The present condition of the treasury;
10. Remarks. [Cf. L. '67, p. 131, § 2; Cd. '81, § 2714; 1 H. C., § 187; L. '93, p. 282, § 5.]

§ 3925. May Appoint Deputies.—The county auditors of the several counties may appoint deputy auditors, who shall be appointed in writing, and shall, before entering upon the discharge of the duties of their office, take and subscribe an oath faithfully to perform the duties of their office, which oath shall be indorsed on the appointment and recorded in the office of the county auditor. The county auditor shall be responsible for the acts of their deputies, and revoke their appointments at pleasure. [L. '54, p. 425, § 7; Cd. '81, § 2716.]

See notes to § 3907, supra, compensation of.

§ 3926. Authorized to Administer Oaths.—Auditors and their deputies are authorized to administer oaths necessary in the performance of their duties and in all other cases where oaths are required by law

to be administered and to take acknowledgments of deeds and other instruments in writing: Provided, that any deputy of any county auditor, in administering such oath or taking such acknowledgment, shall certify to the same in his own name as deputy, and not in the name of his principal, and shall attach thereto the seal of the office in which he is deputy: Provided, that all oaths administered or acknowledgments taken by any deputy of any county auditor certifying to the same in the name of his principal by himself as such deputy, prior to the taking effect of this act, be and the same are hereby legalized and made valid and binding. [Cf. L. '54, p. 425, § 8; Cd. '81, § 2717; 1 H. C., § 188; L. '93, p, 282, § 6.]

Cited in 8 Wash. 472.

§ 3927. To Register Warrants.—It shall be the duty of the county auditor, not earlier than ten days after the adjournment of the board of county commissioners, at any regular, adjourned, or special term of said board, and not earlier than ten days after the receipt of any superior court cost bill, to make out a register of all warrants legally authorized and directed to be issued by such board of county commissioners or such cost bill and to make out under his hand and seal of office a certified copy of such register of warrants, and to forthwith deliver the same to the treasurer of the county, who shall record the same in a book to be kept by him for that purpose, and file and carefully preserve the original in his office for future reference. The register of warrants hereby authorized to be made by the county auditor shall be part of the records of such county, and shall have all the force and effect of the same. [Cd. '81, § 2718; 1 H. C., § 189; L. '93, p. 283, § 7.]

§ 3927–1. Issuance of Warrants Against Certain Districts. — All warrants for the payment of claims against diking, ditch, drainage and irrigation districts and school districts of the second and third class shall be drawn and issued by the county auditor of the county wherein such district is located, upon vouchers properly approved by the respective commissioners, trustees or directors of such district. [L. '15, p. 248, § 1.]

§ 3928. Cancellation of Unclaimed Warrants.—In each of the counties of the state of Washington where warrants have been drawn and remain uncalled for for a period of six years from the date of their issue, the county commissioners of any county, in which such warrants remain shall cancel the same, whereupon it shall be the duty of the auditor and treasurer of any such county to cancel all record of such warrants, so as to leave the funds upon which said warrants were originally drawn intact, as if such warrants had not been so drawn. [L. '09, p. 630, § 1. Cf. L. '86, p. 161; 1 H. C., § 2447.]

See infra, § 7127 et seq., disposition of unclaimed and lost property.

§ 3929. To Examine Books of Treasurer.—The auditor must, between the first and tenth of each month, examine the books of the treasurer, and see that the same have been correctly kept. [Cd. '81, § 2719; 1 H. C., § 190.]

§ 3930. To Count Money in Treasury Quarterly.—The board of county commissioners and county auditor must, at the January, April, July and October settlements with the county treasurer, count the money in the county treasury, and make and verify in duplicate statements, showing—

1. The amount of money that ought to be in the treasury;
2. The amount and kind of money actually therein. [Cd. '81, § 2720; 1 H. C., § 191; L. '93, p. 283, § 8.]

See infra, § 3944, inspection of treasurer's accounts.
See infra, § 3954, county treasurer's statement.

§ 3931. Restriction upon Auditor, etc.—The person holding the office of county auditor or deputy, or performing its duties, shall not practice as an attorney, nor represent any person making any claim against the county, or seeking to procure any legislative or other action by said county board. And the county auditor, during his term of office, and any deputy by him appointed, is hereby disqualified from performing the duties of any other county officer or acting as deputy for any other county officer. Nor shall any other county officer or his deputy act as auditor or deputy, or perform any of the duties of said office. [Cd. '81, § 2722; 1 H. C., § 193.]

§ 3932. Temporary Appointment Made, When.—In case the auditor is unable to attend to the duties of his office during any session of the board of county commissioners, and having no deputy by him appointed in attendance, the said board may temporarily appoint a suitable person, not herein disqualified, to perform the auditor's duties. [L. '69, p. 313, § 15; Cd. '81, § 2723; 1 H. C., § 194.]

§ 3933. Proceedings of Board to be Published.—It shall be the duty of the county auditor of each county, within fifteen days after the adjournment of each regular term, to publish a summary of the proceedings of the board of county commissioners at such term, in any newspaper published in the county, or having a general circulation therein; or the auditor may post copies of such proceedings in three of the most public places in the county. [L. '69, p. 313, § 17; Cd. '81, § 2724; 1 H. C., § 195.]

§ 3934. Seal of County Commissioners—Use and Effect of.—The seal of the county commissioners' court for each county, used by the county auditor as clerk to attest the proceedings of the board of county commissioners, shall be and remain in the custody of the county auditor as clerk of the said board, and said auditor is hereby

authorized to use such seal in attestation of all his official acts, whether as clerk of said court, as auditor, or recorder of deeds; and all certificates, exemplifications of records, or other acts by him performed as county auditor, certified under the seal of said county commissioners' court, heretofore made or hereafter to be made pursuant to this section, in this state, shall be as valid and legally binding as though attested by a seal of office of the said county auditor. [Cd. '81, § 2724; 1 H. C., § 196.]

See supra, note to § 3902.

§ 3935. Duties of Retiring Auditor.—Each auditor, on retiring from office, shall deliver to his successor the seal of office, and all the books, records, and other instruments of writing belonging to said office, and shall take his receipt therefor; and in case of the death of the auditor, his legal representatives shall deliver over the seal, books, records, and papers as aforesaid. [L. '69, p. 314, § 22; Cd. '81, § 2725; 1 H. C., § 197.]

§ 3936. Fees.—County auditors shall collect the following fees for their official services:

For filing each instrument, when filed for recording, ten cents.

For filing each instrument other than for recording (except chattel mortgages and conditional sale contracts), twenty-five cents.

For filing each chattel mortgage and conditional sale contract and entering same as required by law, fifty cents.

For indexing each instrument, except chattel mortgages and conditional sale contracts, for the first two names, five cents.

For each additional name, five cents.

For a marginal release of mortgage or lien, twenty-five cents.

For release of chattel mortgage or conditional sale contract, twenty-five cents.

Making certified copy of instrument besides certificate and seal, per folio, ten cents.

For comparing instrument prepared by another, besides certificate and seal, per folio, five cents.

For certificate and seal, fifty cents.

For recording each instrument, per folio, fifteen cents.

For administering an oath or taking an affidavit with or without seal, fifty cents.

For issuing miscellaneous license and entering of record, one dollar.

For issuing marriage license, including fee of one dollar for county clerk, three dollars.

For recording plats, twenty-five cents for each lot, except for cemetery plats, ten cents for each lot, and one dollar for each acknowledgment, dedication or description, with a minimum fee of one dollar for each plat.

For searching records, per hour, one dollar.

For filing, recording and indexing cattle brands and marks, for each mark and brand described, one dollar.

For filing, recording and indexing brands of loggers, for each brand described, one dollar.

For filing and recording statement and oath in regard to sires, under section 3161 supra, the same fees per folio, as are paid for other instruments.

For each certificate issued under the provisions of section 3162 supra, in regard to sires, fifty cents.

For sealing weights and measures, for each weight and measure sealed, ten cents. [L. '07, p. 88, § 1. See p. 92.]

Fees of salaried officers to be paid to county or state, see § 4072, infra.

Fees to be paid in advance, see § 8794, infra.

See supra, §§ 3661, 3667, filing chattel mortgages and satisfactions.

See supra, § 3649, filing cemetery plats.

See infra, § 7164, issuing marriage license.

CHAPTER X.

County Treasurers.

§ 3937. **Election.**—At the first election in each county, and every two years thereafter, there shall be elected a county treasurer, who shall have the qualifications of a voter, and shall continue in office for the term of two years, and until his successor is elected and qualified. [Cf. L. '54, p. 426, § 1; Cd. '81, § 2738; 1 H. C., § 210.]

Cited in 53 Wash. 546.

See Const., Art. XI, § 7, eligible for but two terms in succession.

See infra, § 4032 et seq., salaries of county treasurers classified.

§ 3938. **Oath and Bond.**—The county treasurer, before he enters on the duties of his office, shall take an oath faithfully to discharge the duties of his office as prescribed by law; he shall also, before he shall enter upon the duties of his office, give a bond to the county, with at least two sureties, residing in the county, in a penal sum of not less than double the amount of funds liable to come into the hands of the said treasurer during his term of office, the amount to be fixed and the bond to be approved by the county commissioners of the proper county, conditioned that all moneys received by him for the use of the county shall be paid as the commissioners shall from time to time direct, except where special provision is made by law for the payment of such moneys, by order of any court, or otherwise, and for the faithful discharge of his duties. [L. '54, p. 426, § 2; Cd. '81, § 2739; 1 H. C., § 211.]

Cited in 14 Wash. 120.

See infra, § 4558, ex-officio treasurer of school districts.

See infra, § 5072, duty as to county depositaries.

See infra, § 8328, approval and filing of bonds.
See infra, § 9219, duty to receive and collect taxes generally.
See infra, § 9283, ex-officio tax collector in cities of first class.
See infra, § 9292, ex-officio tax collector in cities of third and fourth classes.

§ 3939. Deputies.—County treasurers may appoint one or more deputies, and may take from them bond, with sureties; they shall have power to remove their deputies at pleasure, and every county treasurer and his sureties shall be liable for all official acts of his deputies. [L. '54, p. 427, § 4; Cd. '81, § 2741.]

Cited in 57 Wash. 656.

§ 3940. To Receive and Disburse Moneys.—He shall receive all moneys due and accruing to the county and disburse the same on the proper orders issued and attested by the county auditor. Upon receipt of all moneys other than taxes he shall issue his receipt therefore [therefor] in duplicate, one of which receipts he shall deliver immediately to the person or persons making such payment, and the duplicate of such receipt must be immediately filed by such treasurer in the office of the county auditor. [Cf. L. '54, p. 427, § 3; Cd. '81, § 2740; 1 H. C., § 212; L. '93, p. 250, § 1.]

Cited in 45 Wash. 456.

§ 3941. To Keep Office at County Seat—May Administer Oaths.—The county treasurer shall keep his office at the seat of justice of his county, and shall keep the same open for transaction of business during business hours, and he and his deputy are authorized to administer all oaths necessary in the discharge of the duties of his office. [L. '54, p. 27, § 5; Cd. '81, § 2742; 1 H. C., § 213.]

§ 3942. Accounts, How Kept.—He shall so arrange and keep his books, that the amount received and paid out, on account of separate and distinct funds, or specific appropriations, shall be exhibited in separate accounts, as well as the whole receipts and expenditures by one general account. [L. '54, p. 427, § 6; Cd. '81, § 2743; 1 H. C., § 214.]

§ 3943. Moneys, How Kept.—The county treasurer must keep all moneys belonging to this state, or to any county of this state, in his own possession until disbursed according to law. He must not place the same in the possession of any person to be used for any purpose; nor must he loan or in any manner use or permit any person to use the same, except as provided by law; but it shall be lawful for a county treasurer to deposit in his own name, as county treasurer, any such moneys in any national, state or private bank or banks doing a general banking business in his county: Provided, that before any such deposit is made the bank in which it is proposed to make the same shall first give to such county treasurer a bond, with sureties

to be approved by him, in such amount and with such conditions as he may require. Action may be brought on such bond either by such treasurer or by the county of which he is treasurer. But nothing done under the provisions of this section shall alter or affect the liability of any county treasurer or of the sureties on his official bond. [L. '95, p. 132, § 1.]

§ 3944. To Keep Books, etc., Open for Inspection.—The books, accounts and vouchers of the treasurer are at all times subject to the inspection and examination of the board of county commissioners and the grand jury. [Cf. L. '54, p. 427, § 7; Cd. '81, § 2744; 1 H. C., § 215; L. '95, p. 132, § 4.]

Cited in 36 Wash. 640.

See supra, § 3930, to count money quarterly, commissioners and auditor.

§ 3945. Payment of Warrants—Interest.—He shall pay all orders of the county auditor when presented, if there be money in the treasury for that purpose, and write on the face of such order the date of redemption, and his signature. If there be no funds to pay such order when presented, he shall indorse thereon, "Not paid for want of funds," and the date of such indorsement, over his signature, which shall entitle such order thenceforth to draw legal interest: Provided, that such interest shall cease from the date of notice, by publication in some newspaper printed or circulated in his county, to be given by the county treasurer, that there are funds to redeem such outstanding orders, which notice such treasurer shall give in such case; and if there be no such newspaper, then by posting such notice at three public places in such county. [L. '54, p. 427, § 8; Cd. '81, § 2745; 1 H. C., § 216.]

Cited in 8 Wash. 497.

§ 3946. Order of Redemption.—All warrants drawn on the funds of the county shall be redeemed by the treasurer in the order of their issuance. [Cf. L. '54, p. 428, § 10; Cd. '81, § 2747; L. '86, p. 162, § 1; 1 H. C., § 217; L. '93, p. 250, § 2.]

Cited in 15 Wash. 323.

§ 3947. Order of Payment of All Municipal Warrants—Interest.—All county, school, city and town warrants shall be paid according to their number, date and issue, and shall draw interest from and after their presentation to the proper treasurer: Provided, that no compound interest shall be paid directly or indirectly on any of said warrants. [L. '93, p. 76, § 1.]

Cited in 68 Wash. 556.

§ 3948. Shall Note Interest Paid on Warrants.—When the county treasurer shall redeem any order on which interest is due, he shall

note on such order the amount of interest by him paid thereon, and shall enter on his account the amount of such interest, distinct from the principal. [L. '54, p. 427, § 9; Cd. '81, § 2746; 1 H. C., § 218.]

§ 3949. Calls to be Made, When.—Whenever the treasurer of any county, city, town or other municipality shall have in his hands, as such treasurer, the sum of five hundred dollars belonging to any fund upon which warrants are outstanding, it shall be his duty to make a call for such warrants to that amount in the order of their issue, and he shall cause such call to be published in some newspaper printed and published in the county, city, town or other municipality, as the case may be, in the first issue of such newspaper after such sum shall have been accumulated, and if there be no such newspaper, then such call shall be posted in three conspicuous places in such county, city, town or other municipality, and such call shall describe by number the warrants so called, and specify the funds upon which the same were drawn: Provided, that the commissioners of any county, or the council or other governing body of any city, town or other municipality may prescribe a less sum than five hundred dollars, upon the accumulation of which such call shall be made as to any particular fund: And provided further, that if the warrant longest outstanding on any fund shall exceed the sum of five hundred dollars, or shall exceed the sum fixed by the county commissioners or other governing board, then no call need be made for warrants on such fund until the amount due on such warrants shall have accumulated: And provided further, that no more than two calls shall be made by any treasurer in any one month: And provided further, that it shall be the duty of any such treasurer to pay on demand, in the order of their issue, any warrants when there shall be in the treasury sufficient funds applicable to such payment. [L. '95, p. 379, § 1.]

Cited in 15 Wash. 192.

§ 3950. Penalty for Failure to Call.—Any such treasurer who shall knowingly fail to call for or pay any warrant in accordance with the provisions of the last section shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not less than twenty-five dollars nor more than five hundred dollars, and such conviction shall be sufficient cause for removal from office. [L. '95, p. 379, § 2.]

§ 3951.—General Statement to County Commissioners at July Session.—The treasurer of each county must, at the regular July session of the board of county commissioners, make a verified statement to said board showing the whole amount of his collections during the preceding year (stating particularly the source of each portion of the revenue) from all sources paid into the county treasury, the funds

among which the same was distributed, together with the amount to each fund, the total amount of warrants certified to him by the county auditor, and the total amount of warrants paid by him during the same time, and the total amount of warrants remaining unpaid on the thirtieth day of June immediately preceding, and the funds on which the same are drawn, and generally make a full and specific showing of the financial condition of the county. [Cf. L. '54, p. 428, § 11; Cd. '81, § 2748; 1 H. C., § 219; L. '83, p. 45, § 1; L. '93, p. 251, § 3.]

See infra, § 9229, annual report.

§ 3952. Settlement, etc., of Retiring Treasurer.—The county treasurer shall make complete settlement with the board of county commissioners, as required by law, and shall, at the expiration of his term of office, deliver to his successor all public money, books and papers in his possession. [L. '54, p. 428, § 13; Cd. '81, § 2750; 1 H. C., § 220.]

§ 3953. Death of Treasurer.—In case of the death of any county treasurer his legal representatives must deliver up all official moneys, books, accounts, papers, and documents which come into their possession. No percentage must be allowed to the treasurer on any money by him received from his predecessor in office, or from the legal representatives of such predecessors. [L. '95, p. 132, § 3.]

§ 3954. Settlement at Quarterly Sessions of Commissioners.—Each county treasurer shall attend with his books and vouchers before the board of county commissioners at the regular quarterly sessions of said board in January, April, July and October of each year and settle his accounts before said board:—

1. For all money received by him, filing a certified statement, showing under separate headings amounts received from each and every source;

2. For all moneys disbursed by him since the date of the last preceding settlement, and in such settlement the board must allow the treasurer the following credits: (1) The amount of principal and interest paid on account of redemption of warrants issued upon the several funds of the county; (2) The amount paid the state treasurer since the last preceding or quarterly settlement, as per vouchers; (3) The amount paid on account of redemption of orders issued by the several school districts of the county; (4) All claims for credits or disbursements not above specified. He shall at such settlement also present, together with such vouchers and claims for credits, a certified list of such vouchers and claims arranged numerically under the separate headings of the funds from which such vouchers have been paid or on which such claims have accrued, or are made, which list must be checked, compared and made to correspond with the

treasurer's books and vouchers by the board of county commissioners and the auditor at the time of such settlement. On completion of such comparison, such list, when found to be correct, shall be certified to by the chairman of said board and attested by the auditor, and shall, together with the vouchers and claims presented, be filed in the office of said auditor, and such county treasurer be given credit therefor on the record of proceedings of said board, said record to show the amount credited on account of each fund, and whether for principal or interest. The auditor shall thereupon deliver to the county treasurer a transcript of such order and shall forthwith proceed to credit such officer with the sums therein specified. [Cf. 1 H. C., § 221; L. '93, p. 251, § 4.]

See supra, § 3930, duties of commissioners and auditor at quarterly sessions.

§ 3955. Suspension of Treasurer by Commissioners, When.—Whenever an action based upon official misconduct is commenced against any county treasurer the county commissioners may, in their discretion, suspend him from office until such suit is determined, and may appoint some person to fill the vacancy. [Cf. L. '54, p. 428, § 12; Cd. '81, § 2749; 1 H. C., § 222; L. '95, p. 132, § 2.]

§ 3956. Official Seals.—The county treasurer in each of the organized counties of the state of Washington shall be by his county provided with a seal of office for the authentication of all tax deeds, papers, writing and documents required by law to be certified or authenticated by him. Such seal shall bear the device of crosskeys and the words: Official Seal Treasurer —— County, Washington; and an imprint of such seal, together with the certificate of the county treasurer that such seal has been regularly adopted, shall be filed in the office of the county auditor of such county. [L. '03, p. 13, § 1.]

§ 3957. Validity of Former Instruments.—In all cases in which the county treasurer of any county in the state of Washington shall have executed a tax deed or deeds prior to the taking effect of this act, either to his county or to any private person or persons or corporation whomsoever, said deed or deeds shall not be deemed invalid by reason of the county treasurer who executed the same not having affixed a seal of office to the same, or having affixed a seal not an official seal; nor shall said deed or deeds be deemed invalid by reason of the fact that at the date of the execution of said deed or deeds there was in the state of Washington no statute providing for an official seal for the office of county treasurer. [L. '03, p. 14, § 2.]

CHAPTER XI.

Prosecuting Attorneys.

§ 3958. County Attorney as Prosecuting Attorney.—That all officers elected as county attorneys at the last general election be, and they are hereby declared to be, prosecuting attorneys for the counties for which they were respectively elected, and shall be known and designated as such, and perform all the duties prescribed by law as the duties of the prosecuting attorneys. [L. '91, p. 6, § 1; 1 H. C., § 223.]

See Const., Art. XI, § 5.
See supra, § 113 et seq., powers and duties in relation to proceedings in court.
See supra, § 3892, power of commissioners to fill vacancies.
See infra, § 4032 et seq., salaries of, classified.
See infra, § 8988, attorney general to aid, when.

§ 3959. Eligibility to Office of.—No person shall be eligible to the office of prosecuting attorney in any county of this state, unless he be a qualified elector thereof, and shall have been admitted as an attorney and counselor of the courts of this state. [L. '91, p. 95, § 4; 2 H. C., § 86.]

§ 3960. Oath and Bond.—Each prosecuting attorney elected under this chapter shall, before entering upon the discharge of the duties of his office, take and subscribe an oath faithfully to discharge the duties of said office, and shall enter into a bond to the state of Washington, in the sum of five thousand dollars, conditioned that he will faithfully discharge the duties of his office. [Cf. L. '54, p. 417, § 3; L. '58, p. 12, § 3; L. '60, p. 334, § 3; L. '63, p. 408, § 3; L. '77, p. 246, § 5; Cd. '81, § 2163; L. '83, p. 73, § 9; L. '86, p. 61, § 4; 1 H. C., § 224.]

See infra, § 8328, approval and filing of bond.

§ 3961. Duties Generally.—Each prosecuting attorney shall be the legal adviser of the board of county commissioners for the county for which he was elected; he shall also prosecute all criminal and civil actions in which the state or his county may be a party, defend all suits brought against the state or his county, and prosecute all forfeited recognizances, bonds, and actions for the recovery of debts, fines, penalties, and forfeitures accruing to the state or his county: Provided, the commissioners of any county may employ other attorneys, when they may deem it for the interest of their county. [Cf. L. '58, p. 12, § 4; L. '60, p. 235, § 3; L. '77, p. 246, § 6; Cd. '81, § 2171; L. '83, p. 73, § 10; L. '86, p. 61, § 5; 1 H. C., § 225.]

Cited in 21 Wash. 62; 47 Wash. 358, 359; 68 Wash. 680.
See supra, § 116, duties of.
See supra, § 3908, restriction on employment of attorneys by county commissioners.

§ 3962. To Advise Board of Commissioners.—Each prosecuting attorney, when required by the board of county commissioners or by the president of such board, shall give to such board of county commissioners, in writing if so required, his legal opinion touching any subject upon which such board may be called or required to act upon relating to the management of county affairs. [L. '77, p. 247, § 8; Cd. '81, § 2163; L. '83, p. 73, § 12; L. '86, p. 61, § 7; 1 H. C., § 226.]

§ 3963. To Advise County Officers.—The prosecuting attorney in each county is hereby required to give legal advice, when required, to all county and precinct officers, and directors and superintendents of common schools, in all matters relating to their official business; and when so required, he shall draw up, in writing, all contracts, obligations, and like instruments of an official nature, for the use of said officers. [L. '77, p. 247, § 9; Cd. '81, § 2169; L. '83, p. 74, § 13; L. '86, p. 61, § 8; 1 H. C., § 227.]

Cited in 45 Wash. 502.

§ 3964. Further Duties.—It shall be the duty of the prosecuting attorney to visit, once in each year, the offices of the county auditor of his county, and he shall then examine the official bonds of all county and precinct officers on file in such offices, and it is made his duty to report to the board of county commissioners of his county any defect in the bonds of any public officer in such county. He shall also, once in each year, examine the public records and books of the auditor, assessor, treasurer, superintendent of common schools, and sheriff of his county, and report to the board of county commissioners any failure, refusal, omission, or neglect of such officers to keep such records and books as required by law. [L. '77, p. 247, § 10; Cd. '81, § 2170; L. '83, p. 74, § 14; L. '86, p. 61, § 9; 1 H. C., § 228.]

§ 3965. Prosecuting Attorney's Report.—Each prosecuting attorney shall, on the thirty-first day of December in each year, make to the governor of the state a report setting forth the amount and the nature of business transacted by him in that year, with such other statements and suggestions as he may deem useful [L. '86, p. 62, § 13; 1 H. C., § 230.]

§ 3966. Disability of Prosecuting Attorney.—When any prosecuting attorney fails, from sickness or other causes, to attend a session of the superior court of the county for which he was elected or is unable to perform his duties at such session, the court or judge may appoint some qualified person to discharge the duties of such session, and the person so appointed shall receive a compensation to be fixed by the court, to be deducted out of the stated salary of such prosecuting attorney, not exceeding, however, one-fourth of the quarterly salary of such prosecuting attorney: Provided, that in

counties wherein there is no person qualified for the position of prosecuting attorney, or wherein no qualified person will consent to perform the duties of that office, the judge of the superior court of that county shall appoint some suitable person, a duly admitted and practicing attorney at law and resident of the state of Washington, to perform the duties of prosecuting attorney for such county, and he shall receive such reasonable compensation for his services as shall be fixed and ordered by the court, the same to be paid by the county for which such services are performed. [Cf. L. '58, p. 13, § 6; L. '60, p. 335, § 5; L. '77, p. 248, § 15; Cd. '81, § 2166; L. '83 p. 74, § 19; L. '86, p. 62, § 14; 1 H. C., § 231; L. '93, p. 83, § 1.]

Cited in 21 Wash. 62.

§ 3967. Duties in Criminal Proceedings.—The prosecuting attorney, when not in attendance upon the superior court, shall institute and prosecute proceedings before magistrates for the arrest of persons charged with or reasonably suspected of a felony, when he has information that any such offense has been committed, and shall for that purpose attend when required by them. The prosecuting attorney shall also attend and appear before and give advice to the grand jury when cases are presented to them for their consideration, and shall draw all indictments when required by the grand jury. It shall be the duty of the prosecuting attorneys elected under this chapter to carefully tax all cost bills in criminal cases arising in their respective counties, and they shall take care that no useless witness fees are taxed as part of such costs, and that the officers authorized to execute process tax no other or greater fees than the fees allowed by law: Provided, that if they are not present at the trial of any criminal case, before any justice of the peace, and the cost bill in such case is lodged with the county commissioners for such payment, the said prosecuting attorney shall have the right to receive and retax the same, and it is made his duty so to do, if the board of county commissioners deem the bill exorbitant or improperly taxed. [Cf. L. '79, p. 96, § 18; Cd. '81, § 2146; L. '86, p. 63, § 18; 1 H. C., § 233.]

Cited in 7 Wash. 449; 13 Wash. 487; 18 Wash. 610; 21 Wash. 61.

§ 3968. To Prosecute Violation of Election Laws.—It shall be the duty of the prosecuting attorney of each county to present all violations of the election laws which may come to his knowledge to the special consideration of the proper jury. [L. '66, p. 52, § 10; Cd. '81, § 3150; 1 H. C., § 445.]

§ 3969. Special Emoluments Prohibited.—No prosecuting attorney shall receive any fee or reward from any person, on behalf of any prosecution, for any of his official services, except as provided in this chapter, nor shall he be engaged as attorney or counsel for a party

in any civil action [or for] a party to any criminal proceedings depending upon the same facts as such criminal [civil] proceedings. [Cf. L. '58, p. 13, § 8; L. '77, p. 248, § 13; Cd. '81, § 2164; L. '83, p. 74, § 17; L. '86, p. 62, § 12; L. '88, p. 189, § 1; 1 H. C., § 234.]

The word "criminal" in the last line should read "civil."

§ 3970. Office at County Seat.—The prosecuting attorney of each county in the state of Washington must keep an office at the county seat of the county of which he is prosecuting attorney. [L. '09, p. 417, § 1.]

CHAPTER XII.

County Assessors.

§ 3971. Election.—At the general election of eighteen hundred and ninety in this state, and at each subsequent general election, there shall be elected in each county a county assessor, who shall have the qualifications of a voter, and shall continue in office for two years, or until his successor is elected and qualified. [Cf. L. '69, p. 402, § 1; Cd. '81, § 2752; L. '86, p. 164, § 1; L. '90, p. 478, § 1; 1 H. C., § 235.]

See infra, § 4032 et seq., salaries classified.

§ 3972. Bond and Oath.—Every person elected or appointed to the office of assessor shall file with the board of county commissioners, within the time provided by law, his bond, payable to the state of Washington, with two or more good freehold sureties, to be approved by the said board, in the penal sum to be fixed by the board of county commissioners, conditioned that he will diligently, faithfully and impartially perform the duties enjoined on him by law; and he shall, moreover, take and subscribe on said bond an oath that he will, according to the best of his judgment, skill, and ability, diligently, faithfully and impartially perform all the duties enjoined on him by this chapter; and if any person so elected or appointed fails to give bond or fails to take the oath required within the time prescribed such failure shall be deemed a refusal to serve. [Cf. L. '54, p. 428, § 2; Cd. '81, § 2753; L. '90, p. 297, § 46; 1 H. C., § 236; L. '93, p. 342, § 46; L. '97, p. 156, § 44.]

See infra, § 8328, approval and filing of bond.
"Chapter" interpolated for "act."

§ 3973. May Appoint Deputies.—Any assessor, who deems it necessary to enable him to complete the listing and the valuation of the property of his county within the time prescribed by law, may appoint one or more well-qualified citizens of his county to act as his assistants or deputies, and assign them to such portion of his county as he thinks proper; and each assistant so appointed shall, under the direction of the assessor, after taking the required oath,

perform all the duties enjoined upon, vested in or imposed upon assessors by the provisions of this chapter; and each of such deputies shall receive for his services while actually employed in such work the sum which may be designated and allowed by the board of county commissioners, not exceeding three and one-half dollars per day: Provided, that no assessor shall appoint any deputy unless the same be actually necessary, and then for no longer time than may be actually needed: Provided, further, that the county commissioners may limit the number of deputies to be employed by the assessor. [L. '91, p. 247, § 47; 1 H. C., § 1061; L. '93, p. 342, § 47; L. '97, p. 157, § 45.]

"Chapter" interpolated for "act."

For further provisions relating to duties of assessor, see § 9101 et seq., "Taxation."

CHAPTER XIII.

County Engineers.

§ 3974. Election—Bond.—The county surveyor shall hereafter be designated as county engineer. He shall be a qualified elector of his county, and a competent civil engineer and surveyor. The county engineer of each organized county shall be elected at the general election for the term of two years, and shall give a bond to the people of this state in the penal sum of two thousand five hundred dollars, to be approved by the county commissioners, conditioned for the faithful and impartial discharge of the duties of his office. [L. '07, p. 351, § 1. Cf. L. '95, p. 135, § 1.]

Cited in 48 Wash. 463.

For former acts on this subject see L. '55, pp. 26–28; L. '66, pp. 554–556; Cd. '81, §§ 2758–2765; L. '86, p. 104, § 1; H. C., §§ 239–244; L. '05, p. 135, § 1; Bal. Code, § 490.

See infra, § 4032 et seq., compensation.

See infra, § 8328, approval and filing of bond.

§ 3975. Duties of Surveyor and Deputies.—The certificate of the county engineer, or his deputy, of any survey made by him of any lands in the county shall be presumptive evidence of the facts therein contained, unless such engineer or deputy shall be interested therein. The county engineer, in person or by deputy, shall make and execute all surveys, and shall be engineer in charge of all construction within his county required by the county commissioners, or by order of any court, or by application of any person therefor: Provided, that nothing contained in this section shall constrain the county commissioners to place the county engineer in charge of engineering work if they for any cause, believe him incompetent to take charge of such work. [L. '95, p. 136, § 3.]

"Engineer'" used in place of "surveyor" in this and following sections. See preceding section.

§ 3976. Disqualification.—Whenever a survey may be required of any land in which the county engineer, or either of his deputies, shall be interested, or when, from any cause, there shall be no engineer or deputy engineer of the county to be found, or able to act, such survey may be made by any surveyor the county commissioners may appoint. [L. '95, p. 136, § 4.]

§ 3977. Duties in Respect to Roads.—The county engineer shall prepare profiles of all roads hereafter established and of all roads which are ordered to be improved, and shall recommend to the board of county commissioners what improvements shall be made to the roads and bridges in the county, together with an estimated cost of such improvement. He shall at least annually inspect or cause to be inspected, all bridges of the county, and make a report in writing to the board of county commissioners with such recommendations for the repair and maintenance as he finds necessary. [L. '07, p. 351, § 3.]

§ 3978. Records.—The office of county engineer shall be one of record and there shall be recorded and filed in his office, all matters concerning the public roads, highways, bridges, ditches or other surveys of his county, with the original papers, documents, petitions, surveys, repairs and other papers, in order to have the complete history of any such road, highway, bridge, ditch or other survey: Provided, that in any county where there is no qualified engineer, the records of said office shall be kept in the office of the county auditor. [L. '07, p. 351, § 4.]

§ 3979. Office, Where Located.—The county engineer shall keep his office at the county seat in such room or rooms as are provided by the county, and he shall be furnished with all necessary cases and other suitable articles, and also with all blank books and blanks necessary to the proper discharge of his official duties. The records and books in the county engineer's office shall be public records, and shall at all proper times be open to the inspection and examination of the public. [L. '95, p. 138, § 10.]

Cited in 50 Wash. 357.

§ 3979a. To Keep Highway Plat-book.—He shall keep in his office a highway plat-book in which he shall have accurately platted all public roads and highways established by the board of county commissioners. [L. '07, p. 351, § 2.]

§ 3980. To Keep Records.—Each county engineer shall record in a suitable book all surveys made by him and his deputies, except such as are made for a temporary purpose, and surveys of highways and village plats; and he shall make a complete record of all construction notes, and shall also record the survey of any other sur-

veyor, which shall be made in his county, whenever demanded by any person: Provided, the fees for recording the same shall be paid the same as provided for county auditors: Provided further, that such survey appears to have been made in accordance with the laws of the state. The record book shall be so constructed as to have one page for diagrams, to be numbered progressively, and the opposite page for notes and remarks; and no diagram shall be so constructed as to scale less than one inch to twenty chains. The course and distance of all lines run, and the number of acres contained in each piece of land surveyed, shall be entered on the diagram of any section subdivided according to the survey thereof, and shall be considered part of the record. The record shall show in addition the time when, the name of any person by whom, and the person for whom such survey was made, a description of all witness trees marked on the survey, with their respective courses and distances, and the variation of the magnetic from the true meridian. He shall make an index to such record book, referring in suitable manner to each survey so recorded. [L. '95, p. 136, § 5.]

Cited in 12 Wash. 630.

See § 3936, supra, schedule of fees of county auditor.

§ 3981. Books to be Delivered to Successor.—When the term of office of any county engineer shall expire, or he shall resign or be removed, he shall deliver over all the books and papers relating to his office to his successor therein; and any county engineer who, on the expiration of his term of office, or on his resignation or removal, shall neglect for the space of one month after his successor shall be elected or appointed, and qualified, to deliver such books and papers as aforesaid, and any administrator of any deceased county engineer who shall neglect for the space of one month to deliver to such successor all such books and papers which shall come to his hands, shall forfeit and pay a sum not less than ten nor more than fifty dollars, and a similar sum for every month thereafter during which he shall so neglect to deliver the same as aforesaid. [L. '95, p. 137, § 6.]

§ 3982. Chainmen, Oath of.—Every chainman and marker employed in making surveys, pursuant to the provisions of this chapter, shall first take an oath that he will faithfully discharge his duties as such, which oath the county engineer, or the deputy making the survey, is hereby authorized to administer. [L. '95, p. 137, § 7.]

§ 3983. Collection of Plats, etc.—All field-notes, construction notes and plats of surveys heretofore executed for and now in possession of the county, and not heretofore recorded in the engineer's office, shall be collected by the engineer, perfected and recorded in his office

in the same manner as records of surveys are required to be made by the provisions of this chapter. [L. '95, p. 137, § 8.]

Cited in 12 Wash. 630.

§ 3984. Location of Boundaries and Corners.—Whenever a majority of the resident owners of any section or part or parts of any section of land in this state, after having given at least ten days' notice to all other persons, or to their agents, holding land in the same section or part or parts of the section, as the case may be, who reside in the township, shall desire to have their corners and lines, or any of them, established, relocated or perpetuated, such engineer shall proceed to make the required surveys, and the expense thereof shall be borne by all the persons benefited in proportion to the amount of work done for each, to be determined by the engineer; and if any person thus benefited, whether a nonresident or otherwise, shall refuse or neglect to pay his share of such expense, such engineer shall certify the same, and to whom due, to the county assessor, who shall assess it upon the land of such person, to be collected in the same manner as other taxes, and held subject to the order of the person named in the engineer's certificate as being entitled to the same. [L. '95, p. 137, § 9.]

See supra § 947 et seq., establishment of lost boundaries, etc.

CHAPTER XIV.

Sheriffs.

§ 3985. Election—Term, Bond.—There shall be elected in each county in this state a sheriff, who shall possess the qualifications of a voter, and hold his office for the term of two years, and shall, before he enters upon the duties of his office, execute a bond, with at least three sureties, in a penal sum not less than two thousand dollars nor more than five thousand dollars. [Cf. L. '54, p. 434, § 1; Cd. '81, § 2766; 1 H. C., § 168.]

See supra, § 497, schedule of fees.
See infra, § 4032 et seq., salary of sheriffs classified.
See infra, § 4065, traveling expenses, allowance of.
See infra, § 8328, approval and filing of bond.
Liability for misconduct, etc., see § 4000, infra.

§ 3986. Certificate of Election, etc., to be Recorded.—Every sheriff shall, before he enters on the duties of his office, cause his certificate of election or appointment, with the oath of office indorsed thereon, and his bond, with the approval thereon, to be recorded in the office of the auditor of the county. [L. '54, p. 435, § 9; Cd. '81, § 2774; 1 H. C., § 171.]

§ 3987. General Duties.—The sheriff is the chief executive officer and conservator of the peace of the county. In the execution of his office, it is his duty,—

1. To arrest and commit to prison all persons who break the peace, or attempt to break it, and all persons guilty of public offenses;

2. To defend his county against those who, by riot or otherwise, endanger the public peace or safety;

3. To execute the process and orders of the courts of justice or of judicial officers, when delivered to him for that purpose, according to the provisions of this code or other statutes;

4. To execute all warrants delivered to him for that purpose by other public officers, according to the provisions of particular statutes;

5. To attend the sessions of the courts of record held within his county, and to obey their lawful orders or directions.

The county is not responsible for the acts of the sheriff. [L. '91, p. 83, § 1; 2 H. C., § 76.]

See infra, § 3999, special duties as to preserving peace.
See infra, § 8497 et seq., jails.
See infra, § 5325, ex-officio game warden.

§ 3988. To Keep Office at County Seat.—The sheriff must keep his office at the county seat of the county of which he is sheriff. [L. '91, p. 84, § 2; 2 H. C., § 77.]

§ 3989. Office Hours.—The sheriff's office must be kept open on the days and during the hours required for the clerk's office to be kept open. [L. '91, p. 84, § 3; 2 H. C., § 78.]

See supra, § 73, county clerk's office, when to be kept open.

§ 3990. May Appoint Deputies.—Each sheriff may appoint as many deputies as he may think proper, for whose official acts he shall be responsible to the amount of their [his] bond, and may revoke such appointments at his pleasure; and persons may also be deputed by any sheriff in writing to do particular acts; and the sheriff shall be responsible on his official bond for the default or misconduct in office of his deputies. [Cf. L. '54, p. 434, § 2; L. '71, p. 110, § 1; Cd. '81, § 2767; 2 H. C., § 79.]

§ 3992. Duplicate Receipts.—It is the duty of each sheriff in this state to make duplicate receipts for all payments for his services in every case, and for every service, specifying the particular items thereof, at the time when the same is paid, whether so paid by virtue of the laws of this state or of the United States; such duplicate receipts for each month shall be numbered consecutively, commencing with number one in each calendar month. [L. '09, p. 384, § 1.]

See supra, § 497, schedule of fees of sheriff.

§ 3993. Original and Duplicate.—One of such duplicate receipts shall have written or printed upon it the word Original and the other of said duplicate receipts shall have written or printed upon it the word Duplicate. [L. '09, p. 385, § 2.]

§ 3994. Duplicate to Payer.—At the time of the payment of any such fees, such sheriff shall deliver to the person making such payment, either personally or by mail, the copy of such duplicate receipts designated Duplicate. [L. '09, p. 385, § 3.]

§ 3995. Original Receipt Filed.—The said duplicate receipts designated Original for each month shall be attached to the verified statement (for the corresponding month) provided for and prescribed in section 4068, infra, and such sheriff shall file with the county treasurer of his county all of said original duplicate receipts for each month with such verified statement. [L. '09, p. 385, § 4.]

§ 3996. Salary Withheld Unless Chapter Complied With.—It shall not be lawful for any sheriff to receive any salary for the preceding month unless the provisions of this chapter have been first complied with. [L. '09, p. 385, § 5.]

§ 3997. Penalty.—Any sheriff violating any of the provisions of this act, or failing to perform any of the duties required by this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than ten dollars nor more than fifty dollars for each offense. [L. '09, p. 385, § 6.]

§ 3998. Powers of Deputy.—Every deputy sheriff shall possess all the power, and may perform any of the duties, prescribed by law to be performed by the sheriff or by his deputies; shall serve or execute, according to law, all process, writs, precepts, and orders, issued or made by lawful authority, and to him directed, and he shall attend upon all courts of record at every session. [L. '54, p. 434, § 3; Cd. '81, § 2768; L. '86, p. 174, § 1; 2 H. C., § 80.]

Cited in 6 Wash. 566, 567; 40 Wash. 435.

§ 3999. Duties in Respect to Public Peace.—It shall be the duty of sheriffs and of their deputies to keep and preserve the peace in their respective counties, and quiet and suppress all affrays, riots, unlawful assemblies, and insurrections, for which purpose, and for the service of process in civil or criminal cases, and in apprehending or securing any person for felony or breach of the peace, they may call to their aid such persons or power of their county as they may deem necessary. [L. '54, p. 434, § 4; Cd. '81, § 2769; 1 H. C., § 169.]

Cited in 3 Wash. 392.

§ 4000. Liability for Misconduct, etc.—Whenever any sheriff shall neglect to make due return of any writ or other process delivered to him to be executed, or shall be guilty of any default or misconduct in relation thereto, he shall be liable to fine or attachment, or both, at the discretion of the court, subject to appeal; such fine, however, not to exceed two hundred dollars, and also to an action for damages

to the party aggrieved. [L. '54, p. 434, § 6; Cd. '81, § 2771; 1 H. C., § 170.]

See supra, § 159, action against sheriff, limitation of.

§ 4001. Service of Process When Sheriff Disqualified.—When there is no sheriff of a county, or he is disqualified from any cause from discharging any particular duty, it shall be lawful for the officer or person commanding or desiring the discharge of that duty to appoint some suitable person, a citizen of the county, to execute the same: Provided, that final process shall in no case be executed by any other person than the legally authorized officer; or in case he is disqualified, some suitable person appointed by the court, or judge thereof, out of which the process issues, who shall make such appointment in writing; and before such appointment shall take effect, the person so appointed shall give security to the party interested for the faithful performance of his duties, which bond of suretyship shall be in writing, be approved by the court or judge appointing him, and be placed on file with the papers in the case. [L. '69, p. 172, § 687; Cd. '81, § 745; 2 H. C., § 796.]

Cited in 20 Wash. 214.

See infra, § 8338, coroner to act on sheriff's failure to file bond.

§ 4002. Sheriff or Coroner not to Practice Law.—No sheriff, deputy sheriff, or coroner shall appear or practice as attorney in any court, except in defense of himself or his deputies. [Cf. L. '54, p. 434, § 5; Cd. '81, § 2770; L. '91, p. 84, § 4; 1 H. C., § 327; 2 H. C., § 82.]

See infra, § 6516, ineligible to office of justice of the peace.

§ 4003. May Demand Fees and Indemnifying Bond.—No sheriff, deputy sheriff, or coroner shall be liable for any damages for neglecting or refusing to serve any civil process unless his legal fees and an indemnifying bond, if he requires one, are first tendered to him. [L. '54, p. 434, § 7; Cd. '81, § 2772; 1 H. C., § 328.]

Cited in 1 Wash. 96; 26 Wash. 258; 57 Wash. 139; 70 Wash. 588, 591.

See supra, § 505, fees payable in advance.

§ 4004. Sheriff and Constable to Complain of Violation.—It shall be the duty of all constables and all sheriffs to make complaint of all violations of the criminal law which shall come to their knowledge within their respective jurisdictions. [L. '69, p. 260, § 311; Cd. '81, § 2801; 1 H. C., § 326.]

Cited in 6 Wash. 47.

See § 2887, vacation of office on conviction of failure to complain.

§ 4005. Sheriffs, etc., to Surrender Writs to Successors.—All sheriffs, constables and coroners in the state of Washington, upon the completion of their term of office and the qualification of their

successors, shall deliver and turn over to such successors all writs and other processes in their possession not wholly executed, and all personal property in their possession or under their control held under such writs or processes, and take receipts therefor in duplicate, one of which shall be filed in the office from which such writ or process issued as a paper in the action, which receipt shall be a good and sufficient discharge to such officer of and from further charge of the execution of such writs and processes; and shall also deliver to their successors all papers and property in their possession or under their control as such officers. And it shall be the duty of such successors to execute or complete the execution of all such writs and processes so delivered to them, and to finish and complete any and all business pertaining to such offices so turned over to them. [L. '95, p. 22, § 1.]

§ 4006. Successor to Complete Process.—In all cases where any sheriff, constable or coroner in the state of Washington has executed any writ or other process delivered to him by his predecessor, or has completed any business commenced by his predecessor under any writ or process, and has finished and completed any other business commenced by such predecessor pertaining to such offices, and in all cases where any sheriff, constable or coroner has executed any writ or other process, or completed any business connected with his office after the expiration of his term of office, which writ or process he had commenced to execute, or which business he had commenced to perform prior to the expiration of his term of office, the same shall be valid and effectual for all purposes. [L. '95, p. 23, § 2.]

See supra, § 3861, officer to complete business to close of term.
See infra, § 8763, validating sheriff's deeds, etc.

CHAPTER XV.

Coroners and Inquests.

§ 4007. Election—Term—Bond.—There shall be elected at each biennial election, in every county in this state, a coroner, who shall hold his office for two years and until his successor shall be elected and qualified, and shall take an oath of office and file a copy thereof. He shall execute a bond to his county in the sum of one thousand dollars, conditioned for the faithful performance of the duties of his office. [Cf. L. '54, p. 436, § 1; Cd. '81, § 2775; 1 H. C., § 245.]

Cited in 20 Wash. 214.

See supra, § 4002, not to practice law.
See supra, § 4003, may demand fees and indemnifying bond.
See supra, § 4005, to surrender papers, etc., to successor.
See infra, § 4029, justice of the peace to act as coroner when.
See infra, § 4011, to act as sheriff when.
See infra, § 6516, ineligible to office of justice of the peace.
See infra, § 8328, approval and filing of bond.

§ 4008. Deputy—Appointment.—In counties having fifty thousand, or more, inhabitants, the coroner thereof is hereby authorized and empowered to appoint one deputy, and take a bond or security from such deputy, not exceeding in amount the sum of one thousand dollars, for his indemnity. Such appointment shall be in writing and signed by the coroner. [L. '05, p. 112, § 1.]

§ 4009. Oath of Deputy.—Each deputy shall, before entering upon the duties of his office, take and subscribe an oath or affirmation, in like form as required of the coroners, which shall be filed in the office of the county clerk. [L. '05, p. 112, § 2.]

§ 4010. Deputy's Power and Compensation.—Deputy coroners, duly appointed and qualified, may perform any and all the duties of the coroner in the name of the coroner, and the acts of such deputy shall be held to be the act of the coroner: Provided, that such deputy shall receive no compensation from the county. [L. '05, p. 112, § 3.]

§ 4011. Coroner to Act as Sheriff, When.—The coroner shall perform the duties of the sheriff in all cases where the sheriff is interested or otherwise incapacitated from serving; and whenever the coroner acts as sheriff he shall possess the powers and perform all the duties of sheriff, and shall be liable on his official bond in like manner as the sheriff would be; and shall be entitled to the same fees as are allowed by law to the sheriff for similar services: Provided, that nothing herein contained shall prevent the court from appointing a suitable person to discharge such duties, as provided by section 4002. [Cf. L. '54, p. 436, § 2; Cd. '81, § 2776; 2 H. C., § 81; L. '97, p. 21, § 1.]

See supra, § 4001, service when sheriff disqualified.

See infra, § 8338, on failure of sheriff to file bond.

§ 4012. Inquest, When, Where and How to be Held.—When information is given to any coroner that the body of any person, the cause of whose death is unknown, and there shall exist reasonable grounds for the belief that such death has been caused by unlawful means at the hands of another, he shall go to the place where the body is, and forthwith summon six good and lawful persons, qualified by law to serve as jurors, to appear before him forthwith, at the place where the body of the deceased is, to inquire into the cause of the death. [L. '54, p. 436, § 3; Cd. '81, § 2777; 1 H. C., § 246.]

Cited in 33 Wash. 262.

See infra, § 5419, must report deaths to county auditor.

See infra, § 5972, deaths at insane hospital.

See infra, § 7390, inquests at coal mines.

§ 4013. Failure of Juror to Attend—Penalty.—Every person summoned as a juror who shall fail to appear without having a reasonable excuse shall forfeit any sum not exceeding twenty dollars, to

be recovered by the coroner, in the name of the state, before any justice of the peace in the proper county, and when collected to be paid over to the county treasurer for the use of the county. [L. '54, p. 436, § 4; Cd. '81, § 2778; 1 H. C., § 247.]

§ 4014. Oath of Jury—Duty of.—When four or more of the jurors attend, they shall be sworn by the coroner to inquire who the person was, and when, where, and by what means he came to his death, and into the circumstances attending his death, and to render a true verdict therein, according to the evidence afforded them, or arising from the inspection of the body. [L. '54, p. 436, § 5; Cd. '81, § 2719; 1 H. C., § 248.]

§ 4015. Power to Summon and Examine Witnesses and Physicians.—The coroner may issue subpoenas for witnesses to the sheriff or any constable of the county, returnable forthwith or at such time and place as he may appoint, which may be served by any competent person. He must summon and examine as witnesses, on oath by him administered, every person, who, in his opinion or that of any of the jury, has any knowledge of the facts, and he may summon a surgeon or physician to inspect the body and give under oath a professional opinion as to the cause of the death. The fees for the coroner's physician or surgeon shall not be less than ten ($10) dollars: Provided, that in counties between the first and eighth classes inclusive the fee herein provided shall not apply. [L. '01, p. 272, § 1. Cf. L. '54, p. 436, § 6; Cd. '81, § 2780; 1 H. C., § 249.]

§ 4016. Fees.—Coroners shall collect for their official services, the following fees:

For each inquest held, besides mileage	$10.00
For issuing a venire	1.00
For drawing all necessary writings, per folio	.10
For mileage each way, per mile	.10

For performing the duties of a sheriff, he shall receive the same fees as a sheriff would receive for the same service. [L. '07, p. 88, § 1. See p. 93.]

See supra, § 497, fees of sheriff.

§ 4017. Compelling Attendance of Witness.—A witness served with a subpoena may be compelled to attend and testify, or be punished by the coroner for disobedience, in like manner as upon a subpoena issued by a justice of the peace. [L. '54, p. 437, § 7; Cd. '81, § 2781; 1 H. C., § 250.]

§ 4018. Verdict must Show What.—After inspecting the body and hearing the testimony, the jury shall render their verdict, and certify the same in writing signed by them, and setting forth who the person killed is, if known, and when, where, and by what means he

came to his death; and if he was killed, or his death occasioned by the act of another by criminal means, who is guilty thereof, if known. [L. '54, p. 437, § 8; Cd. '81, § 2782; 1 H. C., § 251.]

§ 4019. Testimony to be Reduced to Writing and Witnesses Recognized, When.—In all cases where murder or manslaughter is supposed to have been committed, the testimony of witnesses taken before the coroner's jury shall be reduced to writing by the coroner, or under his direction, and he shall also recognize such witnesses to appear and testify in the superior court of the county, and shall forthwith file the written testimony, inquisition, and recognizance with the clerk of such court. [L. '54, p. 437, § 9; Cd. '81, § 2783; 1 H. C., § 252.]

§ 4020. Proceedings upon Arrest.—If, however, the person charged with the commission of the offense be arrested, the coroner shall deliver the same, with the testimony taken, to the magistrate before whom such person may be brought, who shall return the same, with the depositions and statements taken before him, and the recognizance, to the clerk of the superior court of the county. [L. '54, p. 437, § 10; Cd. '81, § 2784; 1 H. C., § 253.]

§ 4021. Warrant of Arrest.—If the jury find that the person was killed, and the party committing the homicide be ascertained by the inquisition, and be not in custody, the coroner shall issue a warrant for the arrest of the person charged, returnable forthwith to the nearest justice of the peace, judge, or committing magistrate. [L. '54, p. 437, § 11; Cd. '81, § 2785; 1 H. C., § 254.]

§ 4022. Form of Warrant.—The coroner's warrant shall be in substantially the following form:—

State of Washington, }
County of ——. } ss.

To any Sheriff or Constable of the County.

An inquisition having been this day found by the coroner's jury, before me, stating that A B has come to his death by the act of C D, by criminal means (or as the case may be, as found by the inquisition), you are therefore commanded, in the name of the state of Washington, forthwith to arrest the above-named C D, and take him before the nearest or most accessible magistrate in this county.

Given under my hand this —— day of ——, A. D. 18—.

E F, Coroner of the County of ——.

[L. '54, p. 437, § 12; Cd. '81, § 2786; 1 H. C., § 255.]

See Const., Art. IV, § 27.

§ 4023. Warrant, How and Where to be Served.—The coroner's warrant may be served in any county, and the officers serving it

shall proceed thereon, in all respects, as upon a warrant of arrest. [L. '54, p. 438, § 13; Cd. '81, § 2787; 1 H. C., § 256.]

§ 4024. Burial by Coroner—Expense of.—In all cases where no demand for the body for burial shall be made by friends of the deceased, the coroner shall provide for such burial at an expense not exceeding seventy-five dollars, to be paid by the estate of the deceased if it be sufficient. [L. '54, p. 438, § 14; Cd. '81, § 2788; 1 H. C., § 257; L. '01, p. 11, § 1.]

§ 4025. Property of Deceased—Disposition of.—The coroner must, within thirty days after the inquest upon a dead body, deliver to the county treasurer any money or other property which may be found upon the body, unless claimed in the meantime by the legal representatives of the deceased. If he fail to do so, the treasurer may proceed against the coroner to recover the same by a civil action in the name of the county. [L. '54, p. 438, § 15; Cd. '81, § 2789; 1 H. C., § 258.]

§ 4026. Duty of Treasurer as to Such Property.—Upon the delivery of money to the treasurer, he shall place it to the credit of the county; if it be other property, he shall, within thirty days, sell it at public auction, upon reasonable public notice, and shall in like manner place the proceeds to the credit of the county. [L. '54, p. 438, § 16; Cd. '81, § 2790; 1 H. C., § 259.]

§ 4027. Money to be Delivered to Representatives, When and How. If the money in the treasury be demanded within six years by the legal representatives of the deceased, the treasurer shall pay it to them, after deducting the fees and expenses of the coroner and of the county in relation to the matter; or the same may be so paid at any time thereafter, upon the order of the board of county commissioners of the county. [L. '54, p. 438, § 17; Cd. '81, § 2791; 1 H. C., § 260.]

§ 4028. Account of Coroner Audited, When.—Before auditing and allowing the account of the coroner, the board of county commissioners shall require from him a statement in writing, of any money or other property found upon persons on whom inquests have been held by him, verified by his oath, to the effect that the statement is true, and that the money or property mentioned in it has been delivered to the legal representatives of the deceased, or to the county treasurer. [L. '54, p. 438, § 18; Cd. '81, § 2792; 1 H. C., § 261.]

§ 4029. Justice of the Peace to Act as Coroner, When.—If the office of coroner be vacant, or he be absent or unable to attend, the duties of his office may be performed by any justice of the peace in the county, with the like authority, and subject to the same obliga-

tions and penalties, as the coroner. [L. '54, p. 438, § 19; Cd. '81, § 2793; 1 H. C., § 262.]

§ 4030. Fees of.—A justice of the peace acting as coroner, shall be entitled to the same fees, payable in the same manner. [L. '54, p. 438, § 21; 1 H. C., § 264; Cd. '81, § 2795.]

The act of 1913, p. 165 (3 Rem. & Bal. Code, §§ 4030–1, et seq.), is omitted as unconstitutional: See state ex rel. Maulsby v. Fleming, 88 Wash. 583.

CHAPTER XVI.

Salaries of County Officers, Costs and Fees.

§ 4031. Classification of Counties.—For the purpose of regulating the compensation of county officers and for all other purposes herein provided for the several counties of this state are hereby classified according to their population:

Counties containing a population of eighty thousand or over shall belong to and be known as counties of the first class;

Counties containing a population of seventy thousand and under eighty thousand shall belong to and be known as counties of the second class;

Counties containing a population of sixty thousand and under seventy thousand shall belong to and be known as counties of the third class;

Counties containing a population of fifty thousand and under sixty thousand shall belong to and be known as counties of the fourth class;

Counties containing a population of forty-five thousand and under fifty thousand shall belong to and be known as counties of the fifth class;

Counties containing a population of forty thousand and under forty-five thousand shall belong to and be known as counties of the sixth class;

Counties containing a population of thirty-five thousand and under forty thousand shall belong to and be known as counties of the seventh class;

Counties containing a population of thirty thousand and under thirty-five thousand shall belong to and be known as counties of the eighth class;

Counties containing a population of twenty-five thousand and under thirty thousand shall belong to and be known as counties of the ninth class;

Counties containing a population of twenty thousand and under twenty-five thousand shall belong to and be known as counties of the tenth class;

Counties containing a population of eighteen thousand and under twenty thousand shall belong to and be known as counties of the eleventh class;

Counties containing a population of sixteen thousand and under eighteen thousand shall belong to and be known as counties of the twelfth class;

Counties containing a population of fourteen thousand and under sixteen thousand shall belong to and be known as counties of the thirteenth class;

Counties containing a population of twelve thousand and under fourteen thousand shall belong to and be known as counties of the fourteenth class;

Counties containing a population of ten thousand and under twelve thousand shall belong to and be known as counties of the fifteenth class;

Counties containing a population of nine thousand and under ten thousand shall belong to and be known as counties of the sixteenth class;

Counties containing a population of eight thousand and under nine thousand shall belong to and be known as counties of the seventeenth class;

Counties containing a population of seven thousand and under eight thousand shall belong to and be known as counties of the eighteenth class;

Counties containing a population of six thousand and under seven thousand shall belong to and be known as counties of the nineteenth class;

Counties containing a population of five thousand five hundred and under six thousand shall belong to and be known as counties of the twentieth class;

Counties containing a population of five thousand and under five thousand five hundred shall belong to and be known as counties of the twenty-first class;

Counties containing a population of four thousand five hundred and under five thousand shall belong to and be known as counties of the twenty-second class;

Counties containing a population of four thousand and under four thousand five hundred shall belong to and be known as counties of the twenty-third class;

Counties containing a population of three thousand five hundred and under four thousand shall belong to and be known as counties of the twenty-fourth class;

Counties containing a population of three thousand and under three thousand five hundred shall belong to and be known as counties of the twenty-fifth class;

Counties containing a population of two thousand five hundred and under three thousand shall belong to and be known as counties of the twenty-sixth class;

Counties containing a population of one thousand five hundred and under two thousand shall belong to and be known as counties of the twenty-seventh class;

Counties containing a population of one thousand five hundred and under two thousand shall belong to and be known as counties of the twenty-eighth class;

Counties containing a population of one thousand or less and under one thousand five hundred shall belong to and be known as counties of the twenty-ninth class. [L. '90, p. 302, § 1; 1 H. C., § 2972; L. '01, p. 289, § 1.]

Cited in 25 Wash. 266; 54 Wash. 456, 457; 65 Wash. 416, 418; 68 Wash. 491.

§ 4032. Enumeration of County Officers—Salaries and Deputies.—The officers of the county shall be: One county sheriff, one county clerk, one county auditor, one county treasurer, one county attorney, one county assessor, one county superintendent of public [common] schools, one county engineer, one county coroner, and three county commissioners; but in counties with a population of three thousand or less, whenever the county commissioners, at the regular August [July] session prior to any general state election, shall so order and enter said order on their journal, any two or more offices which do not conflict so far as the duties are concerned may be combined, and one person elected to fill the offices thus combined. The officers in the different counties in the state shall each receive the salary hereinafter set forth, and in cases where one officer performs the duties of one or more offices he shall receive the combined salaries thereof. And in all cases where the duties of any office are greater than can be performed by the person elected to fill the same, said officer may employ, with the consent of the county commissioners, the necessary help, who shall receive a just and reasonable pay for services. The officer appointing such deputies or clerks shall be responsible for the acts of such appointees upon his official bond. [L. '90, p. 304, § 2; 1 H. C., § 2973.]

Cited in 10 Wash. 3; 11 Wash. 437, 438, 445; 12 Wash. 395, 415; 18 Wash. 161; 30 Wash. 196; 48 Wash. 465; 49 Wash. 393; 82 Wash. 121.

"Surveyor" changed to "engineer": See § 3974, supra.

See Const., Art. XI, § 5, compensation of county officers.

See supra, § 3907, and notes, limitations on county expenses.

See infra, § 4065, allowance and compensation of deputies.

See § 4479, infra, traveling expenses of county superintendent of schools.

See notes to § 9283, salaries of county treasurer as ex-officio tax collector in cities.

That part of this section relating to compensation of assessors, etc., is omitted as in conflict with the schedule of salaries prescribed in the sections following.

§ 4032–1. Wreckmaster Abolished.—The office of wreckmaster is hereby abolished. [L. '15, p. 142, § 2.]

§ 4033. Salaries in Counties of First Class.—On and after the passage of this act salaries of county officers of counties of the first class, as determined by the last preceding federal census, shall be as follows: County auditor, twenty-four hundred dollars; county clerk, twenty-two hundred dollars; county treasurer, twenty-five hundred dollars; county sheriff, twenty-four hundred dollars; county attorney, three thousand dollars; county superintendent of common schools, two thousand dollars; county commissioners, two thousand dollars per annum and necessary traveling expenses; county assessor, twenty-two hundred dollars; county engineer, twenty-four hundred dollars; county coroner, one thousand dollars per annum. [L. '90, p. 305, § 3; 1 H. C., § 2974; L. '95, p. 409, § 1; L. '05, p. 42, § 1.]

Cited in 25 Wash. 266; 30 Wash. 195.
County engineer changed on authority of § 4062 infra.

§ 4033–1. Salaries of County Commissioners.—In all counties other than counties of the first class which have adopted or may hereafter adopt and put in force township organization, the compensation of county commissioners shall be and the same is hereby fixed at five dollars ($5) per day for each and every day actually employed in the discharge of their duties: Provided, that they shall not be entitled to nor receive such per diem for more than two hundred (200) days in any one year: And provided further, that such county commissioners shall be entitled to all actual traveling and other necessary expenses incurred in the discharge of their duties. [L. '13, p. 58, § 1.]

§ 4034. Of Second Class.—County auditor, twenty-four hundred dollars; county clerk, twenty-two hundred dollars; county treasurer, twenty-five hundred dollars; county sheriff, twenty-four hundred dollars; county attorney, twenty-two hundred dollars; county superintendent of common schools, two thousand dollars; county commissioners, fifteen hundred dollars per annum and expenses; county assessor, eighteen hundred dollars; county coroner, one thousand dollars per annum; county engineer, twenty-four hundred dollars per annum. [L. '90, p. 305, § 4; 1 H. C., § 2975; L. '95, p. 410, § 2; L. '07, p. 446, § 1.]

§ 4035. Of Third Class.—County auditor, nineteen hundred dollars; county clerk, nineteen hundred dollars; county treasurer, two thousand dollars; county sheriff, nineteen hundred dollars; county attorney, nineteen hundred dollars; county superintendent of common schools, eighteen hundred dollars; county commissioners, eighteen hundred dollars per annum, and necessary expenses; county assessor, fifteen hundred dollars; county coroner, one thousand dollars per annum; county engineer, nineteen hundred dollars per annum.

[L. '90, p. 305, § 5; 1 H. C., § 2976; L. '95, p. 410, § 3; L. '07, p. 446, § 2.]

§ 4036. Of Fourth Class.—County auditor, nineteen hundred dollars; county clerk, nineteen hundred dollars; county treasurer, two thousand dollars; county sheriff, nineteen hundred dollars; county attorney, nineteen hundred dollars; county superintendent of common schools, eighteen hundred dollars; county commissioners, eighteen hundred dollars per annum and necessary expenses; county assessor, fifteen hundred dollars; county coroner, one thousand dollars per annum; county engineer, nineteen hundred dollars per annum. [L. '90, p. 306,§ 6; 1 H. C., § 2977; L. '95, p. 410, § 4; L. '07, p. 446, § 3.]

§ 4037. Of Fifth Class.—County auditor, nineteen hundred dollars; county clerk, nineteen hundred dollars; county treasurer, two thousand dollars; county sheriff, nineteen hundred dollars; county attorney, nineteen hundred dollars; county superintendent of common schools, eighteen hundred dollars; county commissioners, eighteen hundred dollars per annum and necessary expenses; county assessor, fifteen hundred dollars; county coroner, one thousand dollars per annum; county engineer, nineteen hundred dollars per annum. [L. '90, p. 306, § 7; 1 H. C., § 2978; L. '95, p. 410, § 5; L. "07, p. 447, § 4.]

§ 4038. Of Sixth Class.—County auditor, nineteen hundred dollars; county clerk, eighteen hundred dollars, county treasurer, nineteen hundred dollars; county sheriff, nineteen hundred dollars; county attorney, nineteen hundred dollars; county superintendent of common schools, two thousand dollars; county commissioners, eight hundred dollars per annum and necessary expenses; county assessor, fifteen hundred dollars; county coroner, eight hundred dollars per annum. [L. '90, p. 307, § 8; 1 H. C., § 2979; L. '95, p. 411, § 6.]

County engineer omitted from this and the next nine sections as superseded by § 4062, infra.

§ 4039. Of Seventh Class.—County auditor, nineteen hundred dollars; county clerk, eighteen hundred dollars; county treasurer, nineteen hundred dollars; county sheriff, nineteen hundred dollars; county attorney, nineteen hundred dollars; county superintendent of common schools, two thousand dollars; county commissioners, eight hundred dollars per annum and necessary expenses; county assessor, fifteen hundred dollars; county coroner, eight hundred dollars per annum. [L. '90, p. 307, § 9; 1 H. C., § 2980; L. '95, p. 411, § 7.]

§ 4040. Of Eighth Class.—County auditor, sixteen hundred dollars; county clerk, fifteen hundred dollars; county treasurer, eighteen hundred dollars; county sheriff, sixteen hundred dollars;

county attorney, sixteen hundred dollars; county superintendent of common schools, twelve hundred dollars; county commissioners, four dollars per day; county assessor, twelve hundred dollars; county coroner, such fees as are allowed by law. [L. '90, p. 307, § 10; 1 H. C., § 2981; L. '95, p. 411, § 8.]

§ 4041. Of Ninth Class.—County auditor, sixteen hundred dollars; county clerk, fifteen hundred dollars; county treasurer, eighteen hundred and fifty dollars; county sheriff, sixteen hundred dollars; county attorney, sixteen hundred dollars; county superintendent of common schools, twelve hundred dollars; county commissioners, four dollars per day; county assessor, twelve hundred dollars; county coroner, such fees as are allowed by law. [L. '90, p. 307, § 11; 1 H. C., § 2982; L. '95, p. 412, § 9.]

§ 4042. Of Tenth Class.—County auditor, sixteen hundred dollars; county clerk, fifteen hundred dollars; county treasurer, eighteen hundred dollars; county sheriff, sixteen hundred dollars; county attorney, sixteen hundred dollars; county superintendent of common schools, twelve hundred dollars; county commissioners, four dollars per day; county assessor, twelve hundred dollars per annum; county coroner, such fees as are allowed by law. [L. '90, p. 307, § 12; 1 H. C., § 2983; L. '95, p. 412, § 10.]

§ 4043. Of Eleventh Class.—County auditor, sixteen hundred dollars; county clerk, fifteen hundred dollars; county treasurer, eighteen hundred dollars; county sheriff, sixteen hundred dollars; county attorney, sixteen hundred dollars; county superintendent of common schools, twelve hundred dollars; county commissioners, four dollars per day; county assessor, twelve hundred dollars per annum; county coroner, such fees as are allowed by law. [L. '90, p. 307, § 13; 1 H. C., § 2984; L. '95, p. 412, § 11.]

§ 4044. Of Twelfth Class.—County auditor, sixteen hundred dollars; county clerk, fifteen hundred dollars; county treasurer, eighteen hundred dollars; county sheriff, sixteen hundred dollars; county attorney, sixteen hundred dollars; county superintendent of common schools, twelve hundred dollars; county commissioners, four dollars per day; county assessor, twelve hundred dollars per annum; county coroner, such fees as are allowed by law. [L. '90, p. 308, § 14; 1 H. C., § 2985; L. '95, p. 413, § 12.]

§ 4045. Of Thirteenth Class.—County auditor sixteen hundred dollars; county clerk, fifteen hundred dollars; county treasurer, eighteen hundred dollars; county sheriff, sixteen hundred dollars; county attorney, sixteen hundred dollars; county superintendent of common schools, twelve hundred dollars; county commissioners, four dollars per day; county assessor, twelve hundred dollars per annum; county

coroner, such fees as are allowed by law. [L. '90, p. 308, § 15; 1 H. C., § 2986; L. '95, p. 413, § 13.]

§ 4046. Of Fourteenth Class.—County auditor, fifteen hundred dollars; county clerk, fourteen hundred dollars; county treasurer, fifteen hundred dollars; county sheriff, fifteen hundred dollars; county attorney, fourteen hundred dollars; county superintendent of common schools, twelve hundred dollars; county commissioners, four dollars per day; county assessor, fifteen hundred dollars; county coroner, such fees as are allowed by law. [L. '13, p. 356, § 4; L. '90 p. 308, § 16; 1 H. C., § 2987; L. '95, p. 413, § 14.]

§ 4047. Of Fifteenth Class.—County auditor, fifteen hundred dollars; county clerk, thirteen hundred and fifty dollars; county treasurer, fourteen hundred and fifty dollars; county sheriff, fourteen hundred and fifty dollars; county attorney, thirteen hundred dollars; county superintendent of common schools, eleven hundred dollars; county commissioners, four dollars per day; county assessor, four dollars per day; county coroner, such fees as are allowed by law. [L. '13, p. 355, § 1.]

§ 4048. Of Sixteenth Class.—County auditor, fifteen hundred dollars; county clerk, thirteen hundred and fifty dollars; county treasurer, fourteen hundred dollars; county sheriff, fourteen hundred dollars; county attorney, twelve hundred dollars; county superintendent of common schools, one thousand dollars; county commissioners, four dollars per day; county surveyor, five dollars per day; county assessor, four dollars per day; county coroner, such fees as are allowed by law. [L. '13, p. 355, § 2.]

§ 4049. Of Seventeenth Class.—County auditor, fifteen hundred dollars; county clerk, thirteen hundred and fifty dollars; county treasurer, fourteen hundred dollars; county sheriff, fourteen hundred dollars; county attorney, eleven hundred dollars; county superintendent of common schools, one thousand dollars; county commissioners, four dollars per day; county surveyor, five dollars per day; county assessor, four dollars per day; county coroner, such fees as are allowed by law. [L. '13, p. 355, § 3. Cf. '90, p. 309, § 19; 1 H. C., § 2990. L. '95, p. 414, § 17.]

§ 4050. Of Eighteenth Class.—County auditor, fifteen hundred dollars; county clerk, thirteen hundred and fifty dollars; county treasurer, thirteen hundred and fifty dollars; county attorney, nine hundred dollars; county sheriff, thirteen hundred and fifty dollars; county superintendents of common schools, seven hundred and fifty dollars; county commissioners, four dollars per day; county assessor, four dollars per day; county surveyor, five dollars per day; county

coroner, such fees as are allowed by law. [L. '90, p. 309, § 20; 1 H. C., § 2991; L. '95, p. 414, § 18; L. '01, p. 273, § 1.]

§ 4051. Of Nineteenth Class.—County auditor, fourteen hundred dollars; county clerk twelve hundred dollars; county treasurer, twelve hundred dollars; county sheriff, twelve hundred dollars; county attorney, eight hundred and fifty dollars; county superintendent of common schools, seven hundred and fifty dollars; county commissioners, four dollars per day; county assessor, four dollars per day; county surveyor, five dollars per day; county coroner, such fees as are allowed by law. [L. '90, p. 309, § 21; 1 H. C., § 2992; L. '95, p. 415, § 19.]

§ 4052. Of Twentieth Class.—County auditor, fourteen hundred dollars; county clerk twelve hundred dollars; county treasurer twelve hundred dollars; county sheriff, thirteen hundred dollars; county attorney, eight hundred and fifty dollars; county superintendent of common schools, seven hundred and fifty dollars; county commissioners, four dollars per day; county assessor, four dollars per day; county surveyor, five dollars per day; county coroner, such fees as are allowed by law. [L. '90, p. 310, § 22; H. C., § 2993; L. '95, p. 415, § 20.]

§ 4053. Of Twenty-first Class.—County auditor, thirteen hundred dollars; county clerk, eleven hundred dollars; county treasurer, eleven hundred and fifty dollars; county sheriff, twelve hundred dollars; county attorney, six hundred dollars; county superintendent of common schools, seven hundred dollars; county commissioners, four dollars per day; county assessor, four dollars per day; county surveyor, five dollars per day; county coroner, such fees as are allowed by law. [L. '90, p. 310, § 23; 1 H. C., § 2994; L. '95, p. 415, § 21.]

§ 4054. Of Twenty-second Class.—County auditor, ten hundred and fifty dollars; county clerk, nine hundred dollars; county treasurer, nine hundred dollars; county sheriff, ten hundred and fifty dollars; county attorney, six hundred dollars; county superintendent of common schools, six hundred dollars; county commissioners, four dollars per day; county assessor, four dollars per day; county surveyor, five dollars per day; county coroner, such fees as are allowed by law. [L. '90, p. 310, § 25; 1 H. C., § 2996; L. '95, p. 416, § 23.]

§ 4055. Of Twenty-third Class.—County auditor, one thousand and fifty dollars; county clerk, nine hundred dollars; county treasurer, nine hundred dollars; county sheriff, one thousand and fifty dollars; county attorney, six hundred dollars; county superintendent of common schools, six hundred dollars; county commissioners, four dollars per day; county assessor, four dollars per day; county sur-

veyor, five dollars per day; county coroner, such fees as are allowed by law. [L. '90, p. 310, § 25; 1 H. C., § 2996; L. '95, p. 416, § 23.]

§ 4056. Of Twenty-fourth Class.—County auditor, nine hundred dollars; county clerk, eight hundred dollars; county treasurer, nine hundred dollars; county sheriff, nine hundred dollars; county attorney, four hundred dollars; county superintendent of common schools, five hundred dollars; county commissioners, four dollars per day; county assessor, four dollars per day; county surveyor, five dollars per day; county coroner, such fees as are allowed by law. [L. '90, p. 311, § 26; 1 H. C., § 2997; L. '95, p. 416, § 24.]

§ 4057. Of Twenty-fifth Class.—County auditor, nine hundred dollars; county clerk, eight hundred dollars; county treasurer, nine hundred dollars; county sheriff, nine hundred dollars; county attorney, four hundred dollars; county superintendent of common schools, five hundred dollars; county commissioners, four dollars per day; county assessor, four dollars per day; county surveyor, five dollars per day; county coroner, such fees as are allowed by law. [L. '90, p. 311, § 27; 1 H. C., § 2998; L. '95, p. 417, § 25.]

§ 4058. Of Twenty-sixth Class.—County auditor, eight hundred dollars; county clerk, six hundred dollars, county treasurer, seven hundred and fifty dollars; county sheriff, eight hundred dollars; county attorney, four hundred dollars; county superintendent of common schools, four hundred dollars; county commissioners, four dollars per day; county assessor, four dollars per day; county surveyor, five dollars per day; county coroner, such fees as are allowed by law. [L. '90, p. 311, § 28; 1 H. C., § 2999; L. '95, p. 417, § 26.]

§ 4059. Of Twenty-seventh Class.—County auditor, seven hundred dollars; county clerk, four hundred and fifty dollars; county treasurer, six hundred dollars; county sheriff, six hundred dollars; county attorney, one hundred and fifty dollars; county superintendent of common schools, two hundred and fifty dollars; county commissioners, four dollars per day; county assessor, four dollars per day; county surveyor, five dollars per day; county coroner, such fees as are allowed by law. [L. '90, p. 311, § 29; 1 H. C., § 3000; L. '95, p. 417, § 27.]

§ 4060. Of Twenty-eighth Class.—County auditor, six hundred dollars; county clerk, four hundred dollars; county treasurer, six hundred dollars; county sheriff, six hundred dollars; county attorney, one hundred and fifty dollars; county superintendent of common schools, two hundred dollars; county commissioners, four dollars per day; county assessor, four dollars per day; county surveyor, five dollars per day; county coroner, such fees as are allowed by law. [L. '90, p. 312, § 30; 1 H. C., § 3001; L. '95, p. 417, § 28.]

§ 4061. Of Twenty-ninth Class.—County auditor, four hundred dollars; county clerk, two hundred and fifty dollars; county treasurer, three hundred dollars; county sheriff, three hundred dollars; county attorney, one hundred and fifty dollars; county superintendent of common schools, one hundred and fifty dollars; county commissioners, four dollars per day; county assessor, four dollars per day; county surveyor, five dollars per day; county coroner, such fees as are allowed by law. [L. '90, p. 312, § 31; 1 H. C., § 3002; L. '95, p. 418, § 29.]

§ 4062. Compensation of County Engineer.—The salary of the county engineer shall be as follows: When according to the last census taken by the county, the state or the United States, preceding the election, at which the engineer was elected, the population of the county is less than ten thousand, the engineer shall receive a salary of five dollars per day, for each day actually and necessarily employed in the discharge of his duties, and he shall keep his office open for the inspection of his records by the public during the official hours of his business, as hereinafter provided. In counties of five thousand or less population he shall keep his office open at least one day in each week. In counties of more than five thousand, and less than ten thousand, he shall keep his office open at least two days each week, and a notice of such days must be posted on his office door. In all counties of ten thousand and more population, he shall receive the same salary as the county auditor of his county, and his office shall be kept open at all times as other county offices of record are kept open. [L. '07, p. 352, § 5.]

Cited in 48 Wash 61.

§ 4063. Traveling Expenses of County Engineer.—The county engineer, or his deputy, and his assistants, shall be allowed actual traveling expenses while officially employed. [L. '07, p. 352, § 6.]

§ 4064. Limitations.—All officers paid a per diem under the provisions of this chapter shall only be paid for the time actually and necessarily spent in the discharge of their duties. No superintendent of common schools shall receive any compensation for his services other than the salary fixed by this chapter. [L. '95, p. 418, § 30.]

Cited in 30 Wash. 196; 48 Wash. 465.

See § 4479, infra, traveling expenses of county superintendent of schools.

§ 4065. Salary to be Full Compensation—Deputies, etc.—In accordance with the classification herein made, the county officers of the counties of this state, according to their class, shall receive a salary for the services required of them by law, or by virtue of their office, which salary shall be full compensation for all services of every kind and description rendered by the officers named herein:

Provided, that in case the salaries herein provided for are, in the judgment of the board of county commissioners, inadequate for the services required of the officers named herein, then the said board of county commissioners may allow such officer a deputy, or such number of deputies as, in their judgment, may be required to do the business of such office in connection with the principal, for such time as may be necessary, and at such salary as they may designate; the said deputies shall be paid in the same manner and time as their principals: Provided, that the county commissioners shall pay the actual traveling expenses of the sheriff while on official duties, to be audited by the board of county commissioners. [L. '90, p. 312, § 32; 1 H. C., § 3003.]

Cited in 11 Wash. 438; 12 Wash. 396, 416; 68 Wash. 491; 82 Wash. 122.

§ 4066. Collection and Disposition of Fees.—All salaried officers of the several counties of this state shall charge and collect for the use of their respective counties, and pay into the county treasury on the first Monday in each month, all the fees now or hereafter allowed by law, paid or chargeable in all cases except such fees as are a charge against the county or state. [L. '90, p. 313, § 33; 1 H. C., § 3004.]

Cited in 68 Wash. 491.

See infra, § 4073, time for payment of fees into treasury.

See infra, § 4072, disposition of fees.

§ 4067. Each Officer must Keep Fee-book.—Each of the officers authorized to receive fees under the provisions of this act shall keep a fee-book, open to public inspection during office hours, in which must be entered at once and detailed all fees or compensation of whatever nature, kind, or description, collected or chargeable. On the first Monday of each and every month, the officer must add up each column in his fee-book to the first of the month, and set down the totals. On the expiration of the term of such officer he must deliver to the county auditor all fee-books kept by him. [L. '90, p. 313, § 34; 1 H. C., § 3018.]

See infra, § 4078, posting schedule of fees.

§ 4068. Fees—Statements of, to be Verified—Form of Affidavit.—The fees and compensation collected and chargeable for the county in each month shall be paid to the county treasurer on the first Monday of the following month, and must be accompanied by a statement and copy of the fee-book for the month last past, duly verified by the officer making such payment, and certified to by the proper officer. The affidavit shall be in the following form:

State of Washington, }
County of ——. } ss.

I, —— county ——, do swear that the fee-book in my office contains a true statement in detail of all fees and compensation of every kind and nature, for official services rendered by me, paid or chargeable, my deputies or assistants, for the month of ——, A. D. 19—, and that said fee-book shows the full amount received or chargeable in said month, and since my last monthly payment; and neither myself nor to my knowledge or belief, any of my deputies or assistants, have rendered any official services, except for the county or state, which is not fully set out in said fee-book; and that the foregoing statement thereof is a full, true and complete copy thereof. Subscribed and sworn to before me this —— day of —— 19—.

The certificate of the checking officer shall be in the following form:

State of Washington, }
County of ——. } ss.

This is to certify that I have checked the records of the office of the county —— for the month of —— 19—, and find the same to be properly entered on his fee-book, and that the foregoing statement is a full, true and complete copy thereof.

Witness my hand and official seal this —— day of ——, 19—. [L. '90, p. 313, § 35; 1 H. C., § 3005; L. '07, p. 107, § 3.]

§ 4069. Officer's Monthly Statement to Auditor.—Each of the salaried officers authorized to receive fees under the laws of this state, shall on or before the first Monday of each month and at the end of his term of office submit to the county auditor a statement and copy of his fee-book for the month last past, duly verified as provided in the preceding section: Provided, that the county auditor shall submit the statement and copy of his fee-book to the county clerk. [L. '07, p. 107, § 1.]

§ 4070. Checking of Statements.—It shall thereupon be the duty of the county auditor and county clerk to check such statements submitted to him with the fee-book of their respective offices and the records pertaining thereto, and if they are found to be correct he shall return same after having attached thereto his official certificate. [L. '07, p. 107, § 2.]

§ 4071. Errors or Irregularities.—If any errors or irregularities are found by the checking officer he shall immediately notify the officer interested, and if within three days after such notification said errors or irregularities are not corrected by such officer, it shall be the duty of the checking officer to so notify the board of county commissioners in writing and upon receipt of such notification it shall be the

duty of said board to proceed against such officer in the manner provided by law. [L. '07, p. 108, § 4.]

§ 4072. Disposition of Fees of Salaried Officers.—All officers enumerated in this section, who are paid a salary in lieu of fees, shall collect the fees herein prescribed for the use of the state or county, as the case may be, and shall pay the same into the state or county treasury, as the case may be, on the first Monday of each month. [L. '07, pp. 88–95, § 1.]

This is only part of the above section: See L. '07, p. 95. The officers enumerated in this section are clerk of the supreme court, clerks of the superior court, sheriffs, constables, county auditors, coroners, secretary of state, and notaries public.

For fees prescribed, see the following: Clerks of court, § 497, supra; sheriffs, § 497; constables, § 6530; county auditors, § 3936; coroners, § 4016; secretary of state, § 8999; notaries, § 8302.

For fees of jurors: See infra, § 4084.

§ 4073. Payment of Fees into County Treasury.—Every county officer, who, by the laws of this state is allowed a salary, shall, on the first Monday of each month, pay into the county treasury all moneys and sums which have come into his hands for fees and charges in his office, or by virtue of his office, during the preceding month. And no officer is permitted to retain to his own use or profit any sums paid him in his office or by virtue of his office, no matter from what source, but all of such moneys so paid him by virtue of the laws of this state, or of the United States, shall be the property of the county. [L. '93, p. 184, § 1.]

Cited in 56 Wash. 90; 68 Wash. 491.

See supra, § 4066, collection and disposition of fees.

See infra, § 4079, vacancy declared on failure to account for fees collected.

See infra, § 4080, penalty for extorting illegal fees.

See infra, § 4081, payment of fees collected, penalty.

§ 4074. Salary Fund Created—Transfer of Funds to.—For the purpose of paying the salaries provided for in this act, all fees directed to be paid into the county treasury shall be set apart therein as a separate fund, to be known as the salary fund, to be applied to the payment of said salaries; should the amount received from such source be insufficient, it shall be the duty of the county treasurer, from time to time, to transfer to said fund from the general county fund such sums as may be necessary to pay said salaries as they become due, notifying the county auditor of such transfer. At the regular term of county commissioners' court they shall transfer any excess of the salary fund to the general county fund, should they deem it expedient so to do. [L. '90, p. 314, § 36; 1 H. C., § 3006.]

Cited in 14 Wash. 682.

See infra, § 9212, county current expense fund.

§ 4075. Payment of Salaries.—The salaries of such officers named in this act as are entitled to salaries shall be paid monthly out of the county treasury, and from the funds hereinbefore provided, and it shall be the duty of the county auditor, on the first Monday of each and every month, to draw his warrant upon the county treasurer in favor of each of said officers for the amount of salary due him, under the provisions of this act, for the preceding month: Provided, the county commissioners shall have entered an order on the record journal empowering him so to do. [L. '90, p. 314, § 37; 1 H. C., § 3007.]

"This act": Act of 1890, p. 312.

§ 4076. Salary Warrant, When may be Drawn.—The auditor shall not draw his warrant for the salary of any such officer for any month until the latter shall have first filed his duplicate receipt with the auditor, properly signed by the treasurer, showing that he has made the statement and settlement for that month required in this act. [L. '90, p. 314, § 38; 1 H. C., § 3008.]

§ 4077. Itemized Receipt for Fees to be Given—Penalty.—Every officer, upon receiving any fees for official duty, service, or reward, may be required by the person paying the same to make out in writing, and deliver to such person, a particular account of such fees, specifying for what they accrued, respectively, and shall receipt the same; and if he refuse or neglect so to do when required, he shall be liable to the party paying the same in treble the amount so paid. [L. '90, p. 315, § 40; 1 H. C., § 3010.]

§ 4078. Statement of Fees to be Posted.—It shall be the duty of each county officer entitled to collect fees herein from the public, to keep posted in his office a plain and legible statement of the fees allowed by law; a failure so to do shall subject the officer to a fine of one hundred dollars and costs, to be recovered in any court of competent jurisdiction. [L. '90, p. 315, § 41; 1 H. C., § 3011.]

§ 4079. Receiving Illegal Fees, Office may be Declared Vacant for, When.—The board of county commissioners of any county in this state, upon receiving a certified copy of the record of conviction of any officer for receiving illegal fees, or where the officer collects fees and fails to account for the same, upon proof thereof must declare his office vacant, and appoint his successor. [L. '90, p. 315, § 42; 1 H. C., § 3012.]

§ 4080. Taking Illegal Fees, How Punished.—If any officer shall take more or greater fees than are herein allowed, he shall be liable to indictment, and on conviction shall be removed from office and

fined in any sum not exceeding one thousand dollars. [Cd. '81, § 2090; 1 H. C., § 3019.]

See, also, § 2612, supra.

§ 4081. Failure to Pay Over Fees is Embezzlement.—Any county officer who is paid a salary, who shall fail to pay to the county treasury all sums that shall have come into his hands for fees and charges in his office, or by virtue of his office, whether under the laws of this state or of the United States, shall be deemed to be guilty of embezzlement in office, and upon conviction thereof shall be punished by imprisonment in the penitentiary not less than one year nor more than three years: Provided further, upon conviction, his office shall be declared to be vacant by the court pronouncing the sentence. [L. '93, p. 184, § 2.]

Cited in 15 Wash. 415; 56 Wash. 87, 88; 68 Wash. 492.

§ 4082. Withholding County Funds—Penalty for.—Any and all officers of a county, or their deputies, who shall collect fees for the county and neglect to turn the money into the county treasury, as herein provided, shall be guilty of a misdemeanor, and on conviction shall be fined in any sum not exceeding two hundred dollars for each offense. [L. '90, p. 316, § 46; 1 H. C., § 3015.]

§ 4083. New or Altered Counties, How Classified. — Counties created or organized after the passage and approval of this act shall immediately come under and be governed by its provisions, so far as the same are applicable thereto: Provided, that when the population of any existing county shall have been reduced, by reason of the creation of any new county from the territory thereof, below the class and rank to which it was first entitled hereunder, it shall then be the duty of the county commissioners to designate, by order, the class to which said county has been reduced by reason thereof, and such county shall then enter the list of such class: Provided further, that the salary of county officers shall in no way be affected by reason of such division for the time for which they were elected. [L. '90, p. 316, § 47; 1 H. C., § 3016.]

See note to § 4075.

§ 4084. Schedule of Fees of Jurors, etc.—Each grand and petit juror shall receive for each day's attendance upon the superior court, besides mileage, three dollars.

Each talesman serving in the superior court, per day	$2.00
For each day's attendance upon a justice of the peace court	1.00
For serving on a coroner's jury, per day	2.00
Mileage, each way, per mile	.10

[L. '07, p. 88, § 1. See p. 93.]

Fees of officers, witnesses, etc.: See § 497, supra.

§ 4085. Mileage of Jurors, etc., Clerk to Certify Amount, etc.—Whenever a juror, witness, or officer is required to attend a court, or travel on official business out of the limits of his own county, and entitled to mileage, in lieu thereof he may at his option receive his actual and necessary traveling expenses by the usually traveled route in going to and returning from the place where the court is held, or where the business is discharged. At the close of each term of the district court the clerk shall ascertain the amount due each juror for his mileage and per diem; and he shall also certify the amount of fees that may be due to the sheriff of any other county than that in which the court is held, who may have attended the term, having a prisoner in custody charged with or convicted of a crime, or for the purpose of conveying such prisoner to or from the county, which, when approved by the court or judge, shall be a charge upon the county to which the prisoner belongs; and he shall also certify the amount which may be due witnesses attending from another county in a criminal case for their fees, which, when approved by the court or judge, shall be a charge upon the county to which the case belongs. [Cf. L. '63, p. 424, §§ 6, 8; L. '69, p. 419, § 7; Cd. '81 § 2109; 1 H. C., § 3049.]

Cited in 7 Wash. 448, 449; 13 Wash. 487.

See note to the last section.

See supra, § 498, requisites for allowance of juror and witness fees.

§ 4086. Official Oaths to be Administered Without Charge.—No fees shall be charged by any officer for administering and certifying the oath of office. [L. '69, p. 374, § 18; Cd. '81, § 2096; 1 H. C., § 3025.]

§ 4087. Pension Papers—Officers not to Charge Fees.—No judge, or clerk of court, county clerk, county auditor, or any other county officer, shall be allowed to charge any honorably discharged soldier or seaman, or the widow, orphan, or legal representative thereof, any fee for administering any oath or giving any official certificate for the procuring of any pension, bounty, or back pay, nor for administering any oath or oaths, and giving the certificate required upon any voucher for collection of periodical dues from the pension agent, nor any fee for services rendered in perfecting any voucher. [L. '91, p. 28, § 1; 1 H. C., § 3046.]

§ 4088. Requiring or Accepting Such Fees, Punishment for.—Any such officer who may require and accept fees for such services shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not less than ten dollars nor more than fifty dollars. [L. '91, p. 28, § 2; 1 H. C., § 3047.]

§ 4089. Fees in Special Cases, Allowance of.—Each and every officer who shall be called on or required to perform service for which

no fees or compensation are provided for in this chapter shall be allowed fees similar and equal to those allowed him for services of the same kind for which allowance is made herein. [L. '54, p. 375, § 4; L. '61, p. 41, § 5; Cd. '81, § 2098; 1 H. C., § 3027.]

Cited in 9 Wash. 108, 109, 111; 10 Wash. 3.

§ 4090. Fee-bills to be Made if Required.—All officers shall, when requested so to do, make out a bill of their fees in every case, and for any services, specifying each particular item thereof, and receipt the same when it is paid, which bill of fees shall always be subject to examination and correction by the several courts; and any officer who refuses or declines to comply with the requirements of this section shall forfeit his fees in every case. [L. '54, p. 376, § 6; L. '61, p. 41, § 3; Cd. '81, § 2102; 1 H. C., § 3030.]

See, also, § 4077, supra.

County Board of Health. See "Health," § 5541.
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CHAPTER I.

Diking Districts.

Assessments on state lands, see §§ 4251–4255 and 6872–6882, infra.

§ 4091. Organization of.—Any portion of a county requiring diking, which contains five or more inhabitants and freeholders therein, may be organized into a diking district, and when so organized, such district, and the board of commissioners hereinafter provided for, shall have and possess the power herein conferred or that may hereafter be conferred by law upon such district and board of commissioners, and said district shall be known and designated as diking district No. —— (here insert number) of the county of —— (here insert the name of county) of the state of Washington, and shall have the right to sue and be sued by and in the name of its board of commissioners hereinafter provided for, and shall have perpetual succession, and shall adopt and use a seal. The commissioners hereinafter provided for, and their successors in office, shall, from the time of the organization of such diking district, have the power, and it shall be their duty, to manage and conduct the business and affairs of the district; make and execute all necessary contracts, employ and appoint such agents, officers and employees as may be required, and prescribe their duties, and perform such other acts as hereinafter provided, or that may hereafter be provided by law. [L. '95, p. 304, § 1.]

Cited in 15 Wash. 316; 19 Wash. 205; 20 Wash. 91, 518; 63 Wash. 332; 81 Wash. 482; 82 Wash. 32; 84 Wash. 253.

This chapter supersedes §§ 1928–1934, 1 Hill's Code (L. '88, pp. 90–92). Compare Code '81, §§ 2519–2531; L. '83, pp. 30–32; L. '90, p. 730, § 1.

§ 4092. Districts, How Formed.—For the purpose of the formation of such diking districts a petition shall be presented to the board

of county commissioners of the county in which said proposed diking district is located, which petition shall set forth the object for the creation of said district; shall designate the boundaries thereof and set forth therein the number of acres of land to be benefited by the proposed diking system, and shall also contain the names of all the freeholders residing within said proposed district, (so far as known), and shall contain a brief description of the proposed system of diking, the route over which the same is to be constructed, together with the proposed spurs or branches, if any there may be, and the termini thereof, and set forth the further fact that the establishment of said district and the proposed system of diking will be conducive to the public health, convenience and welfare, and increase the public revenue, and that the establishment of said district and said system of diking will be of special benefit to the property included therein. Said petition shall be signed by such a number as own at least a majority of the acreage in the proposed district, and shall pray that the same be organized under the provisions of this chapter. Said petitioners shall, at the time of the filing of said petition, file a bond with said commissioners, running to the state of Washington, in the penal sum of five hundred dollars, with two or more sureties, to be approved by the board of county commissioners, conditioned that they will pay all costs in case said district, for any reason, shall not be established. [L. '95, p. 304, § 2.]

§ 4093. Petitions to be Published, and by Whom Filed.—Said petition shall be presented at a regular or special meeting of the board of county commissioners of said county, and shall be published for at least two weeks in two successive issues of some weekly newspaper printed and published in said county, and in case no such newspaper be printed or published in such county, then in some such newspaper of general circulation therein, before the time at which the same is to be presented, together with a notice stating the time of the meeting at which the same shall be presented. When such petition is presented for hearing, the board of county commissioners shall hear the same, or may adjourn said hearing from time to time, not exceeding one month in all; and any person or corporation may appear before said board of county commissioners and make objections to the establishment of said district, or the proposed boundary lines thereof, and upon a final hearing said board of county commissioners shall make such changes in the proposed boundaries as they deem to be proper, and shall establish and define such boundaries, and shall ascertain and determine the number of acres of land that will be benefited by said proposed system of dikes, the number of freeholders residing within said boundaries of the said proposed district, and shall find whether the proposed diking system will be conducive

to the public health, welfare and convenience, increase the public revenue, and be of special benefit to the majority of the land included within the said boundaries of said proposed district so established by said board of county commissioners: Provided, that no changes shall be made by said board of county commissioners in said boundary lines to include any territory outside of the boundaries described in said petition; Provided further, that any person or persons owning land within the proposed boundaries and who did not sign said petition, or any person, persons, or corporations owning land not included within the proposed boundaries, may file a petition with the board of county commissioners asking that the proposed boundaries be extended to include other lands described therein; setting forth in said petition the reason therefor; but no person, persons, or corporations not owning lands included within the boundaries, as originally petitioned for, shall have the right to file such petition unless they ask therein to have their own lands included within the proposed boundaries: Provided, any corporation owning land included within the boundaries described in the original petition, may also petition the board of county commissioners for an extension of the proposed boundaries: Provided further, that the boundaries of any diking district heretofore or hereafter established may be extended by the board of county commissioners to include other lands in said county, upon petition signed by the owners of a majority of the acreage of said land within the proposed extension; which said petition for extension shall set forth and contain, with reference to the extension, such matters and things and data so far as applicable, as is provided for in the petition required for presentation to the board of county commissioners for the purpose of the formation of the original diking district; Provided further, that all necessary expense incident to making such extension, together with a proportionate share of the first cost of any system of dikes existing in the original diking district at the time of making such extension, shall be levied against and apportioned to the land included in such extension, as in this act provided. In such case, the board of county commissioners shall give like notice as provided for in this section of the hearing of the original petition, and the final hearing thereof may, in such case, be continued from time to time, for a period of not exceeding sixty days; and if, upon final hearing, the board of county commissioners deem it advisable and to the best interests of all concerned, they may grant the prayer of said petitioners in whole or in part, and said board of county commissioners of such county shall enter an order on the records of their office setting forth all facts found by them upon the final hearing of said petition, and which may be adduced by them from the evidence heard upon the final hearing thereof. [L. '05, p. 177, § 1. Cf. L. '95, p. 305, § 3.]

§ 4094. Election to Establish Districts—Commissioners—Notices—Costs.—Upon the entry of the findings on the final hearing of said petition as set forth in the last preceding section, said board of county commissioners of said county, if they find said proposed system of dikes will be conducive to the public health, welfare and convenience and will increase the public revenue and be of special benefit to the majority of the lands included within said boundaries, shall give notice of an election to be held in such proposed diking district for the purpose of determining whether the same shall be organized under the provisions of this chapter as a diking district of the state of Washington, and for the further purpose of choosing at such election three commissioners who shall be known and designated as "dike commissioners" for said district proposed to be organized, which said three commissioners shall, upon their election, be the district authorities of said diking district; and such notice shall particularly describe the boundaries as established by the board of county commissioners on its final hearing of said petition, and shall state the name of such proposed diking district and approximately the number of acres of land in said district to be benefited thereby, and the same shall be published for at least two weeks prior to such election in a weekly newspaper printed and published within the county within which said district is located, and in case no such newspaper be printed or published in such county, then in some such newspaper of general circulation therein, for two successive issues thereof, and shall be posted for the same period in at least four public places within the boundaries of said proposed district, which notice shall designate the place within the proposed district where the said election shall be held, and require the voters to cast ballots which shall contain the words "Diking district, yes," or "Diking district, no," and also the names of the persons voted for for commissioners of said diking district. The board of county commissioners shall appoint two judges, one inspector and two clerks for such election, whose compensation shall be the same as in other elections for the election of county and state officers, and shall be a charge upon said district, in case the same be established, and shall be paid in the same manner as other expenses are paid which are incurred in the establishment and construction of said improvement. In case said district be not established, then all costs and expenses shall be collectible from the bond hereinbefore provided for, and any person having a charge against said district shall have a right of action thereon. [L. '95, p. 307, § 4.]

§ 4095. **Election, When Held—Commissioners, Qualification of.**—Said election shall be held on the day designated in such notice, and shall be conducted in accordance with the general election laws of the state, and no person shall be entitled to vote at such election

or at the elections of commissioners hereinafter provided for unless he shall be a qualified elector of the county in which such district is located, and shall own land in the district. It shall be the duty of the county auditor, upon the request of the board of county commissioners, to certify to the election officers of any such election the names of all persons owning land in the district as shown by the records of his office, and at any such election the election officers may require any such land owner, offering to vote, to take an oath that he is a qualified elector of the county before he shall be allowed to vote: Provided, that at any election held under the provisions of this act, an officer or agent of any corporation owning land in the district, duly authorized thereto in writing, may cast a vote on behalf of said corporation; when so voting he shall file with the election officers such written instrument of his authority. The board of county commissioners shall, on the Monday next succeeding such election, count and canvass the votes cast thereat, and if, upon said canvass and count, it appears that a majority of the votes cast are for "Dike Districts, yes," the board shall immediately enter an order upon its records declaring the proposed territory duly organized as a dike district, giving to such district a proper number, followed by the name of the county and state, and shall also declare the three persons receiving, respectively, the highest number of votes, the duly elected dike commissioners of such diking district. Said board shall cause a copy of the order entered of record, duly certified, to be filed in the office of the secretary of state, and from and after the date of such filing, said organization shall be deemed complete; and the members of said board of commissioners, so chosen at said election, before entering upon the discharge of their duties, shall qualify as county officers are required to qualify, and each shall enter into a bond, payable to the state of Washington, for the benefit of said district, with two or more sureties, in a penal sum of not less than one thousand dollars nor more than five thousand dollars, conditioned for the faithful performance of their duties as dike commissioners, to be approved by the board of county commissioners, and to be filed with the county clerk, of the county in which said district is situated. The said dike commissioners shall hold office until the next general election at which officers of said dike district are to be elected, and until such further time as their successors are elected and qualified. The members of each successive board of dike commissioners, whether elected or appointed, shall, before entering upon their duties, enter into a bond as herein provided, and after being approved by the board of county commissioners, shall be filed in the office of the county clerk of the county in which said district is situated. [L. '15, p. 261, § 1. Cf. L. '95, p. 308, § 5; L. '99, p. 187, § 1.]

§ 4095–1. Validation of Defective Districts.—Whenever a petition for the formation of a diking district, under the provisions of section 4092, shall have been filed with the board of county commissioners of any county, and such petition shall have conformed to the requirements of said section, except that the description of the proposed system of diking, the route over which the same is to be constructed, and the proposed spurs or branches, and the termini thereof, shall not have been definitely set forth in said petition, or said petition shall have been defective in any particular, and whenever said petition shall have been published, as required in section 4093, and a hearing shall have been held thereon, and supplemental petitions shall have been filed, and the board of county commissioners shall have, at the final hearing, entered findings and an order granting the prayer of the petitioners, in whole or in part, as provided in said section 4093, and said board of county commissioners shall have given notice of an election to be held in such proposed diking district, and shall have appointed officers of election in the manner prescribed in section 4094, and such election shall have been held, and the board of county commissioners shall have counted and canvassed the votes cast thereat, and it shall have appeared that a majority of the votes cast were for "Dike District, Yes," and the board shall have entered an order upon its records declaring the proposed territory duly organized as a diking district, and given such district a proper number, followed by the name of the county and state, and declared the three persons receiving respectively the highest number of votes the duly elected dike commissioners of such diking district, and caused a copy of the order entered of record, to be duly certified and filed in the office of the secretary of state, in the manner prescribed in section 4095, the organization of said diking district so attempted to be organized shall be deemed complete, and the organization of any such diking district so attempted to be organized in the manner hereinabove set forth, is hereby validated, and said diking district is hereby declared to be a duly organized and established diking district. [L. '15, p. 483, § 1.]

§ 4096. General Election, When Held—Expenses of—Notice.—A general election for the election of a board of dike commissioners for such district shall be held upon the first Tuesday after the first Monday in March, 1916, and annually thereafter. The term of office of commissioners shall be for three years and until their successors are elected and qualified, but of the commissioners elected at the first election held under the provisions of this act the commissioner receiving the highest number of votes shall hold office for three years. The commissioner receiving the second highest number of votes shall hold office for two years, and the commissioner receiving the third highest number of votes shall hold office for one year. The term of

office shall begin on the first Monday of the following April, and such election shall be held in accordance with the general election laws of the state of Washington for the election of county and state officers, and the expenses thereof shall be defrayed by said district, and the judges, clerks and inspectors of said election shall each receive as compensation for the services rendered at such election the sum of two dollars per day: Provided, that at least thirty days' notice immediately preceding any such general election shall be given thereof by the board of commissioners of such diking district, by posting the same in four public places within said district. Said notice shall contain the names of two electors of said district as judges of said election and the name of one elector of said district as inspector thereof, the same to be chosen by said board of commissioners. Said board of commissioners shall be a canvassing board to canvass the votes of each election, and they shall meet the day following such election and canvass said votes and declare the result thereof and issue certificates of election. [L. '15, p. 373, § 1.]

§ 4097. Eminent Domain—Powers of Districts.—All diking districts organized under the provisions of this act shall have the right of eminent domain with the power by and through its board or commissioners to cause to be condemned and appropriated private property for the use of said organization, in the construction and maintenance of a system of dikes and make just compensation therefor; that the property of private corporations may be subjected to the same rights of eminent domain as private individuals, and said board of commissioners shall have the power to acquire by purchase all of the real property necessary to make the improvements provided for by this act. All diking districts and the commissioners thereof now organized and existing, and all diking districts hereafter to be organized, and the commissioners thereof shall have in addition to the rights, powers and authority now conferred by any law of this state:

(1st) The right, power and authority to straighten, widen, deepen and improve any and all rivers, watercourses or streams, whether navigable or otherwise, flowing through or located within the boundaries of such diking district.

(2d) To construct all needed and auxiliary drains, ditches, canals, flumes, locks and all other necessary artificial appliances, in the construction of a diking system and which may be necessary or advisable to protect the land in any diking district from overflow, or to provide an efficient system of drainage for the land situated within such diking district, or to assist and become necessary in the preservation and maintenance of such diking system.

(3d) In the accomplishment of the foregoing objects, the commissioners of such diking districts are hereby given, in addition to the

right and power of eminent domain now conferred by law upon the commissioners of any diking district, the right, power and authority by purchase, or the exercise of the power and authority of eminent domain, or otherwise, to acquire all necessary or needed rights of way in the straightening, deepening or widening of such rivers, watercourses or streams, and such auxiliary drains, ditches or canals hereinabove mentioned, and when so acquired shall have and are hereby given the right, power and authority, by and with the consent and approval of the United States government, in cases where such consent is necessary, to divert, alter or change the bed or course of any such river, watercourse or stream aforesaid, or to deepen or widen the same. [L. '15, p. 441, § 1. Cf. L. '95, p. 309, § 7; L. '07, p. 175, § 1.]

§ 4097–2. Construction of Drainage System—Resolution.—Before entering upon the construction of any system of drainage for the land situated within such diking district, the commissioners thereof shall adopt a resolution which shall contain a brief and general description of the proposed improvement, a statement that the costs thereof shall be paid by warrants drawn and payable in like manner as for the original construction of the dikes of such district, and fixing a time and place within such district for hearing objections to such proposed improvement or for the proposed method of paying the costs thereof. The time so fixed shall be not less than thirty days or more than sixty days from the date said resolution shall be adopted. Such resolution may be adopted by the commissioners upon their own motion and it shall be their duty to adopt such resolution at any time when a petition signed by the owners of sixty per cent or more of the acreage within such diking district is presented, requesting them to do so. [L. '15, p. 442, § 2.]

§ 4097–3. Notice of Hearing.—Notice of such hearing shall be given by posting in three (3) public places within such district a true copy of said resolution signed by the commissioners of the diking district and attested with the seal thereof, which notice shall be posted for at least ten (10) days prior to the day fixed in said resolution for said hearing. [L. '15, p. 443, § 3.]

§ 4097–4. Procedure in Absence of Objections.—At the time fixed, the commissioners shall meet and if no objections have been made to the proposed improvement or to the proposed method of paying the costs thereof, they shall adopt an order reciting that fact and shall thereupon proceed to construct such system of drainage and pay the costs thereof in accordance with the terms specified in the resolution. [L. '15, p. 443, § 4.]

§ 4097–5. Consideration of Objections.—But if objections in writing are filed either to the proposed improvement or to the proposed

method of paying the costs thereof, the commissioners shall proceed to hear and consider the same and may, thereupon, order that such proposed improvement be abandoned for the time being or may direct such improvement to be constructed and the order of the commissioners in that regard shall be final and conclusive on all parties interested: Provided, however, that no such proceeding shall be abandoned unless the owners of at least twenty-five per cent of the acreage within said district shall have at or prior to said hearing, filed protests against the same. But nothing contained in this act shall be held to forbid the commissioners in their discretion overruling all protests and directing the construction of such improvement.

Commissioners shall likewise hear and consider all objections that may be filed to the proposed method of paying the cost of such improvement. [L. '15, p. 443, § 5.]

§ 4097-6. Assessment of Benefits.—In case the commissioners at such hearing shall determine that the benefits accruing to any lot or parcel of lands within said district by reason of the construction of such drainage system are greater or less than the amount theretofore fixed in the original or any subsequent proceeding for the construction of dikes, they shall determine the amount of such benefits to each lot or parcel of land and certify their findings and determination in that regard to the county auditor and the county auditor shall note the same on the transcript of the judgment (and in case there has been any readjustment of assessments of such diking district, then upon such transcript as readjusted). [L. '15, p. 444, § 6.]

§ 4097-7. Appeal to Superior Court—Trial De Novo.—Any person deeming himself aggrieved by the assessment for benefits made against any lot or parcel of land owned by him, may appeal therefrom to the superior court for the county in which the diking district is situated; such appeal shall be taken within the time and substantially in the manner prescribed by the laws of this state for appeals from justices' courts and all notices of appeal shall be filed with the said board, and the board of diking commissioners shall at the appellant's expense certify to the superior court so much of the record as appellant may request, and the hearing in said superior court shall be de novo, and the superior court shall have power and authority to reverse or modify the determination of the commissioners and to certify the result of its determination to the county auditor and shall have full power and authority to do any thing in the premises necessary to adjust the assessment upon the lots or parcels of land involved in the appeal in accordance with the benefits. [L. '15, p. 444, § 7.]

§ 4097-8. Assessments—Segregation.—In all cases wherein it is finally determined that the assessments for the system of drainage

differ from the assessment theretofore made, as to any tract or parcel of land within said diking district, the diking commissioners in making their annual estimate shall segregate the amount necessary to be raised for the construction, repair and maintenance of the system of drainage or for the payment of the principal or interest of any bonds issued for drainage purposes from the amount necessary to be raised for all other diking purposes and the county auditor in apportioning said estimate for drainage purposes to the lands in such district shall base such apportionment upon the assessment fixed for drainage purposes and shall apportion the remainder of such estimate upon the basis fixed in the original or any subsequent proceeding for all other diking purposes. But in all other cases, the estimate and apportionment shall be made in accordance with existing laws. [L. '15, p. 445, § 8.]

§ 4097-9. Issuance of Bonds.—Authority is hereby given to any diking district heretofore organized, or that may be hereafter organized, to issue bonds of such diking district for the purpose of procuring funds with which to construct a drainage system, such bonds to be issued in accordance with the terms of section 4126-1. [L. '15, p. 445, § 9.]

"Section 4126-1, substituted for the references to the act of 1913.

§ 4097-10. Appeals to Supreme Court.—Either the dike commissioners or any land owner who has appealed to the superior court in accordance with the provisions of this act shall have a right to appeal to the supreme court within the time and in the manner prescribed by existing law. [L. '15, p. 445, § 10.]

§ 4098. Rights of Way Over State, County, etc., Property.—The right, power and authority to acquire the necessary and needed rights of way for any and all purposes now existing by law or created by this act, may be acquired by the commissioners of any diking district over, across and upon any land, or interest therein, of the state of Washington or any county of this state, and streets, avenues, alleys or public places of any city, town or municipal corporation of this state: Provided, however, that the construction of such dike or dikes shall not have the effect of impairing any right, power or authority now existing on the part of any city or town to construct in, upon, underneath, above or across such dike or dikes, sewers, water pipes, mains, or the granting of any franchise thereon, or the improvement by way of planking, replanking, paving, repaving or any other power, right or authority which but for this act such city or town would have in or to such street, avenue, alley or public place; except, however, that such right, power or authority on behalf of such city or town shall not be exercised either by such city or town or by any person, persons, firms or corporations to whom it might grant

any right or franchise, which will materially impair the efficiency of such dike or dikes. The provisions of this section as regards said system of dikes to be located within the boundaries of any incorporated city or town shall apply to the extension or enlargement of any dike or dikes already existing upon, over and across any street, avenue, alley or public place of any city or town, as well as the original construction thereof. [L. '07, p. 176, § 2.]

"Act" in this section refers to §§ 4097, 4098–4101.

§ 4099. Organization—Matters to be Set Forth in Proceedings.—In all proceedings hereafter had to organize diking districts, all notices, petitions or proceedings shall contain and set forth all matters and things required by existing law, and in addition thereto shall contain and set forth, so far as is necessary or applicable, all matters and things required by the provisions of this act, and all diking districts now existing, which may exercise any of the rights, powers or authority conferred by the provisions of this act, the proceedings to obtain the benefits hereof, must contain such allegations, and such steps and proceedings must be taken, as is rendered necessary by the provisions of this act; and the commissioners of existing diking districts are hereby given the right, power and authority to institute all proceedings and to take all necessary steps to secure the benefits of the provisions of this act, and all proceedings to secure the benefits thereof and all judgments to be rendered in such proceedings, including the filing of transcripts and the making of levies, and all other proceedings, shall be in addition to proceedings, assessments or levies, theretofore made in any prior proceedings. [L. '07, p. 177, § 3.]

"Act" in this section refers to §§ 4097, 4098–4101.

§ 4100. Grant of Overflowed State Lands.—All the right, title and interest of the state of Washington in and to so much of the beds and shores of any navigable river, stream, waterway or watercourse located within the boundaries of any diking district up to and including the line of ordinary high tide in waters where the tide ebbs and flows, and up to and including the line of ordinary high water within the banks of all navigable rivers and lakes, to the extent that the same under any proceedings to be had under this act shall cease to become a part of such river, stream, waterway or watercourse by reason of the diversion of such river, stream, waterway or watercourse, under any proceedings had under this act, are hereby given, granted and vested in the respective diking districts now existing or hereafter to be formed; and the commissioners of such respective diking districts are hereby given the right, power and authority to sell such beds and shores in such manner and upon such notices and pro-

ceedings as govern, under existing laws of this state, the board of county commissioners in the sale and disposition of any real estate belonging to counties of this state. The proceeds of such sales are to be used for the benefits of such diking district in the payment of any expenses connected with the construction of such dikes or maintenance thereof: Provided, however, that the commissioners of such diking district may, in their discretion, exchange such abandoned beds and shores for other property needed in the straightening, deepening or widening of such rivers, watercourses or streams; and which exchange may be made upon such terms, conditions and in such areas as in the discretion of such commissioners they may deem advisable and for the best interests of such diking district, without any notice or other formality of proceedings whatever. [L. '07, p. 178, § 4.]

"Act" in this section refers to §§ 4097, 4098–4101.

See Const., Art. XV, § 1, no right to sell tide-lands within harbor areas.

§ 4101. County Auditor Authorized to Sign Petition for County.—Whenever the county owns any land situated within the boundaries of a proposed diking district, the county auditor, when so directed by the board of county commissioners of the county in which such lands are situated, is hereby authorized to sign the petition praying for the formation of such diking district for and on behalf and as the act and deed of such county, and when so signed the same shall be considered in determining the question of a majority signature in acreage to the petition for the formation of such district. [L. '07, p. 178, § 5.]

§ 4102. Commissioners, Duty of.—Said board of dike commissioners hereinbefore provided for shall have the exclusive charge of the construction and maintenance of all dikes or dike systems which may be constructed within the said district, and shall be the executive officers thereof, with full power to bind said district by their acts in the performance of their duties, as provided by law. In case of vacancy or vacancies occurring in said board by the death, failure to elect, failure to qualify, resignation or removal of one or more of the members thereof from said district, such vacancy or vacancies shall be filled at once from the freeholders and qualified electors of said district by the judge of the superior court of said county, and said appointee shall serve the unexpired term, or until the next general election or until a successor is elected and qualified: Provided, that in counties where there may be more than one superior judge, the judge eldest in age shall make such appointment. [L. '95, p. 310, § 8.]

§ 4103. Diking, Method of Procedure—Estimates—Right of Way. Whenever it is desired to prosecute the construction of a system of

dikes within said district, said district, by and through its board of commissioners, shall file a petition in the superior court of the county in which said district is located, setting forth therein the route over which the same is to be constructed, with a complete description thereof, together with specifications for its construction, with all necessary plats and plans thereof, together with the estimated cost of such proposed improvement, showing therein the names of the land owners whose lands are to be benefited by such proposed improvement; the number of acres owned by each land owner, and the maximum amount of benefits per acre to be derived by each land owner set forth therein from the construction of said proposed improvement, and that the same will be conducive to the public health, convenience and welfare, and increase the value of all of said property for purposes of public revenue. Said petition shall further set forth the names of the land owners through whose land the right of way is desired for the construction of said dikes; the amount of land necessary to be taken therefor, and an estimate of the value of said lands so sought to be taken for such right of way, and the damages sustained by any person or corporation interested therein, if any, by reason of such appropriation, irrespective of the benefits to be derived by such land owners by reason of the construction of said system. Such estimate shall be made, respectively, to each person through whose land said right of way is sought to be appropriated. Said petition shall set forth as defendants therein all the persons or corporations to be benefited by said improvement, and all persons or corporations through whose land the right of way is sought to be appropriated, and all persons or corporations having any interest therein, as mortgagee or otherwise, appearing of record, and shall set forth that said proposed system of dikes is necessary for the protection of all the lands from overflow described in said petition, and that all lands sought to be appropriated for said right of way are necessary to be used as a right of way in the construction and maintenance of said improvements; and when the proposed improvement will protect or benefit the whole or any part of any public or corporate road or railroad, so that the traveled track or roadbed thereof will be improved by the construction of said dikes, such fact shall be set forth in said petition, and such public or private corporations owning said road or railroad shall be made parties defendant therein, and the maximum amount of benefits to be derived from such proposed improvement shall be estimated in said petition against said road or railroad. [L. '95, p. 310, § 9.]

§ 4104. Surveyors, When Employed.—In the preparation of the facts and data to be inserted in said petition and filed therewith for the purpose of presenting the matter to the said superior court, the board of commissioners of said diking district may employ one or

more good and competent surveyors and draughtsmen to assist them in compiling data required to be presented to the court with said petition as hereinbefore provided, and such legal assistance as may be necessary, with full power to bind said district for the compensation of such assistants or employees employed by them, and such services shall be taxed as costs in the suit. [L. '95, p. 311, § 10.]

§ 4105. Summons to Contain, What—Service of.—A summons stating briefly the objects of the petition and containing a description of the land, real estate, premises or property sought to be appropriated, and those which it is claimed will be benefited by such improvement, and stating the court wherein said petition is filed, the date of the filing thereof and when the defendants are required to appear (which shall be ten days, exclusive of the day of service, if served within the county in which the petition is pending, and if in any other county, then twenty days after such service, and if served by publication, then within thirty days from the date of the first publication), shall be served on each and every person named therein as owner, encumbrancer, tenant or otherwise interested therein. Said summons must be subscribed by the commissioners, or their attorney, running in the name of the state of Washington and directed to the defendants; and service thereof shall be made by delivering a copy of such summons to each of the persons or parties so named therein, if a resident of the state, or in case of the absence of such person or party from his or her usual place of abode, by leaving a copy of such notice at his or her usual place of abode; or in case of a foreign corporation, at its principal place of business in this state with some person of more than sixteen years of age; in case of domestic corporations said service shall be made upon the president, secretary or other director or trustee of such corporation; in case of minors, on their guardians, or in case no guardian shall have been appointed, then on the person who has the care and custody of such minor; in case of idiots, lunatics or insane persons, on their guardian, or in case no guardian shall have been appointed, then on the person in whose care or charge they are found. In case the land, real estate, premises or other property sought to be appropriated, or which it is claimed will be benefited by such improvement, is state, tide, school or county land, the summons shall be served on the auditor of the county in which the land, real estate, premises or other property sought to be appropriated, or which it is claimed will be benefited, is situated. In all cases where the owner or person claiming an interest in such real or other property is a nonresident of this state, or where the residence of such owner or person is unknown, and an affidavit of one or more

of the commissioners of said district shall be filed that such owner or person is a nonresident of this state, or that after diligent inquiry his residence is unknown or cannot be ascertained by such deponent, service may be made by publication thereof in a newspaper published in the county where such lands are situated once a week for three successive weeks; and in case no newspaper is published in such county, then such publication may be had in a newspaper published in the county nearest to the county in which lies the land sought to be appropriated, or which it is claimed will be benefited by said improvement. Such publication shall be deemed service upon each nonresident person or persons whose residence is unknown. Such summons may be served by any competent person over twenty-one years of age. Due proof of service of such summons by affidavit of the person serving the same, or by the printer's affidavit of publication, shall be filed with the clerk of such court before the court shall proceed to hear the matter. Want of service of such notice shall render the subsequent proceedings void as to the person not served; but all persons or parties having been served with summons as herein provided, either by publication or otherwise, shall be bound by the subsequent proceedings. In all cases not otherwise provided for, service of notice, order and other papers in the proceeding authorized by this chapter may be made as the superior court, or the judge thereof, may direct: Provided, that personal service upon any party outside of this state shall be of like effect as service by publication. [L. '95, p. 312, § 11.]

§ 4106. Appearance of Defendants — Jury — Verdict — Decree.— Any or all of said defendants may appear jointly or separately, and admit or deny the allegations of said petition, and plead any affirmative matter in defense thereof, at the time and place appointed for hearing said petition, or to which the same may have been adjourned. If the court or judge thereof shall have satisfactory proof that all of the defendants in said action have been duly served with said summons, as above provided, and shall be further satisfied by competent proof that said improvement is practicable, and conducive to the public health, welfare and convenience, and will increase the value of said lands for the purpose of public revenue, and that the contemplated use for which the land, real estate, premises or other property sought to be appropriated is really a public use, and that the land, real estate, premises or other property sought to be appropriated are required and necessary for the establishment of said improvement, the court or judge thereof shall cause a jury of twelve qualified persons to be impaneled to assess the damages and benefits as herein provided, if in attendance upon his court; and if not, he may, if satisfied that the public interests require the immediate

construction of said improvement, direct the sheriff of his county to summon from the citizens of the county in which said petition is filed as many qualified persons as may be necessary in order to form a jury of twelve persons, unless the parties to the proceedings consent to a less number, such number to be not less than three, and such consent shall be entered by the clerk in the minutes of the trial. If necessary to complete the jury in any case, the sheriff, under direction of the court or judge thereof, shall summon as many qualified persons as may be required to complete the jury from the citizens of the county in which the petition is filed. In case a special jury is summoned, the cost thereof shall be taxed as part of the costs in the proceeding, and paid by the district seeking to appropriate said land, the same as other costs in the case; and no person shall be competent as a juror who is a resident of, or land owner in, the district seeking to appropriate said land. The jurors at such trial shall make in each case a separate assessment of damages which shall result to any person, corporation or company, or to the state, by reason of the appropriation and use of such land, real estate, premises or other property for said improvement, and shall ascertain, determine and award the amount of damages to be paid to said owner or owners, respectively, and to all tenants, encumbrancers and others interested, for the taking or injuriously affecting such land, real estate, premises or other property for the establishment of said improvement; and shall further find the maximum amount of benefits, per acre, to be derived by each of the land owners from the construction of said improvement. And upon a return of the verdict into court, the same shall be recorded as in other cases; whereupon a decree shall be entered in accordance with the verdict so rendered, setting forth all the facts found by the jury, and decreeing that said right of way be appropriated, and directing the commissioners of said drainage [diking] district to draw their warrant on the county treasurer for the amount awarded by the jury to each person, for damages sustained by reason of the establishment of said improvement, payable out of the funds of said diking district. [L. '95, p. 313, § 12.]

Cited in 81 Wash. 484, 487.

§ 4107. Assessment of Benefited Lands Formerly Omitted—Procedure—Appeals.—If at any time it shall appear to the board of diking commissioners that any lands within or without said district as originally established are being benefited by the diking system of said district and that said lands are not being assessed for the benefits received, or that any lands within said district are being assessed out of or not in proportion to the benefits which said lands are receiving from the maintenance of the diking system of said

district, and said board of diking commissioners shall determine that certain lands, either within or without the boundaries of the district as originally established, should be assessed for the purpose of raising funds for the future maintenance of the diking system of the district, or that the assessments on land already assessed should be equalized by diminishing or increasing the same so that said lands shall be assessed in proportion to the benefits received, said commissioners shall file a petition in the superior court in the original cause, setting forth the facts, describing the lands not previously assessed and the lands the assessments on which should be equalized, stating the estimated amount of benefits per acre being received by each tract of land respectively, giving the name of the owner or reputed owner of each such tract of land, and praying that such original cause be opened for further proceedings for the purpose of subjecting new lands to assessment or equalizing the assessments upon lands already assessed, or both.

Upon the filing of such petition, summons shall issue thereon and be served on the owners of all lands affected, in the same manner as summons is issued and served in original proceedings, as near as may be, and if such new lands lie within the boundaries of any other diking district, said summons shall also be served upon the commissioners of such other diking district.

In case any of the new lands sought to be assessed in said proceeding lie within the boundaries of any other diking district, and the diking commissioners of such other district believe that the maintenance of the dike or dikes of such other district is benefiting lands within the district instituting the proceedings, said diking commissioners of such other districts shall intervene in such proceedings by petition, setting forth the facts, describing the lands in the district instituting the proceeding which they believe are being benefited by the maintenance of the diking system of their district, and praying that the benefits to such lands may be determined and such lands subjected to assessment for the further maintenance of the diking system of their district, to the end that all questions of benefits to lands in the respective districts may be settled and determined in one proceeding, and such petitioners in intervention shall cause summons to be issued upon such petition in intervention and served upon the commissioners of the diking district instituting the proceeding and upon the owners of all lands sought to be affected by such petition in intervention.

In case the owner of any such new lands sought to be assessed in said proceedings shall be maintaining a private dike against salt or fresh water for the benefit of said lands, and shall believe that the maintenance of such private dike is benefiting any lands within or without the district instituting the proceedings, or in case any such

new lands sought to be assessed are included within the boundaries of some other diking district and are being assessed for the maintenance of the dikes of such other district, and the owner of such lands believes that the maintenance of the dike or dikes of such other district is benefiting lands included within the district instituting said proceedings, such owner or owners may by answer and cross-petition set forth the facts and pray that at the hearing upon said petition and cross-petition the benefits accruing from the maintenance of the respective dikes may be considered, to the end that a fair and equitable adjustment of the benefits being received by any lands from the maintenance of the various dikes benefiting the same, may be determined for the purpose of fixing the assessments for the future maintenance of such dikes, and may interplead in said proceeding such other diking district in which his lands sought to be assessed in said proceeding are being assessed for the maintenance of the dike or dikes of such other district.

No answer to any petition or petition in intervention shall be required, unless the party served with summons desires to offset benefits or to ask other affirmative relief, and no default judgment shall be taken for failure to answer any petition or petition in intervention, but the petitioners or petitioners in intervention shall be required to establish the facts alleged by competent evidence.

Upon the issues being made up, or upon the lapse of time within which the parties served are required to appear by any summons, the court shall impanel a jury to hear and determine the matters in issue, and the jury shall determine and assess the benefits, if any, which the respective tracts of land are receiving or will receive from the maintenance of the dike or dikes to be maintained, taking into consideration any and all matters relating to the benefits, if any, received or to be received from any dike, structure or improvement. and to credit, or charge, as the case may be, to each tract so situated as to affect any other tract or tracts, or having improvements or structures thereon or easements granted in connection therewith affecting any other tract or tracts included in such proceedings, and shall specify in their verdict the respective amount of benefits per acre, if any, assessed to each particular tract of land, by legal subdivisions. Upon the return of the verdict of the jury, the court shall enter its judgment in accordance therewith, as supplemental to the original decree, or in case a petition in intervention be filed by the diking commissioners of some other district than that instituting the proceeding, such judgment to be supplemental to all such original decrees, and thereafter, all assessments and levies for the future maintenance of any dike or dikes described in said judgment shall be based upon the respective benefits determined and assessed against the respective tracts of land as specified in said

judgment. Every person or corporation feeling himself or itself aggrieved by any such judgment may appeal to the supreme court within thirty days after the entry thereof, and such appeal shall bring before the supreme court the propriety and justness of the verdicts of the jury in respect to the parties to the appeal. No bonds shall be allowed on such appeals. Nothing in this section contained shall be construed as affecting the right of diking districts to consolidation in any manner provided by law. [L. '13, p. 267, § 1. Cf. L. '95, p. 315, § 13; L. '01, p. 226, § 1.]

Cited in 63 Wash. 333; 81 Wash. 482, 485; 82 Wash. 32, 33.

§ 4108. Proceedings, When may be Dismissed.—In case the damages or amount of compensation for such right of way, together with the estimated cost of the improvement, amount to more than the maximum amount of benefits which will be derived from said improvement, or if said improvement is not practicable, or will not be conducive to the public health, welfare and convenience, or will not increase the public revenue, the court shall dismiss such proceedings, and in such case a judgment shall be rendered for the costs of said proceedings against said district, and no further proceedings shall be had or done therein; and upon the payment of the costs, said organization shall be dissolved by decree of said court. [L. '95, p. 315, § 14.]

§ 4109. Damages, How Paid.—Any person or corporation claiming to be entitled to any money ordered paid by the court, as provided in this chapter, may apply to the court therefor, and upon furnishing evidence satisfactory to the court that he is entitled to the same, the court shall make an order directing the payment to such claimant of the portion of such money as he or it may be found entitled to; but if, upon application, the court or judge thereof shall decide that the title to the land, real estate or premises specified in the application of such claimant is in such condition as to require that an action be commenced to determine the title of claimants thereto, it shall refuse such order until such action is commenced and the conflicting claims to such land, real estate or premises be determined according to law. [L. '95, p. 315, § 15.]

§ 4110. Transcript to Contain, What—Assessments, When Due.—Upon the entry of the judgment upon the verdict of the jury, the clerk of said court shall immediately prepare a transcript, which shall contain a list of the names of all the persons and corporations benefited by said improvement and the amount of benefit derived by each, respectively, and shall duly certify the same, together with a list of the lands benefited by said improvements belonging to each person or corporation, and shall file the same with the auditor of the county, who shall immediately enter the same upon the tax-rolls

of his office, as provided by law for the entry of other taxes, against the land of each of the said persons named in said list, together with the amounts thereof, and the same shall be subject to the same interest and penalties in case of delinquency as in case of general taxes, and shall be collected in the same manner as other taxes and subject to the same right of redemption and the lands sold for the collection of said taxes shall be subject to the same right of redemption as in the sale of lands for general taxes: Provided, that said assessment shall not become due and payable except at such time or times and in such amount as may be designated by the board of commissioners of said dike district, which designation shall be made to the county auditor by said board of commissioners of said diking district, by serving a written notice upon the county auditor designating the time and the amount of the assessment, said assessment to be in proportion to benefits, to become due and payable, which amount shall fall due at the time of the falling due of general taxes, and the amount so designated shall be added by the auditor to the general taxes of said person, persons or corporations, according to said notice, upon the assessment-rolls in his said office, and collected therewith: And provided further, that no one call for assessments by said commissioners shall be in an amount to exceed twenty-five per cent of the actual amount necessary to pay the costs of the proceedings, and the establishment of said district and system of dikes and the cost of construction of said work. [L. '95, p. 316, § 16.]

Cited in 81 Wash. 484.

§ 4111. Conditional Tax, How Levied.—In the event of the dismissal of said proceedings and the rendition of judgment against said district, as hereinbefore provided, said diking commissioners shall levy a tax upon all of the real estate within said district, taking as a basis the last equalized assessment of said real estate for state and county purposes, sufficient to pay said judgment, and the cost of levying said tax, and shall cause said tax-roll to be filed in the office of the clerk of the superior court in which such judgment was rendered. If said tax is not paid within sixty days after the filing of said tax-roll, the court shall, upon the application of any party interested, direct said real estate to be sold in payment of said tax, said sale to be made in the same manner and by the same officer, as is or may be provided by law for the sale of real estate for taxes for general purposes; and the same rate of redemption shall exist as in the sale of real estate for the payment of taxes for general purposes. [L. '95, p. 317, § 17.]

§ 4112. Improvements, When Ordered—Contractor's Bond.—After the filing of said certificate said commissioners of such diking dis-

trict shall proceed at once in the construction of said improvements, and in carrying on said construction or any extension thereof they shall have full charge and management thereof, and shall have the power to employ such assistance as they may deem necessary, and purchase all material that may be necessary in the construction and carrying on of the work of said improvement, and shall have power to let the whole or any portion of said work to any responsible contractor, and shall in such case enter into all necessary agreements with such contractor that may be necessary in the premises: Provided, that in case the whole or any portion of said improvement is let to any contractor, said commissioners shall require such contractor to give a bond in double the amount of the contract price of the whole or of such portion of said work covered by such contract, with two or more good and sufficient sureties to be approved by the board of commissioners of said diking district and running to said district as obligee therein, conditioned for the faithful and accurate performance of said contract by said contractor, his executors, administrators or assigns, according to the terms and conditions of said agreement, and shall cause said contractor to enter into a further and additional bond in the same amount, with two or more good and sufficient sureties to be approved by said board of commissioners of said diking district in the name of said district as obligee therein, conditioned that said contractor, his executors, administrators or assigns, or subcontractor, his executors, administrators or assigns, shall perform the whole or any portion of said work under contract of said original contractor; shall pay or cause to be paid all just claims of all persons performing labor or rendering services in the construction of said work, or furnishing materials, merchandise or provisions of any kind or character used by said contractor or subcontractor, or any employee thereof in the construction of said improvement: Provided further, that no sureties on said last-mentioned bond shall be liable thereon unless the persons or corporations performing said labor and furnishing said materials, goods, wares, merchandise and provisions, shall, within ninety days after the completion of such improvement, file their claim, duly verified, that the amount is just and due and remains unpaid, with the commissioners of said diking district. [L. '95, p. 317, § 18.]

§ 4113. Work, When to Begin—Changes, How Made.—The work on said improvement shall begin without delay, and shall be carried on with all expedition possible, and said board of commissioners of said diking district, or any contractor thereunder, shall have no power whatever to change the location of the dikes or the system of improvement or the manner of doing the work therein so as to make

any radical changes in said improvement, without the written consent of all the land owners to be benefited thereby, and the land owners which may be damaged thereby. And in case any substantial changes in said system of improvement or the manner of the construction thereof shall be deemed necessary by said board of commissioners at any time during the progress thereof, and if the written consent to such changes cannot be procured from said land owners, then said commissioners, for and on behalf of said district, shall file a petition in the superior court of the county within which said district is located, setting forth therein the changes which they deem necessary to be made in the plans or manner of the construction of said improvement, and praying therein to be permitted to make such changes, and upon the filing thereof, the commissioners [clerk] shall cause a summons to be served, setting forth the prayer of said petition, under the seal of said court, which summons shall be served in the same manner as the service of summons in the case of the original petition, upon all the land owners or others claiming any lien or interest therein appearing of record in said district, and any or all of such parties so served may appear in said cause and submit their objections thereto, and after the time for the appearance of said parties has expired, the court shall proceed to hear said petition at once without further delay, and if it appears during the course of such proceedings that the property rights of any of said land owners will be affected by such proposed change in said improvement, then the court, after having passed upon all preliminary questions as in the original proceedings, shall cause a jury to be impaneled as in the case of the original proceedings for the establishment of said improvement, and upon the final hearing of said cause the jury shall return a verdict finding the amount of damages, if any, sustained by all persons and corporations the same as upon the original petition, by reason of such proposed change, and the amount of compensation to be paid to any persons or corporations therefor, and for any additional right of way that may be necessary to be appropriated by reason of said proposed change, and shall readjust the amount of benefits claimed to have been increased or diminished by any of said land owners by reason of such proposed change in said improvement, and the proceedings thereafter shall be the same as to rendering judgment, appeal therefrom, payment of compensation and damages, and filing of the certificate with the auditor, as hereinbefore provided for in the proceedings under the original petition, and said commissioners shall have a right thereafter to proceed with the construction of said improvement according to the changes made therein. [L. '95, p. 318, § 19.]

§ 4114. Contractors, When Paid.—During the construction of said improvement said commissioners shall have the right to allow payment thereof, in installments as the work progresses, in proportion to the amount of work completed: Provided, that no allowance or payment shall be made for said work to any contractor or subcontractor to exceed seventy-five per cent of the proportionate amount of the work completed by such contractor or subcontractor, and twenty-five per cent of the contract price shall be reserved at all times by said board of commissioners until such work is wholly completed, and shall not be paid upon the completion of said work until ninety days have expired for the presentation of all claims for labor performed and materials, goods, wares, merchandise and provisions furnished or used in the construction of said improvement; and upon the completion of said work and the payment of all claims hereinbefore provided for, according to the terms and conditions of said contract, said commissioners shall accept said improvement and pay the contract price therefor. [L. '95, p. 320, § 20.]

§ 4115. Private Dikes, How Connected—Additional Plans—Costs. In case any diking district organized under the provisions of this chapter desires to connect its system of dikes with the system of dikes of any other district theretofore organized or constructed, said last-mentioned diking district shall be made a party defendant in the proceedings in the superior court for the establishment of the improvement proposed to be constructed by such first-mentioned diking district, and the petition to be filed in said court, in addition to the facts to be set forth therein as hereinbefore provided for, shall set forth the further fact that said district is desirous of connecting its said system of dikes with the system of such other diking district, and shall set forth an estimate of the additional cost per annum, if any, for the future maintenance of the diking system so sought to be connected with, and also an estimate of the cost of any additional improvement in said system so sought to be connected with, if any, by reason of such connection, and shall also set forth the amount of compensation which should be made by said diking district for the privilege of connecting with the said system of dikes; and in case it shall be deemed necessary to enlarge or strengthen the system of dikes to be connected with by reason of such connection, there shall be filed with said petition, in addition to the plans, specifications and data hereinbefore provided to be filed, plans and specifications and the estimated cost of the proposed improvement to be made in the system sought to be connected with by reason of such connection, and the proceedings thereon shall be the same as in other cases for the establishment of diking districts under the provisions of this chapter: Provided, that the jury shall, in addition to

the other findings provided for in other cases under the provisions of this chapter, find the amount of compensation to be paid said district with whose system connection is sought to be made, for any additional cost, if any, which may be thrown upon said district by reason of the increased cost of maintenance by reason of such connection, and shall estimate the amount of such increased cost of maintenance per annum, and also the amount of compensation to be made to said district for the privilege of joining on to its system of dikes; the compensation to be made for the increased cost of maintenance shall be paid per annum out of the revenue derived from the assessments to be levied as in other cases, and the compensation to be made as may be found by the jury to said district whose system is sought to be connected with for the privilege thereof, shall be paid such district as damages are paid in other cases under the provisions of this act; and all amounts so paid to said district sought to be connected with, as compensation for the cost of maintenance, shall be used as an additional fund for the maintenance of said diking system of such district, and the amount of compensation paid for the privilege of connecting with the system of such district shall also be added to the general fund of said district, to be used for the payment of the cost of maintenance of the system of such district sought to be connected with. [L. '95, p. 320, § 21.]

§ 4116. Enlarging Dikes, Costs of.—In case it shall be found necessary to enlarge or strengthen the system of dikes sought to be connected with, by reason of such connection, the jury shall determine the cost of such enlarging or strengthening, and said petitioner district shall have the right, by and through its representatives, assistants and employees, to make such improvement on the system of such other district as may have been found necessary upon the hearing of said petition, and the costs thereof shall be assessed against the land owners of said petitioner district to be benefited by the construction of said entire system, and no additional cost or burden, by reason of such improvement, shall be thrown upon the land owners of said district sought to be connected with. [L. '95, p. 321, § 22.]

§ 4117. Dikes, Protection Against Injury from Rivers.—Where any diking system is sought to be constructed by any district organized under the provisions of this chapter along any river or watercourse to prevent overflow therefrom, and it shall become necessary to provide against the washing away of the banks of said river or watercourse so as to prevent injury to such proposed diking system, or any system which may have already been completed, such district, by and through its board of commissioners, may make such portions of lands lying along said dikes which are threatened to be washed

away by said river or watercourse part of the right of way of said dike system, and may construct along the banks of said river or watercourse, as a part of said diking system, such protection as may be necessary to protect said dike, and in such cases such tract or parcel of land may be condemned and appropriated under the law of eminent domain as provided herein as a part of the right of way of such dike system; and when not condemned or appropriated at the time said system is established and constructed, said diking district, by and through its board of commissioners, may, at any time thereafter, when any portion of said system is threatened to be washed away by such river or watercourse, file their petition with the court condemning and appropriating for the use of said district so much of the land lying along said river or watercourse as may be necessary to be used for the protection of said diking system, and the proceedings therein for the making of compensation therefor and the payment of damages by reason of such appropriation shall be the same, or as near as may be applicable, as other proceedings for the condemnation of right of way provided for in this chapter. [L. '95, p. 322, § 23.]

§ 4118. Condemnation, Appropriation for.—Whenever any land is appropriated along the bank of any river or watercourse, as provided for in the last preceding section, the expenses of such appropriation, including the costs and damages to be paid therefor—when such appropriation is taken subsequently to the construction of any system of dykes under the provisions of this chapter—shall be added to the annual cost of the maintenance of said system and be paid as such, as provided herein. [L. '95, p. 323, § 24.]

§ 4119. Public Highways—Construction on.—In the construction of any diking system under the provisions of this chapter, where it is desired to construct the same along the right of way of any public road which has heretofore been legally established, said district shall have a right to construct its dikes along such road: Provided, that the dikes so constructed along such road shall not destroy or impair the same for the use of the public convenience as a public highway; and in case of the construction or improvement of any dike along any public highway, such dike shall be constructed of sufficient width and in such manner as will be conducive to the public as a public highway. [L. '95, p. 323, § 25.]

§ 4120. Incorporated Towns may be Included.—Any town or city already incorporated, or which may hereafter be incorporated, may exercise the functions of a diking district under the provisions of this chapter, or the whole or any portion of any such town or city may be included with other territory in a common district under the

provisions for the establishment thereof as provided for herein. [L. 95, p. 323, § 26.]

§ 4121. Maintenance, Cost of to be Certified to County Auditor.—The board of commissioners of any diking district organized under the provisions of this act shall, on or before the first day of November of each year, make an estimate of the cost of maintenance of the diking system in such district, which estimate shall include the cost of making any necessary repairs that it might become necessary to make in the maintenance of such system. Such estimate shall be for the succeeding year, and the amount so estimated shall be certified by the board of —— commissioners to the auditor of the county in which such district is located, on or before said date, and the amount thereof shall be levied against and apportioned to the land in such district benefited by said improvement, in proportion to the maximum benefit originally assessed, and such amount shall be added to the general taxes against said lands and collected therewith: Provided, however, that in case of emergency not in contemplation at the time of making such annual estimate the diking commissioners may incur additional obligations and issue valid warrants therefor in excess of such estimate, and all such warrants so issued shall be valid and legal obligations of such district; and all warrants heretofore issued for such purposes under the provisions of this act, are hereby declared to be valid and legal obligations of the district so issuing the same. [L. '13, p. 271, § 2. Cf. L. '95 p. 323, § 27; L. '05, p. 179, § 2.]

Cited in 81 Wash. 484.

§ 4122. Organization of Board—Warrants, How Issued.—The board of commissioners of such district shall elect one of their number chairman and one secretary, and shall keep minutes of all their meetings, and may issue warrants of such district in payment of all claims of indebtedness against such district. Such warrants shall be in form and substance the same as county warrants, or as near the same as may be practicable and shall draw the legal rate of interest from the date of their presentation to the treasurer for payment, as hereinafter provided, and shall be signed by the chairman and attested by the secretary of said board: Provided, that no warrants shall be issued by said board of commissioners in payment of any indebtedness of such district for less than the face or par value. [L. '95, p. 324, § 28.]

§ 4123. Bonds, When and How Issued.—Upon the establishment of any district under the provisions of this chapter and the establishment of a system of diking therein as provided for in this chapter, the board of commissioners of such diking district may, upon petition of a majority of all the land owners owning land within

such district to be benefited thereby, issue bonds for the total amount of the costs of construction of said improvement, together with the costs of the establishment thereof, including damages assessed and compensation made to land owners for right of way and the expenses and costs of the entire proceeding, payable at a time not less than five years nor longer than ten years from the date thereof; and such commissioners may, at any time thereafter, issue such bonds in the manner and form herein prescribed for the purpose of funding any outstanding warrants or obligations of such district, and in case of such last said named issue all the outstanding warrants shall immediately become due and payable upon receipt of the money by the county treasurer from the sale of said bonds, and upon a call of such outstanding obligations to be issued by him, which call shall be made by said treasurer immediately upon receipt of the proceeds from the sale of said bonds by publication for two successive weeks in the county paper authorized to do the county printing, and such warrants and outstanding obligations shall cease to draw interest at the end of thirty days after the date of the first publication: Provided, that no bonds shall, under the provisions hereof, be sold for less than their par value. [L. '95, p. 324, § 29.]

§ 4124. Bonds, Numbers and Denominations of.—Said bonds shall be numbered from one upwards, consecutively, and be in denominations of not less than one hundred dollars nor more than one thousand dollars. They shall bear the date of issue, shall be made payable to the bearer in not more than ten years nor less than five years from the date of their issue, and bear interest at a rate not exceeding seven per cent per annum, payable annually, with coupons attached for each interest payment. The bonds and each coupon shall be signed by the chairman of the board of diking commissioners, and shall be attested by the secretary of said board, and the seal of such district shall be affixed to each bond, but not to the coupons. [L. '95, p. 325, § 30.]

§ 4125. Bonds, Exchanged for Warrants.—Said bonds may be exchanged at not less than their par value for an equal amount of the warrants of the district issuing such bonds. [L. '95, p. 325, § 31.]

§ 4126. Sinking Fund to Liquidate.—Five years before said bonds shall become due the diking commissioners of such district issuing them are hereby authorized and required, annually, to levy an assessment sufficient to liquidate said bonds at maturity. Such assessment shall be collected by the county treasurer and kept as a separate fund for the sole purpose of liquidating said bonds in accordance with the provisions of the following section. [L. '95, p. 325, § 32.]

The "following" section, refers to § 4127.

§ 4126-1. Bonds—Extraordinary Demands on Funds.—Whenever by reason of any extraordinary occurrence or other casualty there

occur such changes in conditions as to warrant, in the opinion of the commissioners of any diking district, an estimate for making repairs and improvements, including the yearly maintenance expense in an amount equal to twenty-five per cent of the estimated cost of the original improvements, as provided for in Remington & Ballinger's Annotated Codes and Statutes of Washington, section 4103, the funds therefor may be provided by the issuance of bonds of said diking district, payable in not to exceed ten years, and to pay the same, such commissioners shall make a levy extending over such period of time and in such amount as shall be necessary to take care of such bonds and interest, and such levy when made shall state the year for which it is made and the amount thereof, and thereafter, the county auditor shall each year extend such levy without any further orders from said commissioners: Provided, however, that if for any cause whatsoever, said levy shall not be sufficient to take care of said bonds and interest or pay said fixed estimate a further levy shall be made for that purpose. Said bonds shall be sold at not less than par and shall bear interest not to exceed seven per cent per annum, and the proceeds thereof shall be used in such repairs, improvements or maintenance or warrants issued in payment therefor and for no other purpose: Provided, however, that such bonds shall only be issued when they are presented to and filed with such commissioners and shall become a part of their record, a petition of property owners owning at least sixty per cent of all the acreage in such district requesting the issuance of such bonds. [L. '13, p. 512, § 1.]

§ 4127. Treasurer, Duties of.—It shall be the duty of the treasurer of any county in which there may be a district issuing bonds under the provisions of this chapter, whenever he has upon hand two thousand dollars of the special fund for the payment of said bonds, to advertise in the newspaper doing the county printing for the presentation to him for payment of as many of the bonds issued under the provisions of this chapter as he may be able to pay with the funds in his hands, to be paid in numerical order of said bonds, beginning with bond number one, until all of said bonds are paid: Provided, that thirty days after the first publication of said notice of the treasurer calling in any of said bonds by their number said bonds shall cease to bear interest, which shall be stated in the notice. [L. '95, p. 325, § 33.]

§ 4128. Annual Assessments to Pay Interest.—It shall be the duty of such diking commissioners, annually, to levy an assessment sufficient for the payment of the coupons hereinbefore mentioned as they fall due. Said coupons shall be considered for all purposes as warrants drawn upon the funds of the district issuing bonds under the provisions of this chapter, and, when presented to the county treas-

urer and no funds are in the treasury to pay said coupons, it shall be his duty to indorse said coupons as presented for payment in the same manner as other warrants upon the funds of said district are indorsed, and thereafter said coupons shall bear interest at the same rate as other warrants so presented and unpaid. [L. '95, p. 326, § 34.]

Cited in 81 Wash. 484.

§ 4129. Bonds Registered.—Before the bonds are delivered to the purchaser they shall be presented to the county treasurer, who shall register them in a book kept for that purpose and known as the bond register, in which register he shall enter the number of each bond, the date of issue, the maturity, amount and rate of interest, to whom and when payable, and the proceeds derived from the sale of said bonds shall in all cases be paid by the purchaser thereof to the county treasurer. [L. '95, p. 326, § 35.]

§ 4130. Treasurer to Indorse Warrants—When and How Called.—All warrants issued under the provisions of this chapter shall be presented by the holders thereof to the county treasurer, who shall indorse thereon the day of presentation for payment, with the additional indorsement thereon, in case of nonpayment, that they are not paid for want of funds; and no warrant shall draw interest under the provisions of this act until it is so presented and indorsed by the county treasurer. And it shall be the duty of such treasurer, from time to time, when he has sufficient funds in his hands for that purpose, to advertise in the newspaper doing the county printing for the presentation to him for payment of as many of the outstanding warrants as he may be able to pay: Provided, that thirty days after the first publication of said notice of the treasurer calling in any of said outstanding warrants, said warrants shall cease to bear interest, which shall be stated in the notice. Said notice shall be published two weeks, consecutively, and said warrants shall be called in and paid in the order of their indorsement. [L. '95, p. 326, § 36.]

§ 4131. Questions Submitted to Jury.—Upon the trial of any questions of issue by a jury under the provisions of this chapter, the trial court may, in its discretion, submit all questions to be found by the jury in the form of separate findings, or may submit to such jury separate forms of verdict on all such questions to be found by the jury therein. [L. '95, p. 327, § 37.]

§ 4132. Lands of Public Corporations Subject to.—All state, county, school district or other lands belonging to other public corporations requiring to be diked as a protection from overflow shall be subjected to the provisions of this chapter, and such corporations, by and through the proper authorities, shall be made parties in all

proceedings therein affecting said lands and shall have the same rights and liable to the same right of eminent domain as private persons, and their lands shall be subject to the right of eminent domain the same as the lands of private persons or corporations. [L. '95, p. 327, § 38.]

§ 4133. Benefits.—In case lands belonging to the state, county, school district or other public corporations are benefited by any improvement instituted under the provisions of this chapter, all benefits shall be assessed against such lands, and the same shall be paid by the proper authorities of such public corporations at the times and in the same manner as assessments are called and paid in case of private persons out of any general fund of such corporation. [L. '95, p. 327, § 39.]

See infra, §§ 4153, 4154, method of assessing benefits to county or public roads.

See infra, §§ 4251–4255 and 6872–6882, assessments on state lands.

§ 4134. Fees.—Fees for service of all process necessary to be served under the provisions of this chapter shall be the same as for like services in other civil cases, or as is or may be provided by law. [L. '95, p. 327, § 40.]

§ 4135. Commissioners, Compensation of—Objections to.—In performing their duties under the provisions of this chapter, the board of diking commissioners shall receive such compensation as may be just and reasonable for all necessary services actually performed, not exceeding three dollars per day, to be determined and allowed by the court upon presentation by said commissioners, or either of them, of an itemized statement duly verified by either member or all of said board, that the same is just, reasonable, necessary and actually performed and that no part of the same has ever been paid. In case such services are rendered by said board in the establishment and construction of said improvement, the amount thereof so allowed by the court shall be deemed to be a part of the cost of the construction and establishment of said improvement, and in case such compensation to be allowed by the court shall be for services rendered by said board in the repairing or maintenance of such improvement, such allowance shall be added to the annual cost of maintenance of such system: Provided, that any person interested therein may file objections to the allowance asked for, either in whole or in part, and such claims so filed shall not be passed upon or allowed by the court until the expiration of thirty days from the filing thereof. Said board of commissioners, or the members thereof presenting such claim for allowance, shall at the time of the filing thereof in the court, post notices in at least four public places within said district, which said notice shall set forth therein the fact that an application for allowance

has been filed in said court, giving the date of the filing thereof and the amount of the allowance applied for, and demand that any and all persons having any interest therein shall file objections in said court, if any they have, to the allowance of said claim or any portion thereof, within thirty days from the filing of such application for allowance, and the court shall hear said application and the objections thereto, if any be made and filed, and shall, in its discretion, make such allowance and in such amount as it may deem to be just in the premises, and the same shall be paid as other claims against said district are paid. [L. '95, p. 327, § 41; L. '09, p. 630, § 1.]

§ 4136. Power of Court.—The court may compel the performance of the duties imposed by this chapter and may, in its discretion, on proper application therefor, issue its mandatory injunction for such purpose. [L. '95, p. 328, § 42.]

§ 4136-1. Consolidation of Diking Districts—Petition—Election.—Any two or more contiguous diking districts heretofore organized or which may hereafter be organized under the diking laws of the state of Washington, desiring to consolidate into one district, may, upon petition signed by the owners of real property representing a majority of the acreage therein to the commissioners of their respective districts, effect such consolidation by the commissioners of said districts so desiring to consolidate giving thirty days' notice of an election for such purpose to be held in each of said districts, setting forth in said notice the date of said election, and the object of the same, said notice to be given and posted in the same manner as notice of the annual election of commissioners, as provided in the general diking law, and the further publication of the same for at least three successive issues in a weekly newspaper published in the county in which such districts are located, and of general circulation in said districts: Provided, that where there is no newspaper so published and circulated, the publication of the notice of said election may be dispensed with. [L. '13, p. 106, § 1.]

§ 4136-2. Ballots.—At such election held pursuant to said notice, a printed ballot shall be furnished by the commissioners of said districts, having printed thereon: "For consolidation of Diking District No. —— and No. —— (here insert numbers), to be known as 'Consolidated Diking District No. —— (here insert number), of —— (here insert name of county) County, Washington.'" And "Against consolidation of Diking District No. —— and No. —— (here insert numbers)" in such form as to enable the voters to express their choice as to the proposition submitted. [L. '13, p. 106, § 2.]

§ 4136-3. Election—Canvass—Order.—The manner of conducting said election and the hours between the opening and closing of the polls and the officers of said election shall be the same as provided

in the general diking law for the annual election of officers of diking districts, and in case a canvass of the votes cast at said election shall show a majority of the votes cast in each of the districts seeking to consolidate to be in favor of consolidation, an order shall at once be entered upon the minutes of each of said districts by the commissioners thereof, showing the result of said vote cast at said election, and setting forth therein the name of such consolidated district, and a copy of the minutes so entered duly certified by the commissioners of each of said districts shall be filed, one each with the auditor and treasurer of the county within which said districts are located, and one with the clerk of the superior court of such county, to be entered and filed by the clerk of such court in the original proceedings establishing said districts, and a certified copy of such entry shall be transmitted to the secretary of state by the clerk of said court, and thereafter the territory embraced in said districts so consolidated shall be known and designated as "Consolidated Diking District No. —— (here insert number) of —— (here insert name of county) County, Washington," as provided in said order, and thereafter the said district shall have the same powers and duties as other diking districts organized under the diking laws of the state of Washington. [L. '13, p. 107, § 3.]

§ 4136–4. Commissioners — Term of Office.—The diking commissioners of the districts constituting such consolidated district shall be the board of commissioners of such consolidated district and discharge the duties of such officers until the next general election for the election of diking commissioners, and until a board of commissioners for said consolidated district are elected and qualified, and thereafter the officers of said consolidated district shall be elected, qualified and perform the same duties as in case of other diking districts. [L. '13, p. 107, § 4.]

§ 4136–5. Indebtedness—Future Obligations.—In case of such consolidation all indebtedness and outstanding obligations, of the districts so consolidated, and all assessments levied and moneys collected and to be collected thereunder, shall remain unaffected by said proceedings for the consolidation of the same, and the payment of such indebtedness and obligations and the expenditure of moneys collected or to be collected under such previous assessments shall be made in the same manner, based upon the same assessments, and against and for the benefit of the same lands liable therefor prior to such consolidation, but the duties relating thereto shall be discharged by the commissioners of such consolidated district: Provided, however, that all assessments made for the future repair, improvement or maintenance of the diking system of said consolidated district shall be apportioned to and assessed against the land included in such con-

solidated district, in the same manner as though the same had been originally incorporated in one district, and in accordance with the general provisions of the diking laws relating thereto. [L. '13, p. 108, § 5.]

CHAPTER II.

Drainage Districts.

Assessments on state lands, see §§ 4251–4255 and 6872–6882, infra.

§ 4137. Organization of.—Any portion of a county, requiring drainage, which contains five or more inhabitants and freeholders therein may be organized into a drainage district, and when so organized such district and the board of commissioners hereinafter provided for shall have and possess the power herein conferred or that may hereafter be conferred by law upon such district and board of commissioners, and said district shall be known and designated as drainage district No. —— (here insert number), of the county of —— (here insert the name of the county), of the state of Washington, and shall have the right to sue and be sued by and in the name of its board of commissioners hereinafter provided for, and shall have perpetual succession and shall adopt and use a seal. The commissioners hereinafter provided for and their successors in office shall, from the time of the organization of such drainage district, have the power, and it shall be their duty, to manage and conduct the business and affairs of the district, make and execute all necessary contracts, employ and appoint such agents, officers and employees as may be required, and prescribe their duties, and perform such other acts as hereinafter provided, or that may hereafter be provided by law. [L. '95, p. 271, § 1.]

Cited in 31 Wash. 32; 42 Wash. 497–505; 44 Wash. 24; 82 Wash. 499.

For former laws on this subject see §§ 1863–1927, 1 Hill's Code; L. '90, pp. 652–670, declared unconstitutional in Skagit Co. v. Stiles, 10 Wash. 388; Askam v. King Co., 9 Wash. 1. See, also, L. '38, pp. 30, 31; L. '63, p. 485; L. '65, p. 29, §§ 1–3; L. '75, pp. 93–96; L. '77, pp. 314, 315; Cd. '81, §§ 2501–2516; L. '83 pp. 77–82; L. '93, p. 218, superseded.

See note to § 4091, supra.

§ 4138. Districts, How Formed.—For the purpose of the formation of such drainage districts a petition shall be presented to the board of county commissioners of the county in which said proposed drainage district is located, which petition shall set forth the object for the creation of said district, the number of acres to be benefited by the proposed drainage system, shall designate the boundaries thereof, shall contain the names of all the freeholders residing within said proposed district so far as known, a brief description of the proposed system of drainage, the designation of a good and sufficient outlet for the drainage of said district, which point of outlet may be within or without the boundaries of said district; the route over

which said drainage system is to be constructed, together with the proposed spurs and branches, if any there may be, and the termini thereof, and shall set forth the further fact that the establishment of said district and the proposed system of drainage will be conducive to the public health, convenience and welfare, and increase the public revenue, and that the establishment of said district and system of drainage will be of special benefit to the property included therein. Said petition shall be signed by the owners of at least a majority of the acreage in the proposed district and shall pray that the same be organized under the provisions of this chapter. At the time of the filing of said petition said petitioners shall file a bond with said county commissioners running to the state of Washington, in the penal sum of five hundred ($500) dollars, executed in behalf of petitioners by one or more sureties to be approved by the board of county commissioners, conditioned that they will pay all costs in case said district, for any reason, shall not be established. [L. '13, p. 260, § 1; L. '95, p. 272, § 2.]

Cited in 82 Wash. 499.

§ 4139. Petitions to be Published—Boundaries, How Located.—Such petition shall be presented at a regular or special meeting of the board of county commissioners of said county, and shall be published for at least two weeks in two successive issues of some weekly newspaper printed and published in said county, and in case no such newspaper be printed or published in such county, then in some such newspaper of general circulation therein, before the time at which the same is to be presented, together with a notice stating the time of the meeting at which the same shall be presented. When such petition is presented for hearing the board of county commissioners shall hear the same, or may adjourn said hearing from time to time, not exceeding one month in all; and any person or corporation may appear before said board of county commissioners and make objections to the establishment of said district, or the proposed boundary lines thereof, and upon final hearing said board of county commissioners shall make such changes in the proposed boundaries as they may deem to be proper, and shall establish and define such boundaries, and shall ascertain and determine the number of acres of land that will be benefited by said proposed drainage system, the number of freeholders residing within said boundaries of the said proposed district, and shall find whether the proposed drainage system will be conducive to the public health, welfare and convenience, increase the public revenue, and be of special benefit to the majority of the lands included within said boundaries of the said proposed district so established by said board of county commissioners: Provided, that no changes shall be made by said board of county commissioners in said

boundary lines so as to include any territory outside of the boundaries described in said petition: Provided, further, that any person or persons owning land within the proposed boundaries, and who did not sign said petition, or any person, persons or corporations owning land not included within the proposed boundaries, may file a petition with the board of county commissioners asking that the proposed boundaries be extended so as to include other lands described therein; setting forth in said petition the reasons therefor: Provided, however, that no person, persons or corporations not owning lands included within the proposed boundaries, as originally petitioned for, shall have the right to file such petition unless they ask therein to have their own lands included within the proposed boundaries: Provided, further, that any corporation owning land included within the boundaries described in the original petition, may also petition the board of county commissioners for an extension of the proposed boundaries: Provided, further, that the boundaries of any drainage district heretofore or hereafter established may be extended by the board of county commissioners so as to include other lands in said county upon petition signed by the owners of a majority of the acreage of said land within the proposed extension; which said petition for extension shall set forth and contain with reference to the extension such matters and things and data so far as applicable, as is provided for in the petition required for presentation to the board of county commissioners for the purpose of the formation of the original drainage district: Provided, further, that all necessary expense incident to making such extension, together with a proportionate share of the first cost of any drainage system existing in the original district at the time of making such extensions, shall be levied against and apportioned to the lands included in such extension, as in this chapter provided. In such case the board of county commissioners shall give the like notice as provided for in this section of the hearing of the original petition, and the final hearing thereof may, in such case, be continued from time to time for a period not exceeding sixty days, and if upon final hearing the board of county commissioners deem it advisable, and to the best interest of all concerned, they may grant the prayer of such petitioner or petitioners in whole or in part. And said board of county commissioners of such county shall enter an order on the records of their office setting forth all facts found by them upon the final hearing of said petition, and which may be adduced by them from the evidence heard on the final hearing thereof: And provided, further, that any drainage system constructed in the original drainage district may be extended into the said extension by the board of drainage commissioners of said drainage district, in the same manner, and by the same method of procedure as is provided by law for the construction of said drainage system within the said

original drainage district. [L. '13, p. 261, § 2. Cf. L. '95, p. 272, § 3; L. '05, p. 360, § 1.]

Cited in 42 Wash. 499, 500.

§ 4140. Election to Establish District—Commissioner, How Chosen. Upon the entry of the findings on the final hearing of said petition as set forth in the last preceding section, said board of county commissioners of said county, if they find said proposed drainage system will be conducive to the public health, welfare and convenience, and will increase the public revenue and be of special benefit to the majority of the lands included within said boundaries, shall give notice of an election to be held in such proposed drainage district for the purpose of determining whether the same shall be organized under the provisions of this chapter as a drainage district of the state of Washington, and for the further purpose of choosing at such election three commissioners who shall be known and designated as "drainage commissioners" for said district proposed to be organized, which said three commissioners shall, upon their election, be the district authorities of said drainage district; and such notice shall particularly describe the boundaries as established by the board of county commissioners on its final hearing of said petition, and shall state the name of such proposed drainage district and approximately the number of acres of land in said district to be benefited thereby, and the same shall be published for at least two weeks prior to such election in a weekly newspaper printed and published within the county within which said district is located, and in case no such newspaper be printed or published therein, then in some such newspaper of general circulation therein, for two successive issues thereof, and shall be posted for the same period in at least four public places within the boundaries of said proposed district; such notice shall designate the place within the proposed district where the election shall be held, and require the voters to cast ballots which shall contain the words "Drainage District, yes," or "Drainage District, no," and also the names of persons voted for for commissioners of said drainage district. The board of county commissioners shall also appoint two judges, one inspector and two clerks for such election, whose compensation shall be the same as in other elections for the election of county and state officers and shall be a charge upon said district, in case the same be established, and shall be paid in the same manner as other expenses are paid which are incurred in the establishment and construction of said improvement. In case said district be not established, then all costs and expenses shall be collectible from the bond hereinbefore provided for, and any person having a charge against said district shall have a right of action thereon. [L. '95, p. 274, § 4.]

§ 4141. Election of Drainage Commissioners—Bonds of.—Such election shall be held on the day designated in such notice, and shall be conducted in accordance with the general election laws of the state of Washington, and no person shall be entitled to vote at such election unless he shall be a qualified elector of the county in which such district is located, and shall have resided within the limits of such district, as established by the board of county commissioners, for at least thirty days next preceding such election. The board of county commissioners shall meet on the Monday next succeeding such election and proceed to canvass the votes cast thereat, and if, upon such canvass, it appears that a majority of the votes cast are for drainage district, "Yes," the board shall have an order entered upon their minutes and declaring such territory duly organized as a drainage district under the name and style of Drainage District No. —— (here insert number) of (here insert name of county) of the state of Washington, and shall declare the three persons receiving respectively the highest number of votes to be duly elected as a board of commissioners for such drainage district. Said board shall cause a copy of said order, duly certified, to be filed in the office of the secretary of state, and from and after the date of filing such organization shall be deemed complete, and such board of commissioners so chosen at such election shall be entitled to enter immediately upon the duties of their office, and upon qualifying as county officers are required to qualify, and giving a bond to the state of Washington for the benefit of said drainage district, for the faithful performance of their duties as such board of drainage commissioners in the penal sum of twenty-five hundred dollars, with two or more sureties, to be approved by the board of county commissioners, and shall hold such office until the next general election for the election of officers in such drainage district, and until their successors are elected and qualified. Each board of commissioners thereafter, which may be constituted either by appointment or election, shall enter into a like bond and of like effect before entering upon their duties, which bond shall be approved by the judge of the superior court of the county in which said district is located, and shall be filed in said court. [L. '95, p. 275, § 5; L. '09, p. 563, § 1.]

§ 4142. General Election, When—Expenses of—Notice of.—A general election for the election of a board of drainage commissioners of such district shall be held upon the first Tuesday after the first Monday in December of each year thereafter, and the term of office shall begin the second Monday of the following January, and such election shall be held in accordance with the general election laws of the state of Washington for the election of county and state officers, and the expenses thereof shall be defrayed by said district, and the judges, clerks and inspectors of said election shall each receive as com-

pensation for the services rendered at such election the sum of two dollars per day: Provided, that at least thirty days' notice immediately preceding any such general election shall be given thereof by the board of commissioners of such drainage district, by posting the same in four public places within said district. Said notice shall contain the names of two electors of said district as judges of said election and the name of one elector of said district as inspector thereof, the same to be chosen by said board of commissioners. Said board of commissioners shall be a canvassing board to canvass the vote of each election, and they shall meet the day following such election and canvass said votes and declare the result thereof and issue certificates of election. [L. '95, p. 276, § 6.]

Cited in 46 Wash. 476.

§ 4143. Eminent Domain.—All drainage districts organized under the provisions of this chapter shall have the right of eminent domain, with the power by and through its board of commissioners, to cause to be condemned and appropriated private property for the use of said corporation in the construction and maintenance of a system of drainage, and make just compensation therefor: Provided, that the property of private corporations may be subjected to the same rights of eminent domain as that of private individuals: Provided, further, that the said board of commissioners shall have power to acquire by purchase all the real property necessary to make the improvements herein provided for. [L. '95, p. 277, § 7.]

§ 4144. Commissioners, Duties of.—Said board of drainage commissioners hereinbefore provided for, shall have exclusive charge of the construction and maintenance of all drainage systems which may be constructed by said district and shall be the executive officers thereof, with full power to bind said district by their acts in the performance of their duties as provided by law. In case of vacancy or vacancies occurring in said board by the death, failure to elect, failure to qualify, resignation or removal of one or more of the members thereof from said district such vacancy or vacancies shall be filled at once from the freeholders and qualified electors of said district by the judge of the superior court of said county, and said appointee shall serve the unexpired term or until the next general election: Provided, that in counties where there may be more than one superior judge, the judge eldest in age shall make such appointment. [L. '13, p. 264, § 3; L. '95, p. 277, § 8.]

Cited in 46 Wash. 476.

§ 4145. Drainage—Method of Procedure.—Whenever it is desired to prosecute the construction of a system of drainage by said drainage district, said district, by and through its board of commissioners, shall file a petition in the superior court of the county in which said

district is located, setting forth therein the route and termini of said system, with a complete description thereof, together with specifications for its construction, with all necessary plats and plans thereof, with drafts of any artificial appliances or equipment necessary in aid thereof, together with the estimated cost of such proposed improvement, showing therein the names of the land owners whose lands are to be benefited by such proposed improvement; the number of acres owned by each land owner, and the maximum amount of benefits per acre to be derived by each land owner set forth therein from the construction of said proposed improvement, and that the same will be conducive to the public health, convenience and welfare, and increase the value of all of said property for purposes of public revenue. Said petition shall further set forth the names of the land owners through whose land the right of way is desired for said improvement; the amount of land necessary to be taken therefor, and an estimate of the value of said lands so sought to be taken for such right of way, and the damages sustained by any person or corporation interested therein, if any, by reason of such appropriation, irrespective of any benefits to be derived by such land owners by reason of the construction of said improvement. Such estimate shall be made, respectively, to each person through whose land said right of way is sought to be appropriated. Said petition shall set forth as defendants therein all the persons or corporations to be benefited by said improvement, and all persons or corporations through whose land the right of way is sought to be appropriated, and all persons or corporations having any interest therein, as mortgagee or otherwise, appearing of record, and shall set forth that said proposed system of drainage is necessary to drain all of said lands described in said petition, and that all lands sought to be appropriated for said right of way are necessary to be used as a right of way in the construction and maintenance of said improvement; and when the proposed improvement will protect or benefit the whole or any part of any public or corporate road or railroad, so that the traveled track or roadbed thereof will be improved by its construction, such fact shall be set forth in said petition, and such public or private corporations owning said road or railroad shall be made parties defendant therein, and the maximum amount of benefits to be derived from said proposed improvement shall be estimated in said petition against said road or railroad: Provided, however, that all maps, plats, field-notes, surveys, plans, specifications, or other data heretofore made, ascertained or prepared under laws heretofore enacted on the subject of this chapter, may be used under the provisions of this chapter. [L. '13, p. 264, § 4; L. '95, p. 277, § 9; L. '05, p. 362, § 2.]

Cited in 42 Wash. 499; 82 Wash. 502.

§ 4146. Surveyors and Draftsmen.—In the preparation of the facts and data to be inserted in said petition and filed therewith for the purpose of presenting the matter to the superior court, the board of commissioners of said drainage district may employ one or more good and competent surveyors and draftsmen to assist them in compiling data required to be presented to the court with said petition, as hereinbefore provided, and such legal assistance as may be necessary, with full power to bind said district for the compensation of such assistants or employees employed by them, and such services shall be taxed as costs in the suit. [L. '95, p. 279, § 10.]

§ 4147. Summons—How Served.—A summons stating briefly the objects of the petition and containing a description of the land, real estate, premises or property sought to be appropriated, and those which it is claimed to be benefited by such improvement, and stating the court wherein said petition is filed, the date of the filing thereof and when the defendants are required to appear (which shall be ten days, exclusive of the day of service, if served within the county in which the petition is pending, and if in any other county, then twenty days after such service, and if served by publication, then within thirty days from the date of the first publication), shall be served on each and every person named therein as owner, encumbrancer, tenant or otherwise interested therein. Said summons must be subscribed by the commissioners, or their attorney, running in the name of the state of Washington and directed to the defendants; and service thereof shall be made by delivering a copy of such summons to each of the persons or parties so named therein, if a resident of the state, or in case of the absence of such person or party from his or her usual place of abode, by leaving a copy of such notice at his or her usual place of abode, or in case of a foreign corporation, at its principal place of business in this state with some person of more than sixteen years of age; in case of domestic corporations, said service shall be made upon the president, secretary or other director or trustee for such corporation; in case of minors, on their guardians; or in case no guardian shall have been appointed, then on the person who has the care and custody of such minor; in case of idiots, lunatics or insane persons, on their guardian; or in case no guardian shall have been appointed, then on the person in whose care or charge they are found. In case the land, real estate, premises or other property sought to be appropriated, or which it is claimed will be benefited by such improvement, is state, tide, school or county land, the summons shall be served on the auditor of the county in which the land, real estate, premises or other property sought to be appropriated, or which it is claimed will be benefited, is situated. In all cases where the owner or person claiming an interest in such real

or other property is a nonresident of this state, or where the residence of such owner or person is unknown, and an affidavit of one or more of the commissioners of said district shall be filed that such owner or person is a nonresident of this state, or that after diligent inquiry his residence is unknown or cannot be ascertained by such deponent, service may be made by publication thereof in a newspaper published in the county where such lands are situated, once a week for three successive weeks; and in case no newspaper is published in such county, then such publication may be had in a newspaper published in the county nearest to the county in which lies the land sought to be appropriated, or which it is claimed will be benefited by said improvement. Such publication shall be deemed service upon each nonresident person or persons whose residence is unknown. Such summons may be served by any competent person over twenty-one years of age. Due proof of service of such summons by affidavit of publication shall be filed with the clerk of such court before the court shall proceed to hear the matter. Want of service of such notice shall render the subsequent proceedings void as to the person not served; but all persons or parties having been served with summons as herein provided, either by publication or otherwise, shall be bound by the subsequent proceedings. In all cases not otherwise provided for service of notice, order and other papers in the proceedings authorized by this chapter may be made as the superior court, or the judge thereof, may direct: Provided, that personal service upon any party outside of the state shall be of like effect as service by publication. [L. '95, p. 279, § 11.]

§ 4148. Appearance—Jury—Verdict—Decree.—Any or all of said defendants may appear jointly or separately and admit or deny the allegations of said petition and plead any affirmative matter in defense thereof at the time and place appointed for hearing said petition, or to which the same may have been adjourned. If the court or judge thereof shall have satisfactory proof that all of the defendants in said action have been duly served with said summons, as above provided, and shall be further satisfied by competent proof that said improvement is practicable and conducive to the public health, welfare and convenience, and will increase the value of said lands for the purpose of public revenue, and that the contemplated use for which the land, real estate, premises or other property sought to be appropriated is really a public use, and that the land, real estate, premises or other property sought to be appropriated are required and necessary for the establishment of said improvement, and that said improvement has a good and sufficient outlet, the court or judge thereof shall cause a jury of twelve qualified persons to be impaneled to assess the damages and benefits, as herein provided, if

in attendance upon his court; and if not he may, if satisfied that the public interests require the immediate construction of said improvement, direct the sheriff of his county to summons from the citizens of the county in which petition is filed as many qualified persons as may be necessary in order to form a jury of twelve persons, unless the parties to the proceedings consent to a less number, such number to be not less than three, and such consent shall be entered by the clerk in the minutes of the trial. If necessary, to complete the jury in any case, the sheriff, under the directions of the court or the judge thereof shall summon as many qualified persons as [may] be required to complete the jury from the citizens of the county in which the petition is filed. In case a special jury is summoned the cost thereof shall be taxed as part of the cost in the proceedings and paid by the district seeking to appropriate said land, the same as other costs in the case; and no person shall be competent as a juror who is a resident of, or land owner in, the district seeking to appropriate said land. The jurors at such trial shall make in each case a separate assessment of damages which shall result to any person, corporation or company, or to the state, by reason of the appropriation and use of such land, real estate, premises or other property for said improvements and shall ascertain, determine and award the amount of damages to be paid to said owner or owners, respectively, and to all tenants, encumbrancers and others interested, for the taking or injuriously affecting such land, real estate, premises or other property for the establishment of said improvement; and shall further find a maximum amount of benefits per acre to be derived by each of the land owners, and also the maximum amount of benefits resulting to any municipality, public highway, corporate road, or district from construction of said improvement. And upon a return of the verdict into court the same shall be reported as in other cases; whereupon, a decree shall be entered in accordance with the verdict so rendered setting forth all the facts found by the jury, and decreeing that said right of way be appropriated, and directing the commissioners of said drainage district to draw their warrant on the county treasurer for the amount awarded by the jury to each person for damages sustained by reason of the establishment of said improvement, payable out of the funds of said drainage district. [L. '95, p. 281, § 12; L. '09, p. 564, § 2.]

§ 4149. Inclusion of Lands Omitted from Assessment—Appeals—Procedure.—If the board of drainage commissioners shall, at any time, discover that any lands within said district are being benefited by the drainage system, and the same were by mistake, inadvertence or other cause omitted from the assessment of benefits as provided for in the last preceding section, or which were omitted for the rea-

son that they were not at the time of assessing the benefits provided for in said preceding section, for any cause, subject to a legal assessment, said commissioners shall file a petition in the superior court in the original cause setting forth the facts of such benefits, describing the lands omitted, the reason the same were omitted in said original proceedings and giving the names of the owners or reputed owners thereof and praying that said original cause, as to such lands, be opened up for further proceedings for the assessment of the alleged benefits, and upon the filing of said petition summons shall issue thereon and be served on the defendants named in said petition the same as summons is served and issued in original proceedings, as near as may be, except the court may, to avoid costs and in its discretion, call a jury of not less than three jurors; and the jury, in assessing the benefits, shall take into consideration the length of time said lands are to receive the benefits from said improvement and its future maintenance, estimating said time from the date when said lands first became legally assessable, which date must be found by the jury in their verdict as to each tract or parcel found to be benefited: And provided further, that in case the expense and the cost of the improvements has been paid for by assessments levied against the land assessed in the original proceedings before the lands provided for in this section are assessed, as provided for herein, then, in such case, the assessments levied from time to time on said last mentioned land shall be paid into the maintenance fund of said district. Every person or corporation feeling himself or itself aggrieved by any judgment for damages or any assessment of benefits provided in this chapter, may appeal to the supreme court of the state within thirty days after the entry of the judgment, and such appeal shall bring before the supreme court the propriety and justness of the amount of damage or assessment of benefits in respect to the parties to the appeal. Upon such appeal no bonds shall be required and no stay shall be allowed. [L. '95, p. 282, § 13; L. '01, p. 181, § 1.]

§ 4150. Proceedings, When may be Dismissed.—In case the damages or amount of compensation for such right of way, together with the estimated costs of the improvement, amount to more than the maximum amount of benefits which will be derived from said improvement, or, if said improvement is not practicable, or will not be conducive to the public health, welfare and convenience, or will not increase the public revenue, or will not have sufficient outlet, the court shall dismiss such proceedings, and in such case a judgment shall be rendered for the costs of said proceedings against said district, and no further proceedings shall be had or done therein; and upon the payment of the costs, said organization shall be dissolved by decree of said court. [L. '95, p. 282, § 14.]

§ 4151. Damages, How Paid.—Any person or corporation claiming to be entitled to any money ordered paid by the court, as provided in this chapter, may apply to the court therefor, and upon furnishing evidence satisfactory to the court that he is entitled to the same, the court shall make an order directing the payment to such claimant of the portion of such money as he or it may be found entitled to; but if, upon application, the court or judge thereof shall decide that the title to the land, real estate or premises specified in the application of such claimant is in such condition as to require that an action be commenced to determine the title of claimants thereto, it shall refuse such order until such action is commenced and the conflicting claims to such land, real estate or premises be determined according to law. [L. '95, p. 283, § 15.]

§ 4153. Certifying Benefits Assessed to Road District—Payment of Judgment.—Whenever, upon the trial to fix and assess the benefits and damages resulting from the construction of any diking or drainage system under the laws of this state, the jury shall find by its verdict that any public or county road will be benefited from the construction of such improvement, the clerk of the court in which such trial is had shall, upon the entry of the judgment upon such verdict, certify to the board of county commissioners of the county in which such road is situated the amount of benefits to such road so found and adjudged. The said county commissioners shall, upon the receipt of such certified statement, allow the same as for other road work and shall order the amount thereof to be paid out of the road and bridge fund of the road district in which the road so benefited is situated, and shall direct the auditor of said county to issue a warrant for the amount of such benefits against the road and bridge fund of such road district in favor of the county treasurer of said county. The said county treasurer shall, upon the payment of said warrant, place the proceeds therefrom to the credit of the drainage or diking district from which such benefits resulted. [L. '09, p. 690, § 1.]

This and the next section apply, also, to Chapters I, III and IV, of this title. See §§ 4133, 4174, and compare § 4199.

§ 4154. Additional Assessments and Maintenance.—Any additional assessments for the construction of any diking or drainage system, and also all assessments for the maintenance of same shall be based upon the benefits so found and adjudged, and the proportion of benefits resulting to such public or county road therefrom, on such basis, shall be allowed and paid for by such county in the same manner as in the case of the original construction. [L. '09, p. 691, § 2.]

See note to last section.

§ 4155. Transcript, to Contain What—Assessments, When Due.—Upon the entry of the judgment upon the verdict of the jury the clerk of said court shall immediately prepare a transcript, which shall contain a list of the names of all the persons and corporations benefited by said improvement and the amount of benefit derived by each, respectively, and shall duly certify the same, together with a list of the lands benefited by said improvement belonging to each person and corporation, and shall file the same with the auditor of the county, who shall immediately enter the same upon the tax-rolls of his office, as provided by law for the entry of other taxes, against the land of each of the said persons named in said list, together with the amounts thereof, and the same shall be subject to the same interest and penalties in case of delinquency as in case of general taxes, and shall be collected in the same manner as other taxes and subject to the same right of redemption, and the lands sold for the collection of said taxes shall be subject to the same right of redemption as the sale of lands for general taxes: Provided, that said assessments shall not become due and payable except at such time or times and in such amounts as may be designated by the board of commissioners of said drainage district, which designation shall be made to the county auditor by said board of commissioners of said drainage district, by serving written notice upon the county auditor designating the time and the amount of the assessment, said assessment to be in proportion to benefits to become due and payable, which amount shall fall due at the time of the falling due of general taxes, and the amount so designated shall be added by the auditor to the general taxes of said person, persons or corporation, according to said notice, upon the assessment-rolls in his said office, and collected therewith; Provided further, that no one call for assessments by said commissioners shall be in an amount to exceed twenty-five per cent of the amount estimated by the board of commissioners to be necessary to pay the costs of the proceedings, and the establishment of said district and drainage system and the cost of construction of said work: Provided, further, that where the amount realized from the original assessment and tax shall not prove sufficient to complete the original plans and specifications of any drainage system, alterations, extensions or changes therein, for which the said original assessment was made, the board of commissioners of said district shall make such further assessment as may be necessary to complete said system according to the original plans and specifications, which assessment shall be made and collected in the manner provided in this section for the original assessment. [L. '95, p. 283, § 16; L. '07, p. 669, § 1.]

§ 4156. Conditional Tax, How Levied.—In the event of the dismissal of said proceedings and the rendition of judgment against

said district, as hereinbefore provided, said drainage commissioner[s] shall levy a tax upon all the real estate within said district, taking as a basis the last equalized assessment of said real estate for state and county purposes, sufficient to pay said judgment and the cost of levying said tax, and shall cause said tax-roll to be filed in the office of the clerk of the superior court in which such judgment was rendered. If said tax is not paid within sixty days after the filing of said tax-roll, the court shall, upon the application of any party interested, direct said real estate to be sold in payment of said tax, said sale to be made in the same manner and by the same officer as is or may be provided by law for the sale of real estate for taxes for general purposes; and the same right of redemption shall exist as in the sale of real estate for the payment of taxes for general purposes. [L. '95, p. 284, § 17.]

§ 4157. Commissioners, Duty of—Contractor's Bond—Liabilities. After the filing of said certificate said commissioners of such drainage district shall proceed at once in the construction of said improvement, and in carrying on said construction or any extensions thereof they shall have full charge and management thereof, and shall have the power to employ such assistance as they may deem necessary and purchase all material that may be necessary in the construction and carrying on of the work of said improvement, and shall have power to let the whole or any portion of said work to any responsible contractor, and shall in such case enter into all necessary agreements with such contractor that may be necessary in the premises: Provided, that in case the whole or any portion of said improvement is let to any contractor said commissioners shall require said contractor to give a bond in double the amount of the contract price of the whole or of such portion of said work covered by said contract, with two or more sureties to be approved by the board of commissioners of said drainage district and running to said district as obligee therein, conditioned for the faithful and accurate performance of said contract by said contractor, his executors, administrators or assigns, according to the terms and conditions of said agreement, and shall cause said contractor to enter into a further or additional bond in the same amount, with two or more good and sufficient sureties to be approved by said board of commissioners of said drainage district in the name of said district as obligee therein, conditioned that said contractor, his executors, administrators or assigns, or subcontractor, his executors, administrators or assigns, performing the whole or any portion of said work under contract of said original contractor, shall pay or cause to be paid all just claims for all persons performing labor or rendering services in the construction of said work, or furnishing materials, merchandise or provisions of

any kind or character used by said contractor or subcontractor, or any employee thereof in the construction of said improvement: Provided further, that no sureties on said last mentioned bond shall be liable thereon unless the persons or corporation performing said labor and furnishing said materials, goods, wares, merchandise and provisions, shall, within ninety days after the completion of said improvement, file their claim, duly verified, that the amount is just and due and remains unpaid, with the board of commissioners of said drainage district. [L. '95, p. 285, § 18.]

§ 4158. Work, Where to Begin—Changes, How Effected.—The work on said improvement shall begin and shall be completed with all expedition possible, and said board of commissioners of such drainage district, or any contractor thereunder, shall have no power whatever to change said route or system of improvement or the manner of doing the work therein so as to make any radical changes in said improvement, without the written consent of all the land owners to be benefited thereby, and the land owners which may be damaged thereby. And in case any substantial changes in said system of improvement or the manner of the construction thereof shall be deemed necessary by said board of commissioners at any time during the progress thereof, and if the written consent to such changes cannot be procured from said land owners, then said commissioners, for and on behalf of said district, shall file a petition in the superior court of the county within which said district is located, setting forth therein the changes which they deem necessary to be made in the plan or manner of the construction of said improvement, and praying therein to be permitted to make such changes, and upon the filing thereof, the commissioners shall cause a summons to be served, setting forth the prayer of said petition, under the seal of said court, which summons shall be served in the same manner as the service of summons in the case of the original petition, upon all the land owners or others claiming any lien or interest therein appearing of record in said district, and any or all of said parties so served may appear in said cause and submit their objections thereto, and after the time for the appearance of all of said parties has expired, the court shall proceed to hear said petition at once without further delay, and if it appears during the course of said proceedings that the property rights of any of said land owners will be affected by such proposed change in said improvements, then the court, after having passed upon all preliminary questions as in the original proceedings may call a jury to be impaneled as in the case of the original proceeding for the establishment of said improvements, and upon the final hearing of said cause, the jury shall return a verdict finding the amount of damages, if any, sustained by all persons and corporations, the same as upon the original petition, by reason of such

proposed change, and shall readjust the amount of benefits claimed to have been increased or diminished by any of said land owners by reason of said proposed change in said improvements, and the proceedings thereafter shall be the same as to rendering judgment, appeal therefrom, payment of compensation and damages and filing of the certificate with the auditor, as hereinbefore provided for in the proceedings upon the original petition, and said commissioners shall have a right thereafter to proceed with the construction of said improvements according to the changes made therein. [L. '95, p. 286, § 19; L. '09, Ex. Sess., p. 47, § 1.]

§ 4159. Contractors, When Paid.—During the construction of said improvement said commissioners shall have the right to allow payment thereof, in installments as the work progresses, in proportion to the amount of work completed: Provided, that no allowance or payment shall be made for said work to any contractor or subcontractor to exceed seventy-five per cent of the proportionate amount of the work completed by such contractor or subcontractor, and twenty-five per cent of the contract price shall be reserved at all times by said board of commissioners until said work is wholly completed, and shall not be paid upon the completion of said work until ninety days have expired for the presentation of all claims for labor performed and materials, goods, wares, merchandise and provisions furnished or used in the construction of said improvements; and upon the completion of said work and the payment of all claims hereinbefore provided for according to the terms and conditions of said contract, said commissioners shall accept said improvement and pay the contract price therefor. [L. '95, p. 287, § 20.]

§ 4160. Private Drains—Proceedings to Connect.—Any person or corporation owning land within said district shall have a right to connect any private drains or ditches for the proper drainage of such land with said system, and in case any persons or corporations shall desire to drain such lands into said system and shall find it necessary, in order to do so, to procure the right of way over the land of another, or others, and if consent thereto cannot be procured from such person or persons, then such land owner may present in writing a request to the board of commissioners of said district, setting forth therein the necessity of being able to connect his private drainage with said system, and pray therein that said system be extended to such point as he may designate in said writing, and immediately thereon said board of commissioners shall cause a petition to be filed in the superior court, for and in the name of said drainage district, requesting in said petition that said system be extended as requested, setting forth therein the necessity thereof and praying that lief [leave] be granted by the board to extend the

system in accordance with the prayer of said petition, and the proceedings in such case, upon the presentation of such petition and the hearing thereof, shall be, in all matters, the same as in the hearing and presentation of the original petition for the establishment of the original system of drainage in said district, as far as applicable. The costs in such proceedings shall be paid from the assessment of benefits to be made on the lands of the person or persons benefited by such extension, and the assessment and compensation for the right of way, damages and benefits, and payment of damages and compensation, and the collection of the assessments for benefits, shall be the same as in the proceedings under the original petition, and the construction of the said extension shall be made under the same provisions as the construction of the original improvement; and all things that may be done or performed in connection therewith shall be, as near as may be applicable, in accordance with the provisions already set forth herein for the establishment and construction of said original improvement: Provided, that such petitioner or petitioners shall, at the time of filing such petition by said drainage commissioners, enter into a good and sufficient bond to said drainage district in the full penal sum of five hundred dollars, with two or more sureties, to be approved by the court, conditioned for the payment of all costs in case the prayer of said petition should not be granted, which bond shall be filed in said cause. [L. '95, p. 288, § 21.]

§ 4161. Districts Above—Proceedings to Connect.—In case of the establishment of a drainage district and system of drainage under the provisions of this chapter above any other district that may have theretofore been established and above any other system of drainage that may have theretofore been constructed in said district, and in case said district to be established above may desire to connect its drainage system with the lower or servient district, shall be made a party to the proceedings for the establishment of such system, and the petition to be filed in the superior court for the establishment of the system of drainage in said upper district shall, in addition to the facts hereinbefore provided and required to be set forth therein, set forth the fact that said lower system in said lower district is necessary to be used as an outlet for the system of drainage of said upper district, and that the same will be a sufficient outlet and will afford sufficient capacity to carry the drainage of both said upper and lower districts; and in case said system of said lower district will be required to be enlarged by widening or deepening the same, or both, in order to give sufficient outlet to said upper district and afford sufficient drainage for said upper and lower districts, then the plans and specifications for enlarging the system of said lower district shall be filed with said petition in addition to the other data hereinbefore

provided for in this chapter. All the land owners in said lower district, or any person claiming any interest therein as mortgagee or otherwise, shall be made parties defendant in said petition, and the proceedings therein as to the assessment of damages and compensation for land taken, if any be necessary to be taken in enlarging said lower system, shall be the same as in the establishment of systems of drainage in the lower or servient district as hereinbefore provided for; but the jury, in addition to the facts to be found by them as provided for in the establishment of a drainage system in the lower district, shall find and determine whether said lower system, when improved according to the plans and specifications filed with the said petition, will afford sufficient drainage for both said upper and lower districts, which finding shall be made by the jury before considering any other question at issue in said proceeding; and in case said jury should find that the system of said lower district when improved as proposed in said petition would not be sufficient, then, in that case, said finding shall terminate the proceedings, and no further proceedings in said case shall be had, and the costs of said proceeding shall be paid as costs in other proceedings, as hereinbefore provided for; but in such case the finding of said jury shall not terminate the objects of said upper district or operate to disorganize the same, but said upper district may begin new proceedings for the establishment of a system of drainage with some new outlet provided therein. All costs for the enlarging or improving of said lower system that may be required shall be assessed to the land owners in the upper district according to the benefits to be derived from the construction of said entire system, and no additional cost shall be thrown upon the lower district, and all compensation for taking any right of way that may be necessary to be taken in enlarging said lower system, and all damages occurring therefrom, if any, to the land owners of said lower district, shall be ascertained and paid in the same manner as hereinbefore provided for for the adjustment of compensation and damages in the establishment of drainage systems in lower districts. Said lower district, by and through its board of commissioners, may appear in said cause and show therein any injury it may sustain as a district by reason of the additional cost of maintenance of said lower system as improved and enlarged, and such fact shall be determined in said cause and the jury shall find the amount of the increased costs of maintenance per annum, which will be sustained by said lower district by reason of said enlarging or improving of the same, and judgment shall be rendered in favor of said lower district against said upper district for such amount so found, and the same shall be paid each year as the cost of construction is paid as provided for in this chapter, and the amount so paid shall be held by said lower district as an additional

fund for the maintenance of its said system as improved and enlarged by said upper district. [L. '95, p. 289, § 22.]

§ 4162. Incorporated Towns may Act as Drainage Districts.—Any town or city already incorporated, or which may hereafter be incorporated, may exercise the functions of a drainage district under the provisions of this chapter, cr the whole or any portion of any such town or city may be included with other territory in a common district under the provisions for the establishment thereof as provided for herein. [L. '95, p. 291, § 23.]

§ 4163. Cost of Maintenance, Estimate of.—The board of commissioners of any drainage district organized under the provisions of this act shall on or before the first day of November of each year, make an estimate of the cost of maintenance of the drainage system, constructed in such district which estimate shall include the cost of making any necessary repairs that it might become necessary to make in the maintenance of such system. Such estimate shall be made for the succeeding year and the amount so estimated shall be certified by the board of commissioners to the auditor of the county in which such district is located, on or before said date and the amount thereof shall be levied against and apportioned to the lands in such district benefited by said improvement in proportion to the maximum benefits originally assessed by the judgment of the court, and said amount shall be added to the general taxes against said lands and collected therewith. [L. '95, p. 291, § 24; L. '05, p. 363, § 3; L. '07, p. 219, § 1.]

Cited in 42 Wash. 499; 52 Wash. 399.

§ 4164. Commission, Officers and Duty of.—The board of commissioners of such district shall elect one of their number chairman and one secretary, and shall keep minutes of all their proceedings, and may issue warrants of such district in payment of all claims of indebtedness against such district; such warrants shall be in form and substance the same as county warrants, or as near the same as may be practicable, and shall draw the legal rate of interest from the date of their presentation to the treasurer for payment, as hereinafter provided, and shall be signed by the chairman and attested by the secretary of said board: Provided, that no warrants shall be issued by said board of commissioners in payment of any indebtedness of such district for less than the face or par value. [L. '95, p. 291, § 25.]

Cited in 46 Wash. 476.

§ 4165. Bonds, to Issue, When.—Upon the establishment of any district under the provisions of this chapter, and the establishment of a system of drainage therein as provided for in this act, the board

of commissioners of such drainage district may, upon petition of a majority of all the land owners owning land within such district to be benefited thereby, issue bonds for the total amount of the costs of construction of said improvement, together with the costs of the establishment thereof, including damages assessed and compensation made to land owners for right of way and the expenses and costs of the entire proceeding, payable at a time not less than five years nor longer than ten years from the date thereof; and such commissioners may, at any time thereafter, issue such bonds in the manner and form herein prescribed for the purpose of funding any outstanding warrants or obligations of such district, and in case of such last named issue all the outstanding warrants shall immediately become due and payable upon receipt of the money by the county treasurer from the sale of said bonds, and upon a call of such outstanding obligations to be issued by him, which call shall be made by said treasurer immediately upon receipt of the proceeds from the sale of said bonds by publication for two successive weeks in the county paper authorized to do the county printing, and such warrants and outstanding obligations shall cease to draw interest at the end of thirty days after the date of the first publication: Provided, that no bonds shall, under the provisions hereof, be sold for less than their par value. [L. '95, p. 292, § 26.]

§ 4166. Bonds—Terms of.—Said bonds shall be numbered from one upwards, consecutively, and be in denominations of not less than one hundred dollars nor more than one thousand dollars. They shall bear the date of issue, shall be made payable to the bearer in not more than ten years nor less than five years from the date of their issue, and bear interest at a rate not exceeding seven per cent per annum, payable annually, with coupons attached for each interest payment. The bonds and each coupon shall be signed by the chairman of the board of drainage commissioners, and shall be attested by the secretary of said board, and the seal of such district shall be affixed to each bond, but not to the coupons. [L. '95, p. 292, § 27.]

§ 4167. Bonds, How Exchanged.—Said bonds may be exchanged at not less than their par value for an equal amount of the warrants of the district issuing such bonds. [L. '95, p. 293, § 28.]

§ 4168. Bonds, Liquidation of.—Five years before said bonds shall become due the drainage commissioners of such district issuing them, are hereby authorized and required, annually, to levy an assessment sufficient to liquidate said bonds at maturity; such assessment shall be collected by the county treasurer and kept as a separate fund for the sole purpose of liquidating said bonds in accordance with the provisions of the following section. [L. '95, p. 293, § 29.]

§ 4169. Treasurer, Duties as to Taking Up.—It shall be the duty of the treasurer of any county in which there may be a district issuing bonds under the provisions of this chapter, whenever he has upon hand two thousand dollars of the special fund for the payment of said bonds, to advertise in the newspaper doing the county printing, for the presentation to him for payment of as many of the bonds issued under the provisions of this chapter as he may be able to pay with the funds in his hands, to be paid in numerical order of said bonds, beginning with bond number one, until all of said bonds are paid: Provided, that thirty days after the first publication of said notice of the treasurer calling in any of said bonds by their number, said bonds shall cease to bear interest, which shall be stated in the notice. [L. '95, p. 293, § 30.]

§ 4170. Coupons, Payment of.—It shall be the duty of such drainage commissioners annually to levy an assessment sufficient for the payment of the coupons hereinbefore mentioned as they fall due. Said coupons shall be considered for all purposes as warrants drawn upon the funds of the district issuing bonds under the provisions of this chapter, and, when presented to the county treasurer, and no funds are in the treasury to pay said coupons, it shall be his duty to indorse said coupons as presented for payment in the same manner as other warrants upon the funds of said district are indorsed, and thereafter said coupons shall bear interest at the same rate as other warrants so presented and unpaid. [L. '95, p. 293, § 31.]

§ 4171. Bonds to be Registered.—Before the bonds are delivered to the purchaser they shall be presented to the county treasurer, who shall register them in a book kept for that purpose and known as the bond register, in which register he shall enter the number of each bond, the date of issue, the maturity, amount and rate of interest, to whom and when payable, and the proceeds derived from the sale of said bonds shall in all cases be paid by the purchaser thereof to the county treasurer. [L. '95, p. 294, § 32.]

§ 4172. Warrants Presented for Indorsement—When Paid.—All warrants issued under the provisions of this chapter shall be presented by the holders thereof to the county treasurer, who shall indorse thereon the day of presentation for payment, with the additional indorsement thereon, in case of nonpayment, that they are not paid for want of funds; and no warrant shall draw interest under the provisions of this act until it is so presented and indorsed by the county treasurer. And it shall be the duty of such treasurer, from time to time, when he has sufficient funds in his hands for that purpose, to advertise in the newspaper doing the county printing for the presentation to him for payment of as many of the outstanding warrants as he may be able to pay: Provided, that thirty days after the

first publication of said notice of the treasurer calling in any of said outstanding warrants said warrants shall cease to bear interest, which shall be stated in the notice. Said notice shall be published two weeks consecutively, and said warrants shall be called in and paid in the order of their indorsement. [L. '95, p. 294, § 33.]

§ 4173. Trial—Findings and Forms of Verdict.—Upon the trial of any questions of issue by a jury under the provisions of this chapter the trial court may, in its discretion, submit all questions to be found by the jury in the form of separate findings, or may submit to such jury separate forms of verdict on all such questions to be found by the jury therein. [L. '95, p. 294, § 34.]

§ 4174. No Lands Exempt.—All state, county, school district or other lands belonging to other public corporations requiring drainage shall be subject to the provisions of this chapter, and such corporations, by and through the proper authorities, shall be made parties in all proceedings herein affecting said lands, and shall have the same rights as private persons, and their lands shall be subject to the right of eminent domain the same as the lands of private persons or corporations. [L. '95, p. 294, § 35.]

See supra, §§ 4153, 4154, method of assessing benefits to county or public roads.

See infra, §§ 4251–4255 and 6872–6882, assessments on state lands.

§ 4175. Assessments on Public Lands.—In case lands belonging to the state, county, school district or other public corporation are benefited by any improvement instituted under the provisions of this chapter, all benefits shall be assessed against such lands, and the same shall be paid by the proper authorities of such public corporation at the times and in the same manner as assessments are called and paid in case of private persons, out of any general fund of such corporation. [L. '95, p. 295, § 36.]

§ 4176. Service Fees.—Fees for service of all process necessary to be served under the provisions of this chapter shall be the same as for like services in other civil cases, or as is or may be provided by law. [L. '95, p. 295, § 37.]

Cited in 42 Wash. 497.

§ 4177. Commissioners, Compensation of — Objections — Procedure.—In performing their duties under the provisions of this chapter the board of drainage commissioners shall receive such compensation as may be just and reasonable for all necessary services actually performed, not exceeding three dollars and fifty cents per day, to be determined and allowed by the court upon presentation by said commissioners, or either of them, of an itemized statement duly verified by either or all of such board, that the same is just, reasonable, necessary and that such services were actually performed, and that

no part of said compensation has ever been paid, and in case such services are rendered by said board in the establishment or construction of said improvement, or any extension thereof, the amount thereof so allowed by the court shall be deemed to be a part of the cost of the construction and establishment of said improvement, and in case such compensation to be allowed by the court shall be for services rendered by said board in the repairing or maintenance of such improvement, such allowance shall be added to the annual cost of maintenance of such system: Provided, that any person interested therein may file objections to the allowance asked for either in whole or in part, and such claims so filed shall not be passed upon or allowed by the court until the expiration of thirty days from the filing thereon. Said board of commissioners, or the member thereof presenting such claim or allowance, shall, at the time of the filing thereof in the court, post notices in at least four public places within said district, which said notices shall set forth therein the fact that an application for allowance has been filed in said court, giving the date of the filing thereof and the amount of the allowance applied for, and demand that any and all persons having any interest therein shall file objections in said court, if any they have, to the allowance of such claim or any portion thereof, within thirty days from the filing of such application for allowance, and the court shall hear said application and the objections thereto, if any be made and filed, and shall in its discretion, make such allowance in such amount as it may deem to be just in the premises, and the same shall be paid as other claims against said district are paid. [L. '95, p. 295, § 38; L. '07, p. 101, § 1.]

§ 4178. Natural Watercourses—Improvement of.—The whole or any portion of any natural watercourse, the whole or any portion of which lies within any district established under this chapter, or the whole or any portion of any ditch or drainage system already constructed or partially constructed prior to the passage of this chapter, may be improved and completed as a system under the provisions of this chapter: Provided, that vested rights in any such watercourse acquired by appropriation of the water thereof for irrigation, mining or manufacturing purposes under existing law, shall not be disturbed. [L. '95, p. 296, § 39; L. '03, p. 42, § 1.]

§ 4179. Power of Court.—The superior court may compel the performance of the duties imposed by this chapter, and may, in its discretion, on proper application therefor, issue its mandatory injunction for such purpose. [L. '95, p. 296, § 40.]

Cited in 46 Wash. 477.

§ 4180. Dissolution of District—Hearing—Notice.—Any drainage district or diking district in the state of Washington may be dissolved

by order of the superior court of the county wherein the same is organized, upon a hearing had upon a verified petition praying for such dissolution, signed by not less than two-thirds of the adult land owners of such district, who own in the aggregate not less than three-fourths in area of the land contained in said district, when it shall be determined by the court, that not less than four weeks' notice of such hearing has been given by posting notices in five of the most public places of the district sought to be dissolved, and by the insertion in a weekly newspaper of such county for four successive weeks next prior to such hearing, and the costs of dissolution have been advanced and that it is for the best interest of the land owners in said district that the same be dissolved; Provided, the ditches, drains, dikes and other improvements of dissolved districts, shall be and remain for the common use of the land owners in said district so dissolved. [L. '15, p. 31, § 1. Cf. L. '07, p. 376, § 1.]

§ 4181. Sale of Property—Application of Proceeds—Indebtedness. If said dissolved district owns any property, either real or personal, other than such ditches, drains, dikes or other improvements, it may be sold by an order of the superior court, directed to the sheriff of said county, whose duty it shall be to advertise and sell such property in manner otherwise provided by law for the sale of real and personal property, and the proceeds of such sale, after the costs are paid, shall be used to pay any indebtedness of such dissolved district. If the indebtedness of any such district exceeds the amount received from the sale of such property the amount of such excess shall be certified to the auditor of the county in which such district is located and the amount thereof shall be levied against and apportioned to the lands in such district in proportion to and upon the basis of the value of such lands as fixed by the last preceding equalized assessment-roll of said county and said amount shall be added to the general taxes against said lands and collected therewith. If the amount received from the sale of any property in such district exceeds the indebtedness of such district the excess shall be distributed to the land owners of such district in proportion to the value of their respective holdings therein. [L. '07, p. 376, § 2.]

§ 4181-1. Annexation of Territory to Drainage District. — Any land which is in need of drainage, adjoining any drainage district organized under the provisions of sections 4137 to 4181 of Remington & Ballinger's Annotated Codes and Statutes of Washington, may be annexed to and included in such drainage district under the provisions of this act. [L. '13, p. 104, § 1.]

"Act" refers to the last four sections of this chapter.

§ 4181-2. Petition for Annexation—Election.—Upon the presentation to the board of commissioners of such drainage district, of a

petition signed by the owners of a majority of the acreage or area, of lands described in the said petition, and also a petition signed by at least ten freeholders of the said district, which petitions shall ask for the annexation to the said district of the lands described therein, and that the same may be made a part of said district, it shall be the duty of the said board of commissioners to call an election in the said district, and also in the said territory which it is proposed to annex thereto, for the purpose of submitting to the electors thereof the question of such annexation; notice of which election shall be given by the said board of commissioners, in both said district, and in the said territory to be annexed, the same as the notice required in the regular annual election of officers in said district. [L. '13, p. 104, § 2.]

§ 4181–3. Election Officers.—The said board of commissioners shall appoint an election board of three electors for the election to be held in the said district and another election board of three electors in the said territory to be annexed, for the election to be held therein. [L. '13, p. 105, § 3.]

§ 4181–4. Election Returns — Certificate of Result. — Return of such election shall be by the officers thereof made to the board of commissioners of said district forthwith, and such board shall as soon as practicable make canvass of the said returns, and if a majority of the votes cast at each of the said elections shall be in favor of the annexation of said territory, the said board of commissioners shall forthwith certify to the county auditor and also to the county assessor of the county wherein such district and such territory are located, the fact of such election, the result thereof, and a particular description of the territory annexed by such election, which certificate shall be filed and become a part of the records of the said auditor and the said assessor; and thereafter the said territory shall be taken to be and shall be annexed to, and be a part of the said district, and shall be liable to assessment for extensions and improvement of drains, and for the cost and expense of maintenance and repairs the same as other property in the said district, and for the purposes of such assessment, the maximum benefits derived to such annexed territory shall be conclusively presumed to be equal to but not greater than those of abutting property, within the district as the same existed before the said annexation. [L. '13, p. 105, § 4.]

CHAPTER III.

Diking and Drainage Districts in Two or More Counties.

Assessments on state lands, see §§ 4251-4255 and 6872-6882, infra.
Private ditches in two or more counties, see § 4226-38.

§ 4182. Powers — Designation. — Whenever a portion of two or more counties, which contain one hundred or more inhabitants and freeholders therein, require diking, draining, or the erection of flood dams or drift barriers to prevent inundations, such portion of two or more counties may be organized into a district; and the board of commissioners, hereinafter provided for, shall have and possess the powers herein conferred, or that may hereafter be conferred by law upon such district and board of commissioners, and all such powers not in conflict with those herein granted, which now exist under the provision of the laws of the state relating to the establishment, construction and maintenance of dikes and drains; and such districts shall be known and designated as "Diking and Drainage District No. ——, in —— and —— Counties (here insert name of counties), of the state of Washington"; and shall have the right to sue and be sued by, in the name of its board of commissioners herein provided for, and shall have perpetual succession, and shall adopt and use a seal. [L. '09, p. 789, § 1.]

§ 4183. Formation — Petition, Contents and Requisites of — Cost Bond.—For the purpose of the formation of such diking district, a petition shall be presented to the board of county commissioners of each of the two or more counties in which the portion of said counties are situated; which petition shall set forth the objects for the creation of said district, and shall designate in a general way the boundaries thereof, and set forth therein approximately the number of acres of land to be benefited by the proposed system, and shall also contain a brief description of the proposed system, and approximately the route over which the same is to be constructed, together with the proposed flood dams or drift barriers, if any, and approximately the termini thereof. The petition shall also set forth the further fact that the establishment of the said district and the proposed system will be conducive to the public health, convenience and welfare, and will increase the public revenue, and that the establishment of said district will be of special benefit to the property included in each of the counties in such district. The petition shall be signed by at least one hundred of the freeholders in the proposed district, or by a majority of the freeholders in said district in each of the counties, in case there are less than two hundred freeholders in the proposed district. Said petition shall ask that a district be organized under the provisions of this chapter. A duplicate of the petition shall be filed with each of the board of county commissioners in each of the

counties in which the proposed district is situated. At the time of filing of the petition, the petitioners shall file a bond with the board of county commissioners, running to the state of Washington, in the penal sum of one thousand dollars, with two or more sureties, to be approved by the board of county commissioners, conditioned that they will pay all costs in case said district for any reason shall not be established. [L. '09, p. 789, § 2.]

§ 4184. Hearing of Petition—Procedure—Boundaries—Certificate. Immediately thereafter the chairman of each of the respective boards of county commissioners shall notify the commissioner of public lands of the state of Washington that such petition and bond has been filed, praying for the establishment and maintenance of a district as aforesaid, and thereupon the commissioner of public lands shall at once give written notice to the board of county commissioners of each county that the said boards, together with the commissioner of public lands, will hold a joint meeting, at a time and place specified, not less than five or more than twenty days after the mailing of such notice, to consider the petition and to determine upon the matters therein prayed for. At such joint meeting said joint body, including the commissioner of public lands, shall proceed to consider the said petition and determine whether such proposed diking and drainage district shall be established in the locality and vicinity of the proposed system. If such body finds the district should be established, it shall then enter an order upon its minutes creating such district, and defining the boundaries thereof, and the boundaries so established may embrace more or less land than that embraced in the original petition, and the proposed boundaries may be enlarged or diminished as [to] the board may seem proper; such body shall not establish such district, however, unless they find that the proposed system of dikes and drains will be conducive to the public health, welfare and convenience, and will increase the public revenue and be of benefit to the majority of the lands included within the boundaries of the district. Said body shall at this first meeting elect a secretary, and the commissioner of public lands shall act as chairman of the body. If such body after consideration determines that a diking and drainage system shall be established, then the chairman and secretary shall certify to the board of county commissioners of each county a copy of the resolutions of the body creating such district, and a certificate to the same effect shall be made to the commissioner of public lands, and such certificates shall be filed with the board of county commissioners of each county, and in the office of the commissioner of public lands, and shall be recorded in the records and journals of the respective offices; a majority of all the members of said body shall be necessary to establish any diking

and drainage system hereunder, and a majority of the body shall constitute a quorum for the transaction of any business. If such district is established the aforesaid body shall at its first meeting also designate the day upon which the first election shall be held under the provisions of this chapter, which shall not be less than thirty nor more than sixty days from the time when the day of election is fixed. [L. '09, p. 790, § 3.]

§ 4185. Approval — Election of Commissioners — Ballots—Vacancies — General Elections — Terms of Office.—Upon the establishment of a district as aforesaid, the said body shall give notice of an election to be held in the diking and drainage district established, as aforesaid, for the purpose of determining whether the same shall be approved and become an organized diking and drainage district, and for the further purpose of choosing at such election five commissioners, who shall be known and designated as "Commissioners for Diking and Drainage District No. —— (here insert number), in —— and —— Counties (here insert names of counties), State of Washington," and such notice shall particularly describe the boundaries as established, and shall state the name of such proposed diking and drainage district, and the same shall be published for at least two weeks prior to such election in two or more weekly newspapers published within the proposed district, and in case no such newspaper be published in such district, then in two or more newspapers of general circulation in such district for two successive issues; and shall be posted for the same period in at least ten public places within the boundaries of such proposed district, which notice shall designate the places within the proposed district where the said election shall be held, and require the voters to cast ballots which shall contain the words "Diking and Drainage District 'yes,'" or "Diking and Drainage District 'no,'" and also the names of the persons voted for as commissioners of such district. The voting places shall be designated by such body; said body shall also appoint two judges, one inspector and two clerks for such election, to act at each polling place, whose compensation shall be the same as in elections for county and state officers, and which shall be a charge upon such district in case the same be established; in case such district be not established, then all costs and expenses shall be collected from the bond hereinbefore provided for. The election shall be held on the day designated in the notice, and shall be conducted in accordance with the general election laws of the state of Washington, as far as applicable. The returns of all the elections hereunder shall be made by the judges of election to the commissioner of public lands. No person shall be entitled to vote at such election unless he be a qualified elector in the county in which said district is located, and shall have resided

within the boundaries of such proposed district for a period of not less than ninety days next preceding the election. The commissioner of public lands shall, within fifteen days next succeeding said election, canvass the vote, and if upon such canvass and count it appears that the majority of votes cast in each of the counties are for "Diking and Drainage District 'yes,'" then the said body shall immediately certify to the board of county commissioners of each county interested and to the commissioner of public lands the result of such election, and shall in such certificate declare the proposed territory duly organized as a drainage and diking district; and that the five persons receiving the highest number of votes are duly elected commissioners of such diking and drainage districts. The commissioners so elected shall hold their position for the period of two years from and after their election and until their successors are elected and qualified. Not more than three commissioners shall be elected from any one county when the district is composed of two counties, and not more than two commissioners shall be elected from any county when the district is composed of three or more counties. All commissioners must be qualified electors of the district. Any vacancies occurring upon said board by failure to qualify, death or resignation, or otherwise, shall be filled by the board of county commissioners of the county in which the vacancy occurs. After the first election a general election for the election of such board of commissioners for the diking and drainage district shall be held every second year thereafter, on the first Tuesday of October, and the returns thereof shall be canvassed by the commissioner of public lands, who shall certify the result to the respective boards of county commissioners. The commissioner of public lands at the time of certifying any election shall also issue a certificate to each person elected as a member of the board that he has been duly elected as one of the commissioners for Diking and Drainage District No. ——, in the counties of —— and ——, state of Washington. No official ballot shall be required at the first or any subsequent election, and the law known as the "Direct Primary Law" of this state shall have no application to the elections held under this chapter. The ballots shall designate the county from which the commissioners are to be elected, for example:

For commissioners from —— county.

For commissioners from —— county.

[L. '09, p. 792, § 4.]

§ 4186. Commissioners, Oath, Bond of—Assessment of Benefits—Procedure.—The members of such board, before entering upon their duties, shall take and subscribe an oath substantially as follows:

State of Washington,
County of ——, } ss.

I, the undersigned, a member of the board of commissioners of the Diking and Drainage District No. ——, in —— and —— counties, do solemnly swear (or affirm) that I will well and truly discharge my duties as a member of said commission.

The members shall also, before entering upon their duties, give a bond to the state of Washington for the benefit of such diking and drainage district, for the faithful performance of their duties as such board of commissioners, in the penal sum of five thousand dollars, with a company or corporation as surety, authorized to make and execute official bonds under the laws of the state, the district to bear the expense of such bond; and upon the oath and bond being filed with the commissioner of public lands, that officer shall enter an order upon his records that the five persons named as aforesaid have qualified as the board of commissioners for Diking and Drainage District, No. ——, in —— and —— counties, and that said persons and their successors do and shall constitute a board of commissioners for the aforesaid diking and drainage district; which order when made shall be conclusive of the regularity of the election and qualification of the board of diking and drainage commissioners for the particular district, and the persons named therein shall constitute such board of diking and drainage commissioners.

The said board of diking and drainage commissioners shall thereupon immediately organize and elect one of their number as chairman and another as secretary. The said board shall then proceed to make and cause to be made specifications and details of a system which may be adopted by the board for the improvements to be made, together with an estimate of the total cost thereof; and shall, upon the adoption of a plan of improvement of the district as aforesaid, proceed to levy an assessment upon the taxable real property within the said district which the board may find to be specially benefited by the proposed improvements; and shall make and levy such assessment upon each piece, lot, parcel and separate tract of real estate in proportion to the particular and special benefits thereto. Upon determining the amount of the assessment against each particular tract of real estate as aforesaid, the commissioners shall make or cause to be made an assessment-roll, in which shall appear the names of the owners of the property assessed, so far as known, and a general description of each lot, block, parcel or tract of land within such district, and the amount assessed against the same, as separate, special or particular benefits. The board shall thereupon make an order setting and fixing a day for hearing any objections to the assessment-roll by anyone affected thereby, which day shall be at least

twenty days after the mailing of notices thereof, postage prepaid, as herein provided. The board shall send or cause to be sent by mail to each owner of the premises assessed, whose name and place of residence is known, a notice substantially in the following form, to wit:

To ——: Your property (here describe the property) is assessed $——. A hearing on the assessment-roll will be had before the undersigned at the office of the said board at ——, ——, on the —— day of ——, at which time you are notified to be and appear and to make any and all objections which you may have as to the amount of the assessment against your property, or as to whether it should be assessed at all; and to make any and all objections which you may have to the said assessment against your lands, or any part or portion thereof.

The failure to send or cause to be sent such notice shall not be fatal to the proceedings herein described. The secretary of the board on the mailing of said notices shall certify generally that he has mailed such notices to the known address of all owners, and such certificate shall be prima facie evidence of the mailing of all such notices at the date mentioned in the certificate.

The board shall cause at least ten days' notice of the hearing to be given by posting notice in at least ten public places within the boundaries of the district, and by publishing the same at least five successive times in a daily newspaper published in each of the counties affected; and for at least two successive weeks in one or more weekly newspapers within the boundaries of said district, in each county if there be such newspapers published therein, and if there be no such newspaper published, then in one or more weekly newspapers, having a circulation in the district, for two successive weeks, which notice shall be signed by the chairman or secretary of the said board of commissioners, and shall state the date and place of hearing of objections to the assessment-roll and levy, and of all other objections; and that all interested parties will be heard as to any objection to said assessment-roll and the levies as therein made. [L. '09, p. 794, § 5.]

§ 4187. Objections to Assessment — Procedure. — Any person interested in any real estate affected by said assessment may, within the time fixed, appear and file objections. As to all parcels, lots or blocks as to which no objections are filed, within the time as aforesaid, the assessment thereon shall be confirmed and shall be final. On the hearing, each person may offer proof, and proof may also be offered on behalf of the assessment, and the board shall affirm, modify, change and determine the assessment, in such sum as to the board appears just and right. The commissioners may increase the

assessment during such hearing upon any particular tract by mailing notice to the owner at his last known address, to be and appear within a time not less than ten days after the date of the notice, to show cause why his assessment should not be increased. When the assessment is finally equalized and fixed by the board, the secretary thereof shall certify the same to the county treasurer of each county in which the lands are situated, for collection; or if appeal has been taken from any part thereof, then so much thereof as has not been appealed from shall be certified. In case any owner of property appeals to the superior court in relation to the assessment or other matter when the amount of the assessment is determined by the court finally, either upon determination of the superior court, or appeal to the supreme court, then the assessment as finally fixed and determined by the court shall be certified by the clerk of the proper court to the county treasurer of the county in which the lands are situated and shall be spread upon and become a part of the assessment-roll hereinbefore referred to. [L. '09, p. 797, § 6.]

§ 4188. Appeal, Procedure on. — Any person who feels aggrieved by the final assessment made against any lot, block or parcel of land owned by him, may appeal therefrom to the superior court of the county in which the land is situated. Such appeal shall be taken within the time and substantially in the manner prescribed by the laws of this state for appeals from justices' courts. All notice of appeal shall be filed with the said board, and shall be served upon the prosecuting attorney of the county in which the action is brought. The secretary of the board shall, at appellant's expense, certify to the superior court so much of the record as appellant may request, and the cause shall be tried in the superior court de novo.

Any person desiring to appeal from any final order or judgment made by the superior court concerning any assessment authorized by this chapter, may appeal therefrom to the supreme court, in accordance with the laws of this state relative to appeals, except that all such appeals shall be taken within thirty days after the entry of such judgment. [L. '09, p. 797, § 7.]

§ 4189. Assessments, Lien of—Notice and Collection of.—The final assessments shall be a lien paramount to all other liens except liens for taxes and other special assessments upon the property assessed, from the time the assessment-roll shall have been finally approved by the said board, and placed in the hands of the county treasurers as collectors. After the roll shall have been delivered to the county treasurers for collection, each treasurer shall proceed to collect the amounts due in the manner that other taxes are collected as to all lands situated within the county of which he is treasurer. Such treasurer shall give at least ten days' notice in one or more daily

newspapers published in the counties in which the lands are situated for two successive weeks, that such roll has been certified to him for collection, and that unless payment be made within thirty days from the date of the notice, that the sum charged against each lot or parcel of land shall be paid in not more than ten equal annual payments, with interest upon the whole sum so charged, at a rate not to exceed seven per cent per annum. Said interest shall be paid annually. The county treasurer shall proceed to collect the amount due each year upon the publication of notice as hereinafter provided. In such publication notice it shall not be necessary to give a description of each tract, piece or parcel of land, or of the names of the owners thereof.

The treasurer shall also mail a copy of the notice to the owner of the property assessed, when the postoffice address of such owner is known to the treasurer; but the failure to mail such notice shall not be necessary to the validity of the collection of such tax. [L. '09, p. 798, § 8.]

§ 4190. Commissioners to Conduct Business, Make Contracts, etc. The commissioners herein provided for and their successors in office, shall from the time of their election and qualifications aforesaid, have the power, and it shall be their duty, to manage and conduct the business affairs of the district, making and executing all necessary contracts, appoint such agents and employees as may be required, and prescribe their duties, and perform any and all acts which may be necessary, proper or requisite to carry into effect their duties as commissioners, and all such other acts as may be provided in this chapter or in any other act. [L. '09, p. 798, § 9.]

§ 4191. Powers — Eminent Domain—Purchase.—The districts organized under the provisions of this chapter, and the commissioners appointed and qualified as such shall have the right of eminent domain with the power by and through the board of commissioners to condemn and cause to be condemned and appropriated private property for the use of said district in the construction and maintenance of the system of dikes, drains, flood dams and drift barriers, and for any other purpose proper, necessary and convenient for the purpose of carrying into effect the powers vested in said district and the commissioners thereof; and the property of private corporations shall be subject to the same rights of eminent domain as private individuals. Said board of commissioners shall also have the power to acquire by purchase, in the name of the district, any and all real property necessary to make the improvements herein provided for. [L. '09, p. 799, § 10.]

§ 4192. Construction and Maintenance in Charge of Commissioners.—Said board of commissioners herein provided for shall have the

exclusive charge of the construction and maintenance of all dikes and drainage systems which may be constructed within the said district, and shall be the executive officers thereof, with full power to bind said district by their acts in the performance of their duties as provided by law. [L. '09, p. 799, § 11.]

§ 4193. Procedure in Eminent Domain.—In the exercise of the right of eminent domain, all proceedings shall be prosecuted by the board of commissioners for and on behalf of the district, or in the name of the district itself, and such proceedings shall be conducted in the superior court of the county in which the lands sought to be condemned are situated, and shall be in the manner and in accordance with the procedure now provided by law regulating the mode of procedure to appropriate lands, real estate, or property by corporations for corporate purposes. [L. '09, p. 799, § 12.]

§ 4194. Improvement of Watercourses—Auxiliary Ditches, etc.—Any district so established as aforesaid through its board of commissioners shall have the right, power and authority to straighten, deepen and improve any and all rivers, watercourses, or streams, whether navigable or otherwise, flowing through or located within the boundaries of said diking or drainage district, whenever necessary or proper in carrying out the objects of the system. The district by and through its board of commissioners shall also have the power to construct all needed auxiliary ditches, canals, flumes, locks, flood barriers, and all necessary artificial appliances in the construction of the system, and which shall be necessary and advisable to protect the land in any such district from overflow or to assist, or which may become necessary in the preservation or maintenance of such system. [L. '09, p. 800, § 13.]

§ 4195. Cities may be Included.—Within the limits of said diking or drainage district may be included any incorporated city or town, or any part thereof. [L. '09, p. 800, § 14.]

§ 4196. State Lands Assessed—Payment.—Any of the state, school, or granted land within the district, shall also be assessed the same as other lands are assessed in proportion to the benefit, but any such lands shall not be sold for delinquencies, but the amount of the assessment shall be paid by the state at the time, in the manner, under the circumstances, and in accordance with the provisions of §§ 4251–4255 of this code. [L. '09, p. 800, § 15.]

§ 4197. Bonds, Issuance and Disposal of—Sale—Form, Maturity, Interest—Calls for.—Any such district by and through its board of commissioners, may, by resolution of such board, cause to be issued in the name of the district, bonds for the whole estimated cost of the improvement, less such amounts as shall have been paid within the

thirty days provided for redemption, as herein specified. Such bonds shall be called Local Improvement Bonds, Diking and Drainage District No. —— in —— and —— counties, state of Washington, and shall be payable in not more than ten years after date, and shall be subject to annual call by the board, in such manner and amount as there may be cash on hand to pay, in the respective local improvement fund, from which such bonds are payable, interest to be paid at the office of the treasurer of the fund. Such bonds shall be executed and delivered to the contractor for the work from month to month in such amounts as the engineer in charge of the improvement shall certify to be due on account of work performed; however, if the said board resolve so to do, such bonds may be offered for sale after thirty days' public notice by it to be delivered to the highest bidder therefor, but in no case shall said bonds be sold for less than par, the proceeds to be applied in payment for the improvement: Provided, that unless the contractor for the work shall agree to take such bonds in payment of the work, such work shall not be begun until the bonds shall have been sold and the proceeds shall have been paid into the fund, the fund to be called Local Improvement Fund, Diking and Drainage District No. ——, in —— and —— counties, and the holder or holders of such bond shall look only to such fund for the payment of either the principal or interest of such bond. Said bonds shall be issued in the denomination of one hundred dollars each, and shall be substantially in the following form:

Local Improvement Bond, Diking and Drainage District No. —— in the counties of —— and ——, state of Washington. No. ——. —— dollars. This bond is not a general debt of the counties of —— or either of them, and has not been authorized by the voters of said counties, or either of them, as a part of the indebtedness of said counties; it is issued in pursuance of an act of the legislature of the state of Washington, passed the —— day of ——, 1897, and is a charge against the fund herein specified, and its issuance and sale is authorized by the resolution of the board of commissioners of said district, passed on the —— day of ——, A. D. ——. The Diking and Drainage District No. —— in counties ——, a municipal corporation of the state of Washington, hereby promises to pay to —— or bearer one hundred ($100) dollars, lawful money of the United States of America, out of the fund established by resolution of the board of commissioners on the —— day of ——, A. D. ——, and known as Local Improvement Fund, Diking and Drainage District No. ——, in —— and —— counties, state of Washington, and not otherwise. This bond is payable ten years after date and is subject to annual call by the treasurer of the board at the expiration of any year before maturity, in such manner and amounts as there may be cash on hand to pay the same in the said fund from which the same

is payable, and shall bear interest at —— per centum per annum, payable annually, both principal and interest payable at the office of the treasurer of the fund. A coupon is hereby attached for each installment of interest to accrue thereon and said interest shall be paid only on presentation and surrender of such coupon to the treasurer of the fund, but in case this bond is called for payment before maturity, each and every coupon representing interest not accrued at the expiration of the call shall be void. The board of commissioners of said diking and drainage district has caused this bond to be issued as a bond of said district and the proceeds thereof to be applied in part payment of so much of the cost of said improvement as is to be borne by the owners of property in said district and the said district has been established for such purpose, and the holder or holders of this bond shall look only to said fund for the payment of either the principal or interest of this bond. The call for the payment of this bond or any bond issued on account of said improvement may be made by the board, by publishing the same in a newspaper in each county for ten consecutive issues, beginning not more than twenty days before the expiration of any year from the date hereof, and if such call be made interest on this bond shall cease at the date named in such call. This bond is one of a series of —— bonds, aggregating in all the principal sum of —— dollars, issued for such district, all of which bonds are subject to the same terms and conditions as herein expressed.

In witness whereof, said board of commissioners of such Diking and Drainage District No. —— has caused these presents to be signed by its chairman and countersigned by its secretary and sealed by its corporate seal, this —— day of ——, A. D. 190—.

The Diking and Drainage District No. —— in —— and —— counties, Washington. By ——, chairman of its board of commissioners. Countersigned ——, secretary of said board.

There shall be attached to each bond such number of coupons as shall be required to represent the interest thereon, payable semi-annually for the term of said bonds, which coupons shall be substantially in the following form:

No. ——. $ ——. On the —— day of ——, the Diking and Drainage District No. ——, in the Counties of —— and ——, Washington, promise to pay to the bearer, at the office of ——, —— dollars, being one year's interest due that day on bond No. —— of the bonds of the said diking and drainage district. The sum being payable only from the fund of the said district known as Local Improvement Fund thereof, and not otherwise: Provided, that this coupon is subject to all terms and conditions contained in the bond to which it is annexed, and if said bond be called for payment before maturity hereof, then this coupon shall be void.

The Diking and Drainage District No. —— in —— and —— counties, Washington. By ——, chairman of the board of commissioners. Countersigned, ——, secretary of said board.

The bonds issued for each district shall be in the aggregate for such an amount as authorized by the board of commissioners for the respective district, and each issue of said bonds shall be numbered consecutively, beginning with number "one." The board of commissioners shall keep a register of all such bonds, in which shall be entered the local improvement districts for which the same were issued and the number and total amount of each bond, with terms of payment. [L. '09, p. 800, § 16.]

§ 4198. Removal of Lien by Payment—Bonds, Interest on, and Calls for.—The owner of any lot or parcel of land charged with any assessment, as hereinbefore provided, may redeem the same from all liability by paying the entire assessment charged against such lot or parcel of land, or part thereof, without interest, within thirty days after notice to him of such assessment, as herein provided, or may redeem same any time after the bonds above specified shall have been issued by paying the full amount of all the principal and interest to the end of the interest year then expiring or next to expire. The board shall pay the interest on the bonds authorized to be issued under this act out of the respective local improvement funds, from which they are payable, and whenever there shall be sufficient money in any of such fund against which bonds have been issued under provisions of this act, over and above the amount necessary for the payment of interest on all unpaid bonds, and sufficient to pay the principal of one or more bonds, the board shall call in and pay such bonds: Provided, said bonds shall be called in and paid in their numerical order: Provided further, that such call shall be made by publication in one or more newspapers on the day following the delinquencies of the installment of the assessment, or as soon thereafter as practicable and shall state that bonds Nos. —— (giving serial number and numbers of the bonds called) will be paid on the day the interest coupons on such bonds shall become due, and interest upon such bonds shall cease upon such date. [L. '09, p. 804, § 17.]

§ 4199. Road Districts Assessed for Benefits—Payment by County. Whenever any highways, roads, or bridges, are maintained by either county in which a diking and drainage district may be established, as herein provided, and it shall appear that the construction and maintenance of such diking and drainage system will be beneficial to such highways, roads, and bridges, or which will be beneficial to such highways, roads and bridges as may thereafter be constructed or maintained by the county, in which any part of the system of dikes and drains is situated, then the board of county commissioners of

such county may, and it shall be the duty of such board to appropriate to such diking and drainage district an amount of money sufficient to pay the proportionate share of such county in accordance with the benefits received or to be received; and whenever it may appear to the board of county commissioners of any county that any improvements made or to be made in any diking or drainage district under the provisions of this act, shall on account of the health of the people of the county be beneficial in respect thereto, the board of county commissioners may make an appropriation of money to such diking and drainage district in such an amount as to such board may seem proper. [L. '09, p. 804, § 18.]

Compare, §§ 4153, 4154, supra.

§ 4200. Payment by Cities—Levy for.—Whenever it shall appear to the city council of any incorporated city or town not included or not wholly included within the limits of any diking or drainage district established hereunder, which incorporated city or town may be within a county in which a portion of such district is located that the construction and maintenance of such diking and drainage system will be beneficial to the health of the inhabitants of said incorporated city and to the general welfare of the said city, then the city council of said city is hereby empowered and authorized to appropriate such amount of money out of the general funds of the city as may to the city council seem proper and just to such diking and drainage system, or the city council may for such purpose levy an assessment upon all the property in said city subject to taxation by said city, which shall not exceed one-half mill for each dollar of property. [L. '09, p. 805, § 19.]

§ 4201. District may Condemn Right of Way.—In the construction and maintenance of the improvements herein provided for, the said district may acquire by purchase or otherwise, and by the exercise of the right of eminent domain, any right of way through, over and across any property situated without said district which may be necessary or proper to the completion of the system of improvements. [L. '09, p. 805, § 20.]

§ 4202. Duties of Officers of Board—Quorum.—The chairman of the board shall preside at all meetings and shall have the right to vote upon all questions the same as other members, and shall perform such duties in addition to those in this act prescribed as may be fixed by the board. The secretary of the board shall perform the duties in this act prescribed, and such other duties as may be fixed by the board. A majority of the board shall constitute a quorum for the transaction of business, but it shall require a majority of the entire board to authorize any action by the board. [L. '09, p. 806, § 21.]

§ 4203. County Treasurer to Collect Assessments—Disbursements. The treasurer of each county shall collect the taxes levied and assessed hereunder upon all that portion of the property situated within the county for which the treasurer is acting. The treasurer of the county in which the smaller or minor portion of the taxes are to be collected shall forward the amount collected by him quarterly each year on the first Monday in January, April, July and October, to the treasurer of the county in which the larger or major portion of the taxes are to be collected. The treasurer of the county in which the larger portion of the taxes have been levied and assessed shall be the disbursing officer of such diking and drainage district, and shall pay out the funds of such district upon orders drawn by the chairman and secretary of the board acting under authority of the board, and shall be the treasurer of the fund. [L. '09, p. 806, § 22.]

§ 4204. Sale for Assessments—Procedure—Notice, Deed, Report, etc.—Purchaser's Rights.—If any of the installment of taxes are not paid as herein provided, the county treasurer shall sell all lots or parcels of land on which taxes have been levied and assessed, whether in the name of the designated owner or the name of an unknown owner, to satisfy all delinquent and unpaid assessments, interests, penalties and costs. The treasurer must commence the sale of property upon which taxes are delinquent within sixty days after the same become delinquent, and continue such sale from day to day thereafter until all the lots and parcels of land upon which taxes have not been paid are sold. Such sales shall take place at the front door of the courthouse. The proper treasurer shall give notice of such sales by publishing a notice thereof once a week for two successive weeks in two or more newspapers published within the district, or if no such newspaper is published within the district, then within any two or more newspapers having a general circulation in such district; such notice shall contain a list of all lots and parcels of land upon which such assessments are delinquent, with the amount of interest, penalty and cost at the date of sale, including costs of advertising had upon each of such lots, pieces or parcels of land, together with the names of the owners thereof, if known to the treasurer, or the word "unknown" if unknown to the treasurer, and shall specify the time and place of sale, and that the several lots or parcels of land therein described, or so much as may be necessary, will be sold to satisfy the assessment, interest, penalty and cost due upon each. All such sales shall be made between the hours of 10 o'clock A. M. and 3 o'clock P. M. Such sales shall be made in the manner now prescribed by the general laws of this state for the sale of property for delinquent taxes, and certificates and deeds shall be made to the purchasers and redemptions made as is now prescribed

by the general laws of this state in the manner and upon the terms therein specified: Provided, that no tax deeds shall be made until after the expiration of one year after the issuance of the certificate, and during such year any person interested may redeem. A certificate of purchase shall be issued to the district for all lots and parcels of land not sold. Certificates issued to the district shall be delivered to the board of commissioners of the district. The board of commissioners of the district may sell and transfer any such certificate to any person who is willing to pay to the district the amount for which the lot or parcel of land therein described was stricken off to the district, with the interest subsequently accrued thereon. Within ten days after the completion of sale of all lots, pieces and parcels of land authorized to be sold as aforesaid, the treasurer must make a return to the board of commissioners with a statement of the doings thereon, showing all lots and parcels of land sold by him, to whom sold and the sum paid therefor. The purchaser at improvement sales acquires a lien on the lot, piece or parcel of land sold for the amount paid by him at such sales for all delinquent taxes and assessments, and all costs and charges thereon, whether levied previously or subsequently to such sale, subsequently paid by him on the lot or parcel of land, and shall be entitled to interest thereon at the rate of ten per cent per annum from the date of such payment. [L. '09 p. 806, § 23.]

§ 4205. Disposal of Lands Bid in by District.—The board of commissioners of the district shall have the power to sell, lease and dispose of any and all lands which may be acquired by it by virtue of deeds issued to it by the treasurer for lands not redeemed from sale, and the funds derived from any disposition of such land shall become the fund of the district to be used for the benefit of the district under the direction of its board of commissioners. [L. '09, p. 808, § 24.]

§ 4206. Cancellation of Lien on Part of Land.—When a piece, lot, or tract of land has been assessed in one body, if the same is subsequently subdivided by the owner, or there should be purchasers of different portions of such tract, then the owner or purchaser may pay the taxes upon such piece or tract of land, paying the proportion which is proper upon such separate piece or tract. [L. '09, p. 808, § 25.]

§ 4207. Improvement of Watercourses, etc.—The board shall have power and authority to straighten, widen, deepen and improve any and all rivers, watercourses or streams, whether navigable or otherwise, flowing through or located within the boundaries of such district; and the beds of any streams or rivers which may be changed, shall become the property of the district, and the board shall have

the power to sell and dispose of the same, or exchange the same or any portion thereof for other lands. [L. '09, p. 808, § 26.]

§ 4208. Condemnation of State and Municipal Lands.—Any district created hereunder is hereby granted the right to exercise the power of eminent domain against any lands or other property belonging to the state of Washington or any municipality thereof, and such power of eminent domain shall be exercised under and by the same procedure as is now, or may hereafter be, provided by the laws of this state for the exercise of the right of eminent domain by ordinary railroad corporations. [L. '09, p. 808, § 27.]

See infra, §§ 4251–4255 and 6872–6882, assessments on state lands.

§ 4209. Adjournments.—The board of commissioners shall have power to adjourn any and all proceedings before them from time to time. [L. '09, p. 809, § 28.]

§ 4210. Notice to Agent.—When any notice is required to be given to the owner under any of the provisions of this chapter, such notice shall be given to the agent instead of the owner, in case the owner prior to the giving of the notice required by the board or proper officer has filed with the board or proper officer the name of the agent with his postoffice address. [L. '09, p. 809, § 29.]

§ 4211. Reassessments.—If because of a substantial reduction of the amount of the assessment upon any lands, the result would be to leave the amount of the assessment upon other lands insufficient, or if for any cause the assessment should be held invalid or become inoperative, then the board shall have power to make a reassessment of all lands to the same extent as the original assessment. [L. '09, p. 809, § 30.]

§ 4212. Annual Tax Levy for Maintenance.—It shall be the duty of the board to levy an annual tax upon all property within the district, for the purpose of maintaining such diking and drainage system. Such levy shall be made and the taxes collected in the manner now provided by law for the levying and collection of school district taxes. [L. '09, p. 809, § 31.]

§ 4213. Rules and Regulations.—The board shall have power and authority to make rules and regulations for the purpose of carrying into effect any of the provisions of this chapter. [L. '09, p. 809, § 32.]

§ 4214. Compensation of Commissioners—Vouchers for Expenses. The members of the board shall receive as compensation the sum of five dollars per day for each day while engaged in the actual performance of their duties, and in addition thereto their actual incurred expenses in the performance of their duties: Provided, that the board may fix a different salary for the secretary thereof in lieu of the per diem. The salary and expenses shall be paid by the treasurer

of the fund, upon orders made by the board. Each member of the board must before being paid for expenses, take vouchers therefor from the person or persons to whom the particular amount was paid, and must also make affidavit that the amounts were necessarily incurred and expended in the performance of his duties. [L. '09, p. 809, § 33.]

CHAPTER IV.

Private Ditches.

§ 4215. Private Parties Authorized to Establish Ditches.—The owner or owners of any land which requires drainage and which is so situated that it is necessary to the proper drainage of the same to construct ditches or drains across the lands of others, may obtain the location and establishment of such ditch or drain across such lands, in the manner provided in this act. [L. '99, p. 239, § 1.]

"Act" in this section refers to §§ 4215–4225. See, also, § 4265, infra, for authorization of private ditches.

§ 4216. Petition, Contents of.—The person or persons desiring the location and establishment of such ditch or drain may file in the superior court of the county in which the lands sought to be appropriated are situated, a petition showing the name of the petitioner or petitioners; a description of the lands to [be] benefited, and of those over which the ditch would pass, and setting forth the name of every owner, encumbrancer, or other person or party interested in the lands over which said ditch would pass, or any part thereof, so far as the same can be ascertained from the public records of the county. Such petition shall also show the object for which the lands are sought to be appropriated, the necessity for the appropriation, and the length, width and depth of the ditch on the lands of each separate owner, with a description of said ditch, as nearly as practicable; and shall also set out the estimated damage to the lands of each owner to be crossed by such ditch. [L. '99, p. 239, § 2.]

§ 4217. Petitioner must File Cost Bond.—The petitioner, or someone in his behalf, shall enter into a bond in the penal sum of one hundred dollars, with two or more sureties, to be approved by the clerk of said court, payable to the state of Washington, conditioned that the petitioner or petitioners will pay all costs and expenses incurred in the proceeding; which said bond shall be filed with the petition. [L. '99, p. 240, § 3.]

§ 4218. Viewers—Appointment and Duties.—Upon the filing of said petition the court shall appoint three viewers, two of whom shall be resident freeholders of said county, and not interested in the result of the proceeding, and the other the county surveyor of the

county in which the lands are situated (unless said county surveyor shall be a party in interest, in which case some other competent surveyor shall be appointed in his place who shall receive the same compensation as is allowed by law to county surveyors) who shall, upon a day to be fixed by the court, in the order appointing them, view the lands of the petitioner and the lands which said proposed ditch or drain is to cross, for the purpose of determining: First, whether there is a necessity for the establishment of a ditch; and, second, the most practicable route for said ditch to run, if the same be necessary. The clerk of said court shall furnish to said viewers a certified copy of the order appointing them, which shall warrant them entering upon the lands described in the petition for the purpose of viewing the same. [L. '99, p. 240, § 4.]

§ 4219. Report of Viewers and Plat to be Filed.—When said viewers shall have made said examination they shall, within ten days after the day appointed by the court for such examination, report to the court, in writing, (filing the same with the clerk of said court) their decision as to the necessity for said ditch and if they deem such ditch necessary, then the county surveyor shall file with such report an accurate description and plat of the proposed ditch, showing the course thereof as recommended by the viewers. The viewers shall also estimate the amount of damage which each separate owner would suffer by reason of the construction thereof. [L. '99, p. 241, § 5.]

§ 4220. Summons to Land Owners—Contents and Form.—Upon the filing of the report of the viewers aforesaid, a summons shall be issued in the same manner as summonses are issued in civil actions, and served upon each person owning or interested in any lands over which the proposed ditch or drain will pass. Said summons must inform the person to whom it is directed of the appointment and report of the viewers; a description of the land over which said ditch will pass of which such person is the owner, or in which he has an interest; the width and depth of said proposed ditch, and the distance which it traverses said land, also an accurate description of the course thereof. It must also show the amount of damages to said land as estimated by said viewers; and that unless the person so summoned appears and files objections to the report of the viewers, within twenty days after the service of said summons upon him, exclusive of the day of service, the same will be approved by the court, which summons may be in the following form:

In the Superior Court of the State of Washington, for —— county.

In the Matter of the Application of —— for a Private Ditch.

The State of Washington to ——.

Whereas, on the —— day of ——, 19—, —— filed his petition in the above-entitled court praying that a private ditch or drain be

established across the following described lands, to wit: —— for the purpose of draining certain lands belonging to said ——, and whereas, on the —— day of ——, 19—, Messrs. —— and —— with —— county surveyor of —— county, were appointed to view said premises in the manner provided by law, and said viewers having, on the —— day of ——, 19—, filed their report in this court, finding in favor of said ditch and locating the same upon the following course: —— for a distance of—— upon said land, and of a width of —— feet and a depth of —— feet; and they further find that said land will be damaged by the establishing and construction of said ditch in the sum of $——: Now therefore, you are hereby summoned to appear within twenty days after the service of this summons, exclusive of the day of service, and file your objections to said petition and the report of said viewers, with this court; and in case of your failure so to do, said report will be approved and said petition granted.

—— ——,
Plaintiff's Attorney.
P. O. Address, ——.

[L. '99, p. 241, § 6.]

§ 4221. Service by Publication.—In case any person interested in any of the lands to be crossed by such ditch, as aforesaid, does not reside in the county, or cannot be found therein, or conceals himself so that personal service cannot be had upon him, upon proof thereof being made satisfactorily to appear to said court, said summons may be served by publication, in the same manner and with like effect as is done in civil actions: Provided, that no other or different form of summons shall be required for publication than is required for personal service. [L. '99, p. 242, § 7.]

§ 4222. Hearing—Procedure.—Upon the expiration of the time within which exceptions may be filed to the report of the viewers aforesaid, the court shall set a day upon which the petition and the report of the viewers shall be heard and considered by the court. In case exceptions have been filed by any party or parties, which exceptions must have been served upon the petitioner or petitioners prior to the hearing, the court shall hear evidence in regard thereto, and without a jury, pass upon the questions of the necessity for said ditch and the location thereof. If the court finds that such ditch is necessary, and the route selected is the best and most practicable, and that the compensation allowed by the viewers is just and reasonable, then the court shall file his findings to this effect and cause an order to be entered approving the petition and report of the viewers. If, within twenty days from the filing of the findings of facts aforesaid, the petitioner or petitioners shall pay into court all the costs and sums awarded to the owner or owners of the land over

which said ditch shall pass, a decree shall be entered establishing the same: Provided, if any party shall except to the amount of damages found by the viewers, then the amount of such damages shall be tried by jury, unless a jury trial be waived by the parties, in which case trial thereof may be had by the court. Such trial shall be at a regular term of said court, at which a jury shall be present, and shall be conducted and verdict rendered in the same manner as in civil actions: Provided further, that it shall not be incumbent on the petitioner to pay into court the amount of the award or awards of said jury, until within twenty days after said verdict shall have been rendered and entered. [L. '99, p. 242, § 8.]

§ 4223. Appeal.—No appeal shall be taken from the finding of the court as to the necessity of such ditch or as to the route thereof until after final judgment or decree is entered: Provided, that exceptions shall be taken and allowed to such orders at the time that they are made and appeal from such orders and from the award of damages shall be taken at the same time. All the provisions of the law in regard to appeals in civil actions shall apply to the proceedings provided for in this act. [L. '99, p. 243, § 9.]

"Act," in this section, refers to §§ 4215–4225.

§ 4224. Compensation of Viewers—Costs.—The viewers appointed under the provisions of this act shall receive the sum of two dollars per day for their services, and the county surveyor shall receive such compensation as is allowed by law for like services, the same to be taxed as costs and paid by the petitioner. All other costs shall be the same as in civil actions in the superior court. [L. '99 p. 243, § 10.]

"Act," in this section, refers to §§ 4215–4225.

§ 4225. Report Rejected—New Viewers Appointed.—In case the court should not for any reason adopt the report of the viewers, or the same should be deemed insufficient for any reason, the court may appoint other viewers whose duties shall be the same as the duties of the viewers first appointed. [L. '99, p. 243, § 11.]

§ 4226–1. Private Drainage Systems.—Whenever one or more persons whose land will be benefited thereby shall desire to have a drainage system established and constructed or any part of an existing drainage system other than those organized under the provisions of sections 4137 to 4181 straightened, widened, altered, deepened or otherwise improved, and shall not desire to incorporate as a drainage district under the provisions of sections 4137 to 4181 and the acts amendatory and supplemental thereto, or there shall not be a sufficient number to be benefited by such system to form a drainage district as in said chapter and the acts amendatory and supplemental

thereto provided, proceedings for the construction or improvement of such system shall be as provided for in this act. [L. '13, p. 611, § 1.]

Cited in 82 Wash. 440–442.

"Act" in this section refers to §§ 4226–1 to 4226–41.

§ 4226–2. Definitions.—"Drainage system" as used in this act shall be held to include a ditch, drain or watercourse and any side, lateral, spur or branch ditch, drain or watercourse necessary to secure the object of the improvement. Two or more ditches, drains or watercourses with their laterals, spurs, and branches with separate outlets may be included in one system and constructed as a part thereof when such separate systems will draw wholly or in part from the same body of soil water. But no system shall be established or constructed unless sufficient outlet or outlets are provided, which outlet or outlets may be either within or without the boundaries of the improvement district hereinafter provided for. Any natural watercourse may be improved in accordance with the provisions of this act.

"Damages" as used in this act shall be held to include the value of property taken and injury to property not taken, or either, as the case may be. "Property benefited" and "property damaged" as used in this act shall be held to include land, platted or unplatted, whether subject to or exempt from general taxation and roads other than public roads. "Public roads" as used in this act shall be held to include state and county roads, streets, alleys and other public places; and "other roads" as used in this act shall be held to include railroads, street railroads, interurban railroads, logging roads, tramways and private roads, and the rights of way, roadbeds and tracks thereof.

"Public utilities" as used in this act shall be held to include irrigation, power and other canals, flumes, conduits and ditches, telegraph, telephone and electric transmission and pole lines, and oil, gas and other pipe lines. "County engineer" as used in this act shall be held to include any engineer specially employed by the board of county commissioners or the board of supervisors to report upon and prepare plans for or to superintend the construction of a drainage system under the provisions of this act. "Prosecuting attorney" as used in this act shall be held to include any attorney specially employed by the board of county commissioners in connection with the carrying out of the provisions of this act to advise or carry on proceedings in court with reference to a drainage system initiated and constructed under the provisions of this act. [L. '13, p. 612, § 2.]

§ 4226–3. Petition for System.—Application for any such improvement shall be made by petition to the board of county commis-

sioners of the county or counties in which such system of drainage or proposed system or any part thereof may be, signed by one or more of the owners of property which will be benefited thereby. The petition shall be filed with the clerk of the board of county commissioners, and shall set forth the necessity for the improvement, and shall describe with reasonable certainty the route and termini thereof; and there shall be filed therewith a bond payable to the county, with good and sufficient surety, to be approved by the board of county commissioners, in a sum of not less than two hundred dollars, conditioned for the payment of all expenses which may have been incurred in the proceedings, in case the prayer of the petition be not granted or the petition be dismissed for any cause. If at any time it shall appear to the board of county commissioners that the bond filed with the petition is not sufficient in amount to cover the expenses which will be necessarily incurred in the proceedings, the board may order an additional bond in such an amount as it shall direct to be given. [L. '13, p. 613, § 3.]

§ 4226–4. View and Report.—Upon the filing of the petition and the approval of the bond, the clerk of the board shall deliver a copy of said petition to the county engineer, who shall at once proceed to view the line of the proposed improvement and the property to be affected thereby and determine whether the improvement is in his opinion necessary or will be conducive to public health, convenience or welfare and whether in his opinion the line or lines described constitute the best route, what, if any, branches mentioned in the petition are in his judgment unnecessary, and what, if any, additional branches should be added thereto or changes made therein, and shall report to and file his findings in writing with the board of county commissioners. [L. '13, p. 613, § 4.]

§ 4226–5. Adverse Report.—If the report of the county engineer shall be against the improvement, the board of county commissioners shall dismiss the petition at the cost of the petitioners, and shall cause an itemized bill of all the costs to be made up by the clerk for its examination and approval, including the per diem of the county engineer, and all other costs necessarily incurred except the fees of the clerk and the compensation of the county commissioners, and if such costs are not paid by the petitioners on demand they shall be recovered in an action on the bond. [L. '13, p. 614, § 5.]

§ 4226–6. Favorable Report—Survey—Plat.—If the report of the county engineer shall be in favor of said improvement, the board of county commissioners shall give the improvement district a number, being its serial number in the order of time of its formation among the improvement districts of the county formed under this act, beginning with the next number following the last serial number of any

drainage district organized and existing in said county, if any and thereafter such district shall be designated as Drainage Improvement District Number —— of —— County, and the board shall cause to be entered on its journal an order directing the county engineer to go upon the lines described in the petition, or as changed by him in his report, and survey, and take levels on the same and set a stake at every hundred feet, numbering down stream, and note the intersection of property lines and boundaries, township, city and county lines, and road crossings, and make a report, profile and plat of the same; also to make an estimate of the cost of construction of such drainage system itemized so as to be reasonably specific as to the various parts thereof: Provided, that such estimate of the cost shall be held to be preliminary only and shall not be binding as a limit on the amount that may be expended in constructing such drainage system. The clerk of the board shall prepare and keep a special index in which he shall note all proceedings had and all papers filed in connection with such drainage improvement district. [L. '13, p. 614, § 6.]

§ 4226–7. Estimate of Property Damaged.—The board shall also by order entered on the journal, direct the county engineer to make and return a schedule and estimate of all property that will be damaged, or both damaged and benefited by the proposed improvement, and to estimate and report the total number of acres that will be benefited by the proposed improvement and to specify the manner in which the proposed improvement is to be made and the number, kind, location and dimensions of all waterways, ditches, outlets, flood-gates, bridges and crossings. Schedules of property to be damaged or damaged and benefited shall be arranged in parallel columns, with appropriate headings, and shall show the description of the property, and if land, give the legal subdivision, section, township and range, and number of acres; and if platted, the name of the plat and lot and block number; the name of the owner or owners or reputed owner or owners; the estimated gross damages that will be sustained by reason of the proposed improvement; the estimated gross benefits that will accrue; and the right-hand column of the schedule shall be sufficiently wide for the signature of the owner, and shall bear the heading: "I, the undersigned owner of the property opposite which I have signed my name, accept and agree to the estimated amount of benefits and damages that will accrue to my property by reason of the proposed improvement." [L. '13, p. 615, § 7.]

§ 4226–8. Plat to Show Details.—The plat provided for in section 4226–6, shall be drawn upon a scale sufficiently large to show all the meanderings of the proposed improvement, and shall distinctly show the boundaries of each lot or tract of land and the location of each public or other road and sewer system to be benefited thereby, and so

far as known, the name of the owner of each lot or tract of land and the authorities or corporation having in charge or owning or controlling each public or other road and sewer system affected, the distance in feet through each tract or parcel of land crossed by the proposed improvement, together with such other matters as the county engineer shall deem material, and the profile shall show the surface, and grade lines and the gradient fixed. The county engineer shall make and file with his report an itemized bill of costs incurred in the proper discharge of his duties under this act and the preceding sections, and shall report the same to the clerk of the board of county commissioners within ten days after the completion of the survey. [L. '13, p. 615, § 8.]

§ 4226–9. Hearing on Report of Engineer—Notice.—Upon the filing of the report of the county engineer, the board of county commissioners shall immediately fix a date for a hearing on such report, and the clerk of the board shall give notice thereof by publication in three successive weekly issues of the official newspaper of the county, and also, if so directed by the board, in one other weekly newspaper to be designated by the board, published in or near the proposed improvement district and of general circulation therein. Said notice shall fix the time and place for said hearing and shall specify the territory to be included in the proposed improvement district, both by boundaries and also by sections or fractions thereof. Such notice shall also designate with reasonable certainty the route and termini of the proposed improvement, and shall state that the plat, report and schedule on file in the office of the board of county commissioners show the property to be taken or damaged, and the amount of damages proposed to be allowed therefor. The last publication of such notice shall be not less than seven or not more than fourteen days before the date of said hearing. Said hearing, and also the hearing hereinafter provided, for fixing the apportionment of the cost of said improvement, may either or both of them be held at a place other than the county seat, and more convenient to the lands affected, if the board of county commissioners shall so order. The county engineer shall attend and have at such hearing his plats, plans, reports and schedules in relation to the proposed improvement, and the clerk of the board of county commissioners shall also attend and have at such hearing all petitions, claims, objections and other papers and documents relating to said improvement on file in his office. [L. '13, p. 616, § 9.]

§ 4226–10. Hearing—Evidence—Amended Report.—On the date set for said hearing the board of county commissioners shall meet at the place designated in the notice, and if it appear that due notice of such hearing has been given, shall proceed with the hearing

on the report of the county engineer, and any objections thereto, and may adjourn said hearing from time to time. At said hearing, the board shall hear all pertinent evidence, including any evidence offered concerning the probable cost of the system and the probable benefits to accrue therefrom, and may change, add to or modify the plans for such drainage system and the boundaries of the improvement district, and change the estimate of damages and benefits in any case, and may review, change and modify any of the findings and estimates of the county engineer, and may, in its discretion, employ another engineer to make separate findings on any or all of the matters hereinbefore required to be included in the report of the county engineer, and may adjourn said hearing and await such report; or may discontinue proceedings in regard to the proposed improvement, at the cost of the petitioners therefor, if the board shall determine that the construction of the proposed improvement is not warranted by the benefits to be derived therefrom. In case any change in the plans of the proposed improvement is made at said hearing, and such change will cause additional damages to any property, or will damage any property not damaged under the original plans, the county engineer shall prepare and file a schedule, showing the estimated damages and benefits under such changed plans, and notice of the filing of such schedule shall be served upon the owners of the properties affected, and settlements made as hereinafter provided. [L. '13, p. 617, § 10.]

§ 4226–11. Deeds to be Executed—Consideration.—In case any owner of property to be damaged by the proposed improvement shall agree to accept the damages estimated by the engineer, or as fixed by the board of county commissioners, the board shall direct and the clerk of the board shall prepare a deed to be approved by the county engineer and the prosecuting attorney, conveying to the county for the benefit of the proposed district the property to be taken, and the right to damage property not taken. If the damages agreed upon are equalled or exceeded by the agreed estimated benefits, the grantors in the deed shall excute and deliver the same without consideration other than the right to have the damages offset against the benefits in the apportionment of the cost of the improvement as hereinafter provided. If the damages agreed upon are damages to property not benefited, or if such damages exceed the agreed benefits, the grantors in the deed shall execute and deliver the same upon the receipt of a warrant drawn by the county auditor under the direction of the board of county commissioners upon the current expense fund of the county, for the amount of damages or the amount of excess of damages over benefits, as the case may be. No such deed shall be accepted, either with or without consideration, until the title con-

veyed thereby has been approved by the prosecuting attorney. [L. 13, p. 618, § 11.]

§ 4226-12. Agent to Secure Deeds.—If at the conclusion of the the hearing provided for in section 4226-10 it shall appear to the board of county commissioners that the owner of any property to be damaged by the proposed improvements has not accepted and agreed to the damages estimated by the engineer or fixed by the board, the board may, in its discretion, appoint an agent to secure acceptances and deeds from such owners and shall, within a reasonable time, direct the prosecuting attorney of the county to institute proceedings in the superior court of the county in which the property affected is located, for the determination of the damages to be sustained and the condemnation of any property the title to which or the right to damage which has not been acquired, and shall direct the clerk of the board to furnish the attorney with a certified copy of such proceedings of the board as he shall require. [L. '13, p. 618, § 12.]

§ 4226-13. Eminent Domain by County.—For the purpose of taking or damaging property for the purposes of this act, counties shall have and exercise the power of eminent domain in behalf of the proposed improvement district, and the mode of procedure therefor shall be as provided by law for the condemnation of lands by counties for public highways. [L. '13, p. 619, § 13.]

Cited in 82 Wash. 440-442.

§ 4226-14. Benefits Offset.—The jury in such condemnation proceedings shall find and return a verdict for the amount of damages sustained: Provided, that the jury, in determining the amount of damages, shall take into consideration the benefits, if any, that will accrue to the property damaged by reason of the proposed improvement, and shall make special findings in the verdict of the gross amount of damages to be sustained and the gross amount of benefits that will accrue. If it shall appear by the verdict of the jury that the gross damages exceed the gross benefits, judgment shall be entered against the county, and in favor of the owner or owners of the property damaged, in the amount of the excess damages over the benefits, and for costs of the proceedings, and upon payment of the judgment into the registry of the court for the owner or owners, a decree of appropriation shall be entered, vesting the title to the property appropriated in the county for the benefit of the improvement district. If it shall appear by the verdict that the gross benefits as found by the jury equal or exceed the gross damages, judgment shall be entered against the county and in favor of the owner or owners for the costs only, and upon payment of the judgment for costs a decree of appropriation shall be entered, vesting the title to the property appropriated in the county for

the benefit of the improvement district. The verdict and findings of the jury as to damages and benefits shall be binding upon the board appointed to apportion the cost of the improvement upon the property benefited as hereinafter provided. [L. '13, p. 619, § 14.]

Cited in 82 Wash. 440–442.

§ 4226–15. Warrant for Damages.—Upon the settlement of the claims for damages as provided in section 4226–11, or upon the entry of judgment as provided in section 4226–14, the county auditor shall, under the direction of the board of county commissioners, draw his warrant upon the county treasurer for the payment of the amount of damages agreed to or the amount of the judgment, as the case may be, to be paid out of the current expense fund of the county. [L. '13, p. 620, § 15.]

§ 4226–16. Construction of System.—When the board of county commissioners shall have finally determined and fixed the route and plans for the proposed drainage system and the boundaries of the improvement district, and when it shall appear that the damages for property to be taken or damaged have been settled in the manner hereinabove provided, or when it shall appear that such damages have been settled as to a particular portion of the proposed improvement, and that construction of such portion of such proposed improvement is feasible, the board of county commissioners shall proceed with the construction of the improvement or of such portion thereof, as the case may be. [L. '13, p. 620, § 16.]

§ 4226–17. Cost of Improvement—Property Benefited—Payments—Bonds.—The cost of the improvement shall be paid by assessment upon the property benefited. The assessment shall bear interest until paid at such rate, not to exceed eight per cent per annum, as the board of county commissioners shall determine. At the hearing provided for in section 4226–10 the board of county commissioners shall determine in what manner and within how many years said assessment shall be paid, and shall also at said meeting determine whether the evidences of indebtedness for the cost of said improvement shall be warrants or bonds. If warrants, it shall fix not to exceed five yearly installments for the payment of said assessments, and if bonds, it shall fix either ten or fifteen years for the payment thereof. Such assessments may be graduated so that the heavier installments shall fall in the later years. In case warrants are to be issued, no yearly installment shall be less than one-tenth, nor more than three-tenths of the entire assessment; and in case bonds are to be issued for ten years, the installments shall be as follows:

For the 1st year..... .... 5%
For the 2d year..... .... 5%
For the 3d year..... .... 5%

For the 4th year.....10%
For the 5th year.....10%
For the 6th year.....10%
For the 7th year.....10%
For the 8th year.....10%
For the 9th year.....15%
For the 10th year.....15%

and in case bonds are to be issued for fifteen years the installments shall be as follows:

For the 1st and 2d years, interest only.
For the 3d year..... 3%
For the 4th year..... 4%
For the 5th year..... 5%
For the 6th year..... 5%
For the 7th year..... 6%
For the 8th year..... 7%
For each succeeding year.....10%

Such bonds shall be interest-bearing coupon bonds, and of such denominations of not less than $100 nor more than $500 as the county commissioners shall by resolution prescribe, and shall recite that they are secured to be paid by assessments upon the property of Drainage Improvement District No. ——, of —— County, and that they are not a general obligation of such county. They shall be payable in their serial order on the call of the treasurer, whenever at any coupon date there shall be sufficient money in the fund of the district against which they are issued over and above that necessary for the payment of interest on all outstanding bonds, to pay the principal of one or more bonds. The treasurer shall give notice of such call by publication in the county official newspaper, in two successive weekly issues thereof, the second of which shall be not less than seven nor more than fourteen days before the annual interest date, stating that bonds Nos. —— (giving their serial number or numbers) will be paid on the date the next interest coupons on said bonds shall become due, and interest upon such bonds shall thereupon cease upon such date. Each warrant and bond shall bear the date of its issuance, and recite that it is payable on or before the —— day of ——, 19—, which shall be —— months after the last installment of the assessment shall become due, and shall be signed by a majority of the board of county commissioners and attested by the county auditor under his seal, and each coupon shall have printed thereon a facsimile of the signatures of such officers. The county treasurer shall register said warrants and bonds in a book kept for that purpose and shall certify on each thereof under his seal that it has been so registered and that the signatures thereon are the genuine signatures of

said county commissioners and the county auditor, and that the seal attached is the seal of the county auditor. Such warrants and bonds shall not be issued in any amount in excess of the cost and expense of the improvement. [L. '13, p. 620, § 17.]

§ 4226–18. Sale of Bonds or Warrants.—The board of county commissioners may, under such regulations and on such notice as they may determine, sell the warrants and bonds or any part thereof, issued under the provisions of this act, and pay the proceeds thereof into a fund to be used for the purpose of paying the cost and expenses of the improvement. Any warrants or bonds issued under the provisions of this act or such portions thereof as shall remain unsold or undisposed of may be issued to the contractor constructing the improvement or any part thereof in payment therefor, and in case the improvement or any part thereof shall be constructed by the board of supervisors as in this act provided, may be issued in payment for work, labor and material performed and furnished therefor. [L. '13, p. 622, § 18.]

§ 4226–19. Election—Notice.—Upon the determination by the board of county commissioners to proceed with the work of construction, said board shall order an election to be held in some place within the district to be designated by the board, and shall appoint an election board to consist of one inspector and two judges, who shall qualify in like manner and receive like compensation as election officers at general elections. Notice of said election shall be given by the clerk of the board of county commissioners by publication in two consecutive weekly issues of a newspaper to be designated by the board and of general circulation in the district, the last of which publications shall be not less than seven or more than fourteen days prior to the date of said election, and such notice shall also be posted by the sheriff of the county not less than fourteen days prior to the date of said election, in three of the most public places in the district. All electors of the county owning land in the district shall be entitled to vote at said election and at the annual elections hereinafter provided for. [L. '13, p. 622, § 19.]

§ 4226–20. Two Supervisors Elected—Terms of Office.—At the election provided for in the preceding section, two qualified electors of the county owning land in the district shall be elected, who, with the county engineer, shall constitute the first board of supervisors of said district. The board of supervisors shall have charge of the construction and maintenance of the drainage system of the district, subject to the limitations hereinafter set forth, and may employ a superintendent of construction and maintenance, who may be one of the two elected supervisors. The supervisor receiving the highest number of votes shall hold office until one year after the first annual elec-

tion of the district and until his successor is elected and qualified, and the other supervisor shall hold office until his successor is elected at the first annual election and shall have qualified. The elected supervisor shall qualify by taking the usual oath of office of county and precinct officers, and by giving a bond in an amount to be fixed and with surety to be approved by the board of county commissioners. On the second Tuesday of December in the year following the election hereinabove provided for and annually thereafter, there shall be elected one supervisor of such district, who shall hold office for the term of two years and until his successor is elected and qualified. Such annual election shall be held upon the same notice and under the same regulations and in the same manner as the first election hereinbefore provided for: Provided, that any drainage improvement districts established under this act, or heretofore established under sections 4226 to 4250, not including any city or town and not less than two thousand acres in extent including all additions thereto, notice of annual elections of supervisors shall be given by posting only. [L. '13, p. 623, § 20.]

§ 4226–21. Elections in Districts Heretofore Organized.—In all drainage districts heretofore organized and now existing under the provisions of sections 4226 to 4250, in which an improvement or extension of the existing drainage system is initiated under the provisions of this act during the year 1913, an election of supervisors shall be held in the manner provided for the first election in drainage improvement districts organized under the provisions of this act, and in such districts in which no improvements are initiated during the year 1913, the first election shall be held on the second Tuesday in December, 1913. The supervisors of such districts now in office shall, unless sooner removed as provided by the act of 1901, hold office until their successors elected under this act shall have qualified. [L. '13, p. 624, § 21.]

§ 4226–22. Board to Construct Ditch.—The said board of supervisors shall, immediately upon their election and qualification, begin the construction of such drainage system at the outlet or outlets thereof, and at such other points as may be deemed advisable from time to time, and shall proceed with the construction thereof in accordance with the plans adopted therefor: Provided, that in the construction of said drainage system the board of supervisors with the approval of the board of county commissioners may change the original plans, cross-sections, gradients, depth and other features of the system, and may construct lining, bulkheading or riprapping wherever the same may be found necessary or advisable in the course of actual construction; but no essential deviation from the route or

alteration of the plans or mode of construction of the system shall be made that will increase the cost of the entire system by more than one-fifth, and no deviation of route requiring additional or different right of way shall be made until title thereto has been first obtained: Provided further, that the board of county commissioners may in its discretion let the construction of said drainage system or any portion thereof by contract, in the manner provided for letting contracts for other public works: And provided further, that the board of county commissioners may, upon such terms as may be agreed upon by the United States acting in pursuance of the National Reclamation Act approved June 17, 1902 (32 Statutes at Large 388), and the acts amendatory thereof and supplemental thereto, or in pursuance to any other act of congress appropriate to the purpose, contract for the construction of the drainage system or any part thereof, by the United States, or in co-operation with the United States therein. In such case, no bond shall be required, and the work shall be done under the supervision and control of the proper officers of the United States.

Unless the work of construction is let by contract, as hereinbefore provided, or for such part of such work as is not covered by contract, the board of supervisors shall employ such number of men as shall be necessary to successfully carry on the work of such construction, and shall give preference in such employment to persons owning land to be benefited by the improvement. [L. '13, p. 624, § 22.]

§ 4226–23. Compensation—Claims, How Paid.—The compensation of the board of supervisors, superintendent of construction, the board of appraisers hereinafter provided for, and any special engineer, attorney or agent employed by the board of county commissioners in connection with the improvement, the maximum wages to be paid, and the maximum price of materials to be used, shall be fixed by the board of county commissioners. Each county commissioner shall receive pay at the rate of four dollars per day for the number of days he is engaged in the performance of any duty under this act, which sum shall be additional to his salary in case he receive an annual salary; and none of the statutory provisions limiting the number of days that a county commissioner shall draw pay for or limiting the number of sessions for attendance upon which he shall be entitled to mileage shall apply to any proceedings under this act. All officers and members of boards performing duties under this act shall receive in addition to their fees or salaries their actual necessary expenses incurred in the performance of their duties hereunder. All costs of construction or maintenance done under the direction of the board of supervisors shall be paid upon vouchers or pay-rolls veri-

fied by two of the said supervisors. All costs of construction and all other expenses, fees and charges on account of such improvement shall be paid by warrants upon the county treasurer upon the proper fund, and shall draw interest at such rate not to exceed eight per cent per annum as the board of county commissioners shall fix, until paid or called by the county treasurer as other warrants of the county are called. [L. '13, p. 625, § 23.]

§ 4226–24. Notice to Cross Public Utility.—Whenever in the progress of the construction of the drainage system it shall become necessary to construct a portion of such system across any public or other road or public utility, the board of supervisors, or in case the work is being done by contract the board of county commissioners, shall serve notice in writing upon the authorities, corporation or person having charge of, or controlling or owning such road or public utility, as the case may be, of the present necessity of such crossing, giving the location, kind, dimensions and requirement thereof, for the purpose of the drainage system, and stating a reasonable time, to be fixed by the county engineer, within which plans for such crossing must be filed for approval in case the authorities, corporation or person controlling or owning such road or public utility desire to construct such crossing. As soon as convenient, within the time fixed in the notice, the authorities, corporation or person shall, if they desire to construct such crossing, prepare and submit to the county engineer for approval duplicate detailed plans and specifications for such crossing. Upon submission of such plans, the county engineer shall examine and may modify the same to meet the requirements of the drainage system, and when such plans or modified plans are satisfactory to the county engineer he shall approve the same and return one thereof to the authorities, corporation or person submitting the same, and file the duplicate in his office, and shall notify such authorities, corporation or person of the time within which said crossing must be constructed. Upon the return of such approved plans the authorities, corporation or person controlling such road or public utility shall, within the time fixed by the county engineer, construct such crossing in accordance with the approved plans, and shall thereafter maintain the same. In case such authorities, corporation or person controlling or owning such road or public utility shall fail to file plans for such crossing within the time prescribed in the notice, the board of supervisors or of county commissioners, as the case may be, shall proceed with the construction of such crossing in such manner as will cause no unnecessary injury to or interference with such road or public utility. The cost of construction and maintenance of only such crossings or such portion of such cost as would not have been necessary but for

the construction of the drainage system shall be a proper charge against the improvement district, and only so much of such cost as the board of county commissioners shall deem reasonable shall be allowed as a charge against the district in the case of crossings constructed by others than the authorities of the district. The amount of costs of construction by private corporations and persons allowed as a charge against the district by the board of county commissioners shall be credited on the assessments against the property on which the crossing is constructed, and any excess over such assessments shall be paid out of the funds of the district. The cost of construction and maintenance of crossings of public roads shall be paid by the county, city or town maintaining such public road. [L. '13, p. 626, § 24.]

§ 4226–25. Cost of Improvement—Apportionment.—When the improvement is fully completed and accepted by the county engineer, the clerk of the board shall compile and file with the board of county commissioners an itemized statement of the total cost of the improvement, including engineering and election expenses, the cost of publishing and posting notices, damages and costs allowed or awarded for property taken or damaged, including compensation of attorneys, the cost of construction, including the cost of crossings, constructed by the district and the cost of crossings constructed by others and allowed by the board of county commissioners, and including the sums paid or to be paid to the United States, and including all other costs and expenses, including fees, per diem and necessary expenses of nonsalaried officers incurred in connection with the improvement, together with interest on such costs and expenses from the time when incurred at the rate of eight per cent per annum. There shall also be included in said statement, in case the county engineer is a salaried officer, a statement of the services performed by him in connection with said improvement at a per diem of five dollars per day and his necessary expenses, and a reasonable sum to be fixed by the board of county commissioners on account of the services rendered by the prosecuting attorney. Upon the filing of such statement of costs and expenses the board of county commissioners shall revise and correct the same if necessary and add thereto a reasonable sum, not to exceed ten per cent of the total thereof, to cover possible errors in the statement or the apportionment hereinafter provided for, and the cost of such apportionment and other subsequent expenses, and shall appoint a board of appraisers consisting of the county engineer ex officio, and two other competent persons, to apportion the grand total as contained in said statement as hereinafter provided. Each member of said board of appraisers shall take, subscribe and file with the board of county commissioners

an oath to faithfully and impartially perform his duties to the best of his ability in making said apportionment, and said board of appraisers shall proceed to carefully examine the drainage system and the public and private property within the district and fairly, justly and equitably apportion the grand total cost of the improvement against the property and the county or counties, cities and towns within the district, in proportion to the benefits accruing thereto. The members of said board of appraisers shall be paid out of the funds of the district such compensation for their services as the board of county commissioners shall fix. [L. '13, p. 628, § 25.]

§ 4226–26. Who are Beneficiaries — Sewage Systems Benefited.—Whenever any drainage system constructed under the provisions of this act will drain the whole or any part of any public road or will so affect such road that the same or the roadbed or track thereof will be benefited or protected thereby, or where any such drainage system will furnish an outlet for or facilitate the construction or maintenance of any sewer system in any city or town, there shall be apportioned against the county in which any such state or county road outside of any incorporated city or town is located or against the city or town in which any such public road is located, or against any such other road or part thereof so drained or affected, or against the city or town for which an outlet for sewage will be furnished or wherein the construction or maintenance of a sewer system will be facilitated, the proper amount of the total sum to be apportioned, and nothing in this section contained shall be so construed as to prevent the apportionment of the proper amount of the total sum to any property other than roads lying within any such county, city or town, in proportion to the benefits accruing thereto. [L. '13, p. 629, § 26.]

§ 4226–27. Irrigation System Benefited.—In the plans for and in the construction of a drainage system in an irrigated region, under the provisions of this act, provision may be made for the prevention of, or affording an outlet for drains to prevent, injury to land from seepage of or saturation by irrigation water, and for the carrying off of necessary waste water from irrigation, and benefits resulting from such provision shall be considered in making the apportionment of the cost of such system. [L. '13, p. 629, § 27.]

§ 4226–28. State Lands.—There shall be apportioned against all state school, granted, and other lands, in the district the proper amount of the total sum to be apportioned in proportion to the benefits accruing thereto. [L. '13, p. 630, § 28.]

§ 4226–29. Apportionment Certified to Municipality.—Upon the completion of the apportionment the board of appraisers shall prepare upon suitable blanks, to be prescribed by the bureau of inspec-

tion and supervision of public officers, sign and file with the clerk of the board of county commissioners a schedule giving the name of each county, city and town and the description of each piece of property found to be benefited by the improvement in the following order: First, counties, cities and towns and the respective amounts apportioned thereto for benefits accruing to public roads and sewer systems therein; second, other roads (a) railroads, (b) street railroads, (c) interurban railroads, (d) logging roads, and (e) tramways, giving the location of the particular portion or portions of each road benefited and the respective amounts apportioned thereto; third, unplatted lands giving a description of each tract arranged in the numerical order of the townships, ranges and sections, and giving the legal subdivisions and such other subdivisions and metes and bounds descriptions as may be necessary to show a different rate of apportionment, or different ownership, and giving the respective amounts apportioned to each tract; fourth, platted lands arranged by cities and towns and platted acreage in alphabetical order, giving under each the names of the plats in alphabetical order and the numbers of blocks and lots, and such other subdivisions and metes and bounds descriptions as may be necessary to show a different rate of apportionment, or different ownership, and giving the respective amounts apportioned to each plat, block, lot, or other description, as the case may be. [L. '13, p. 630, § 29.]

§ 4226–30. Notice of Hearing on Apportionment—Hearing—Assessment-roll—Liens.—Upon the filing of the schedule of apportionment the board of county commissioners shall fix the time and place for a hearing thereon, which time shall be not less than thirty nor more than forty days from the date of filing, and notice of such hearing shall be given in the manner provided for giving notice of hearing in section 4226–9, which notice shall fix the time and place of said hearing and shall state that the schedule of the board of appraisers showing the amount of the cost of the improvement apportioned to each county, city, town and piece of property benefited by the improvement is on file in the office of the board of county commissioners and open to public inspection. At or prior to such hearing any persons interested may file with the clerk of the board written objections to any item or items of said apportionment. At such hearing, which may be adjourned from time to time until finally completed, the board of county commissioners shall carefully examine and consider said schedule of apportionments and any objections filed or made thereto, and may add thereto any property benefited by the improvement against which no apportionment has been made, or strike therefrom any property not benefited, and change, modify or reapportion any item thereof, and shall cause the clerk of the board

to enter thereon all such additions, cancellations, changes, modifications and reapportionments, all credits for damages allowed or awarded to the owner of any piece of property benefited, but not paid, as provided in section 4226–14; also, a credit in favor of the county on any apportionment against the county, of all sums paid on account of said improvement, as provided in section 4226–15; and all sums allowed the county on account of services rendered by the county engineer or prosecuting attorney, as provided in section 4226–25; and all credits allowed to property owners constructing crossings as provided in section 4226–24. When the board of county commissioners shall have finally determined that the apportionment as filed or as changed and modified by the board is a fair, just and equitable apportionment, and that the proper credits have been entered thereon, the members of the board approving the same shall sign the schedule and cause the clerk of the board to attest their signatures under his seal, and shall enter an order on the journal approving the final apportionment and all proceedings leading thereto and in connection therewith. Thereupon, the county auditor shall prepare an assessment-roll which shall contain, first, a map of the district showing each separate description of property assessed; second, an index of the schedule of apportionments; third, an index of the record of the proceedings had in connection with the improvement; fourth, a copy of the resolution of the board of county commissioners fixing the method of payment of assessments; fifth the warrant of the auditor authorizing the county treasurer to collect assessments; and sixth, the approved schedule of apportionments of assessments; and shall charge the county treasurer with the total amount of the assessment and turn the roll over to the treasurer, for collection in accordance with the resolution of the board of county commissioners fixing the method of payment of assessments. The assessments contained in said assessment-roll shall be liens upon the property assessed, and all such liens shall relate back to and take effect as of the date when the board of county commissioners determined to proceed with the construction of the improvement as provided in section 4226–16. [L. '13, p. 630, § 30.]

§ 4226–31. Funds—Order of Payments.—There shall be established in the county treasury of any county in which any drainage improvement district is organized under the provisions of this act, a separate fund for the construction and a separate fund for the maintenance of the improvement in such district. All moneys collected on assessments for the construction or maintenance of any such improvement shall be paid into the proper fund and shall be applied first to the payment of any interest due, and second to the payment of any outstanding warrants or bonds in the order of their issuance. The re-

spective installments of assessments for construction or maintenance of drainage improvements made under the provisions of this act, shall be collected in the same manner and shall become delinquent at the same time as general taxes, and shall bear interest after delinquency at the rate of ten per cent per annum, and the lien thereof shall be enforced by foreclosure and sale of the property assessed, as in the case of general taxes. If any item of assessment shall be uncollectible by reason of any irregularity in any of the proceedings, a new hearing, as provided in section 4226–30, and a reassessment of the property mentioned in such item, in proportion to the benefit received thereby, shall be had and made. If any item of assessment shall be uncollectible by reason of the fact that the property assessed does not sell for enough to pay the assessment against it, or by reason of the fact the property assessed was not subject to assessment, the board of county commissioners shall cause a supplemental assessment to be made on the property benefited by the improvement and against the county, cities and towns chargeable therewith in the manner provided for the original assessment, to cover the deficiency. [L. '13, p. 632, § 31.]

§ 4226–32. Estimate of Annual Expenditures—Levy—Hearing.—On or before the first day of October in each year the board of supervisors of each drainage improvement district shall make and file with the board of county commissioners of the county containing such district, a statement and estimate in writing of the amount required for maintenance of the drainage system of said district for the ensuing fiscal year, and the board of county commissioners shall, on or before the first day of November next ensuing, levy an assessment for the amount of said estimate, or such amount as it shall deem advisable, upon the property within the district and against the county, cities and towns chargeable therewith in the same proportion as the assessment to pay the original cost of construction of said drainage system was levied: Provided, however, that, upon petition filed by two or more assessed property owners of a district the county commissioners may, in their discretion, hold a hearing at the county seat for the purpose of reapportioning the maintenance charges in such district, to be held at the time of the equalization of the real property assessment in the even-numbered calendar years. Preliminary to such hearing the county commissioners shall appoint a board of three appraisers, of whom the county engineer shall be one, who shall qualify and proceed as the board of appraisers appointed to apportion the original cost of the system, and shall report to and file with the board of county commissioners their recommendations in such matter not less than twenty days prior to the date of such hearing. Notice of the filing of such report and that such hearing will be held shall be given by publication in the official county newspaper and in

such other newspaper published in or near such district as the county commissioners may in their discretion direct in two successive publications, the last of which shall not be less than seven or more than fourteen days prior to the date of said hearing. And at such hearing the commissioners may make such change in the basis of the apportionment of the levies for the maintenance of such drainage system as may seem just and equitable. In maintaining the drainage system of their district the board of supervisors may, with the approval of the board of county commissioners, make expenditures in excess of the annual maintenance fund herein provided for, which excess amount shall in such event be included in the maintenance levy for the succeeding year: Provided, that when, owing to floods or other causes an unusually high maintenance levy or expenditure in excess of the current levy shall be necessary the board of county commissioners may provide that such levy or the levy to meet such excess expenditure be spread over a term of years and warrants or bonds issued to meet the same as herein provided for the original construction cost of a drainage system. [L. '13, p. 633, § 32.]

§ 4226–33. Cost to Municipal Corporation.—The amount of the costs of construction or maintenance of any drainage system assessed against any city, town or county may be met by levies to be paid in similar installments and extending over a like period of time as the assessments against property benefited are spread, or such amounts may be met by the issue and sale of the bonds of such city, town or county in the manner in which bonds to meet general indebtedness of such city, town or county are issued. The proper authorities of such city, town or county shall make the necessary levies to meet such amounts thus apportioned thereto as a general levy on all property therein. [L. '13, p. 634, § 33.]

§ 4226–34. Abandonment of System—Assessment.—Upon a petition and bond being filed by one or more land owners, either within or without the boundaries of a drainage improvement district, and like proceedings being had as in the case of the original establishment and construction of a drainage system, the county commissioners may declare any drainage system or any part thereof, abandoned and may strike from the district lands no longer benefited or served thereby, or they may cause the route of any established drainage system to be changed, in whole or in part, or the whole or any part thereof to be widened or deepened, or provided with lining or bulkheading, or other betterment to be made therein, or a new outlet or outlets, or one or more branches or extensions to be constructed, either within or without the boundaries of the original district. But the striking of any lands from a district shall not in any way affect any assessment theretofore levied against such lands. When such improvements shall have been completed the costs thereof shall be apportioned and assessed against the lands benefited thereby in the manner

hereinbefore provided for such apportionment and assessment in the case of original proceedings in regard to a drainage system and drainage improvement district. New lands assessed for any such improvement shall become a part of such drainage improvement district. The construction and maintenance of such new improvement, unless let by contract by the board of county commissioners, shall be under the direction of the board of supervisors of the district in which they are made or to which said improvement is added. [L. '13, p. 635, § 34.]

§ 4226–35. New Territory—Share of Original Cost.—When any extension or new branch of any existing drainage system is thus constructed there may be included in the apportionment and assessment of the costs thereof against the property, county, cities and towns benefited thereby, a proper and equitable share of the value of the existing drainage system which serves as an outlet for such extension or new branch. In arriving at which amount the board which makes the apportionments in such case shall consider the amount, if any, which the property thus to be assessed has already paid toward the construction of such drainage system, the present value of said drainage system, to wit: the cost of duplicating the same and all other matters that may be pertinent. The amount of the value of the existing drainage system thus apportioned to the property assessed for such new construction shall be rebated pro rata upon the assessments, if any, outstanding against the lands of the district on account of the construction of such drainage system: Provided, that if the original assessment for the cost of construction is already paid, or for such proportion thereof as is already paid, to wit, in the case of lands whereon all the installments for costs have been paid before coming due, then and in that event the amount of the value of such existing drainage system thus reapportioned to the property benefited by such new construction or such proper proportion thereof, shall be paid into the maintenance fund of said district; and such amount shall be a credit in favor of the respective property or all of the property, as the case may be, in such original district. [L. '13, p. 635, § 35.]

§ 4226–36. Prosecuting Attorney to Prepare Blanks.—It shall be the duty of the prosecuting attorney of each county to prepare suitable blanks for the use of the board of county commissioners under this act, not otherwise provided for, and to advise the board of county commissioners and other officers of the county and the boards provided for by this act in regard to the proceedings and in the performance of their duties under this act, and perform such other duties as in this act provided and required. [L. '13, p. 636, § 36.]

§ 4226–37. Drainage System to be Kept Efficient.—The board of supervisors of each drainage improvement district shall make reasonable rules and regulations whereby any owner of land in the district

may make connection for drainage purposes, with the drainage system thereof. They shall also keep the drainage systems in their districts clear and free of all obstructions, and upon complaint of any person they shall immediately remove any obstruction which interferes with the flow of the water through said system. [L. '13, p. 636, § 37.]

§ 4226–38. Districts in Two or More Counties.—When a drainage system is proposed which will require a location in more than one county application therefor shall be made to the board of county commissioners in each of said counties, and the county engineers shall make preliminary reports for their respective counties. The line of such drainage system shall be examined by the county engineers of the counties wherein said ditch will lie, jointly. The hearings provided for by sections 4226–9 and 4226–30 shall be had by the boards of the counties wherein such drainage system shall lie, in joint session, at such place as the said boards jointly shall order. The county engineer of the county wherein the greatest length of the drainage system will lie shall have charge of the engineering work and be ex officio a member of the boards in this act provided for: Provided, that in case a contract is let to private parties for the construction work, or in the event that the construction work necessary is proposed to be done by or with the co-operation of the United States, as in section 4226–22 provided, a contract for such purpose for the portions in the respective counties shall be executed by the boards of county commissioners of each of the counties, wherein the drainage system will extend, respectively. [L. '13, p. 637, § 38.]

§ 4226–39. Repeal.—Sections 4226 to 4250 and 4256 to 4267 are hereby repealed, saving and excepting, however, that the provisions of said act shall continue in force and effect and shall be applicable to and shall govern all proceedings, rights and powers, in the case of ditches already contracted for, or under construction under said act, and in the case of the maintenance of the same for the current year 1913; and the method of supervision, construction, payment for the work, apportionment of costs, and assessment and collection thereof, delinquency and foreclosing thereof and penalties therefor, and all other proceedings in regard to the same, shall be as in said sections 4226–4250, 4256–4267: Provided, however, that with the consent of the holders of warrants heretofore issued or hereafter issued for work already begun or contracted for under said act, or with the consent of the contractor engaged in constructing any ditch or drainage system under said act, the provisions of this act in regard to the funding of such warrants with bonds, or the payment for work with bonds and the issuance and sale thereof, and all provisions in regard to such issuing of bonds, shall be applicable to such outstanding warrants or work already begun or contracts let for work. And in such event and to the extent of the costs so acquiesced in by war-

rant holders or contractors, all the provisions of this act in regard to the method of payment, form, issuing and sale, of bonds and warrants, extension of the assessment over a term of years, collecting, delinquency, interest and foreclosure of the assessments, and all other proceedings in regard thereto shall be as in this act provided. In such event the county commissioners shall prescribe the method and time of payment of the assessments and whether bonds shall be issued and perform any other proper act in regard to the same, at a special meeting called for that purpose, or at the hearing on the apportionment of costs provided for in section 4226–30, hereof.

Provided, also, that in case any of the provisions of this act shall be applied to any proceedings in regard to any ditch begun under said sections 4226–4250, 4256–4267 and the same shall be held not to be legally applicable thereto by a court of competent jurisdiction, then appropriate and proper proceedings for the performance of said acts or duties shall be had and done in regard thereto, as in said sections provided. And from the time any such drainage district organized and existing under the provisions of said sections shall be brought under the provisions of this act, said district shall be known and designated in all proceedings and records relating thereto, as Drainage Improvement District No. —— of —— County, retaining its original serial number.

Nothing in this act contained shall be construed as in anywise modifying or repealing any of the provisions of sections 4137 to 4181, or the acts amendatory thereof or supplemental thereto, or affecting any proceeding heretofore or that may hereafter be had under the provisions of said act. [L. '13, p. 637, § 39.]

§ 4226–40. Application of Act.—Except as specified in the foregoing section, all of the provisions of this act, instead of said sections 4226 to 4250 and 4256 to 4267, shall be applicable to and shall govern and be the law in all respects, in regard to all ditches and drainage systems now existing, initiated or applied for under said sections, and all powers hereby vested in or granted to all boards and officers under this act shall be vested in such boards and officers that shall hereafter have charge of the work, or administering of the affairs of such ditches and drainage systems, and the districts in which they lie. [L. '13, p. 639, § 40.]

§ 4226–41. Validity.—An adjudication that any section, paragraph, or portion of this act, or any provision thereof, or proceeding provided for therein, is unconstitutional or invalid shall not affect or determine the constitutionality, or validity, of this act as a whole or of any other portion or provisions thereof, and all provisions of this act not adjudicated to be unconstitutional shall be and remain

in full force and effect and shall be operative until specifically adjudicated to be unconstitutional or invalid. [L. '13, p. 639, § 41.]

§ 4251. Assessments on State Lands Certified to Land Commissioner.—The several county treasurers of this state shall, in each year, within thirty days after the tax-rolls have been received and filed by them, make up and certify to the commissioner of public lands a list of all state, school and granted lands upon said rolls against which special assessments have been levied under the laws of this state for the construction or maintenance of any diking system or any drainage system constructed and maintained under the laws of this state. Said certificate shall contain (1) a description of the state, school or granted lands by legal subdivisions, (2) the amount of the assessment against each legal subdivision separately stated. [L. '07, p. 125, § 1.]

This and the next four sections apply, also, to Chapters I, II and III of this title. See §§ 4133, 4174, 4208.

See infra, §§ 6872–6882, later enactment on this subject, made applicable to this title by § 6879.

§ 4252. Land Commissioner to Certify to State Auditor.—As soon as the said assessments shall become due and payable the commissioner of public lands shall certify to the state auditor a list of all lands certified to him by the county treasurer, which have not been sold by the state, and his certificate shall contain the same facts as to the land certified by him that the certificate of the county treasurer shall contain as provided for in the next preceding section. [L. '07, p. 125, § 2.]

See note to § 4251.

§ 4253. Assessment Added to Appraised Value of Land.—Upon issuing his certificate to the state auditor as provided for in the next preceding section, the commissioner of public lands shall make a minute upon his records showing the amount paid and charge it to the tract of land against which it was assessed. The valuation of the tract of land benefited by the diking or drainage improvement shall not be raised by or on account thereof, but when any of said land is offered for sale there shall be added to the appraised value of such lands as provided for by law the amount of such payments made by the state out of the general fund, which amount so added shall be paid by the purchaser in cash at the time of the sale of said land, and such additional sum shall be turned over to the state treasurer and placed to the general fund. [L. '07, p. 125, § 3.]

See note to § 4251.

§ 4254. Payment by State Auditor.—Upon receipt of the certificate of the commissioner of public lands herein provided for the state auditor shall draw his warrants in favor of the several county

treasurers upon the general fund for the payment of such assessments; and when he transmits his warrants he shall certify to the several county treasurers a description of the lands upon which he pays the assessment, the amount paid on each legal subdivision of land. [L. '07, p. 126, § 4.]

See note to § 4251.

§ 4255. Estimate of Money Required.—It shall be the duty of the state auditor to include in his estimate of the amount of money necessary to be appropriated for the purposes of this act a statement of the amount necessary to pay the assessments certified to him. [L. '07, p. 126, § 5.]

See note to § 4251.
"Act," in this section, refers to §§ 4251–4255.

§ 4267-1. Abandoned Ditches.—Where a ditch or drain shall have been in part constructed in compliance with the provisions of Remington & Ballinger's Annotated Codes and Statutes of Washington, sections 4226–4250, 4256–4267, and the work of constructing said ditch or drain shall have ceased before the completion thereof or for any reason, the county commissioners shall declare said ditch or drain abandoned. [L. '11, p. 439, § 1.]

§ 4267-2. Apportionment of Cost.—When any such drainage proceedings shall have been abandoned by the county commissioners they shall, unless a petition shall have been filed within ninety days after such abandonment, as hereinafter provided, order the county engineer to apportion the costs of improvement, so far as constructed, against the lands benefited and like proceedings shall be had for the apportionment and collection of the costs and expenses of constructing said ditch or drain so far as the same shall have been constructed as are provided for the apportionment and collection of costs and expenses when such ditch or drain shall have been completed in accordance with the provisions of the said act. [L. '11, p. 439, § 2.]

§ 4267-3. Petition—Contents.—When any ditch or drain shall have been in part constructed pursuant to the provisions of the said act, and the same shall have been abandoned as provided herein, a petition may be filed as provided in section 4138, and like proceedings shall be had thereon as are provided by sections 4137 to 4179. Said petition shall include only such lots or tracts of land and public or corporate roads or railroads as were included in the schedule filed by the county surveyor in the original proceedings pursuant to sections 4226–4250, 4256–4267: Provided, that the boundaries of such proposed drainage district may be extended by the board of county commissioners in like manner as is provided for the extending of boundaries in section 4139. [L. '11, p. 439, § 3.]

§ 4267–4. Rights and Powers Conferred.—When a petition for the establishment and organization of a drainage district shall have been filed as provided herein the same shall be governed by all the provisions of sections 4137–4179, so far as the same are applicable and all rights and powers conferred upon drainage districts established and organized in compliance with said act shall be and are hereby conferred upon drainage districts organized and established in accordance herewith. [L. '11, p. 440, § 4.]

§ 4267–5. Construction.—When any drainage district shall be established and organized as provided in this act it shall be lawful for such drainage district to use so much of the original ditch or drain as shall have been constructed and to construct such additional ditches or drains as shall be petitioned for and ordered by the board in the course of said proceedings. Upon the completion of said original ditch or drain, the cost of such new ditches or drains, if any, as shall be constructed and expense thereof, together with all costs and expenses lawfully incurred in the partial construction of said original ditch or drain, shall be apportioned against the land in the district established and an assessment made for the payment of the entire sum in accordance with the provisions of sections 4137–4179. [L. '11, p. 440, § 5.]

§ 4267–6. Concurrent Act.—Nothing in this act shall be construed so as to amend, change or repeal any of the existing laws relating to dikes and drains but concurrent therewith. [L. '11, p. 440, § 6.]

CHAPTER V.

Payment of Expenses Heretofore Incurred in Construction of Ditches, etc.

§ 4268. Purchase or Condemnation of Lands—Under Act of 1890. Where any ditch or drain or any portion thereof has been constructed in compliance with the provisions of an act of the legislature of the state of Washington entitled "An act to provide for the construction, repairing and protection of drains and ditches for agricultural, sanitary and domestic purposes, and to provide for the organization of drainage districts, and declaring an emergency," approved March 19, 1890, it shall be the duty of the board of county commissioners of any county in which the same is located, to purchase the lands occupied by or necessary to said drain or ditch, or any culverts, bridges or approaches thereto, or appurtenances to said drain or ditch, or acquire the same by condemnation proceedings, wherever title to such lands has not already been obtained, and to that end are hereby authorized to institute and maintain in the name of the

county the proceedings provided in sections 921–936, supra. [L. '95, p. 142, § 1.]

Cited in 19 Wash. 201; 20 Wash. 85, 92; 28 Wash. 40; 30 Wash. 631; 31 Wash. 358; 40 Wash. 68; 45 Wash. 424; 47 Wash. 415, 416; 48 Wash. 231.

§ 4269. Ditch Fund Established.—Said board of county commissioners shall establish a ditch fund named after such ditch or drain, and whenever there is not sufficient money to make the payments required under the provisions of the last section, they shall borrow money wholly on the faith of, and to be repaid wholly from, the moneys in such fund by issuing bonds payable out of said funds in denominations of not to exceed twenty dollars each, due on or before five years from date, and drawing not to exceed seven per cent interest per annum, in order to make such payments required pursuant to the last section. Where said ditch or drain is uncompleted, or completed only in part, said board shall proceed to finish said ditch according to the survey and report of said improvement made in accordance with the provisions of said act of March 19, 1890, and pay for the same by warrants duly issued on said ditch fund, and the total cost of said improvement, including expenses heretofore incurred and warrants heretofore issued for the location, right of way and construction of said ditch, shall be paid as hereinafter provided. [L. '95, p. 142, § 2.]

§ 4270. Apportionment According to Benefit—Notices.—Said board of county commissioners shall, upon obtaining title to lands as provided in section 4268, file the survey and report of said improvement, if any has been made, in accordance with the provisions of said act of March 19, 1890, and shall ascertain the aggregate cost of said ditch, and shall apportion the said cost to each lot, tract of land, road or railroad, according to the benefit which will result to each from said improvement, not exceeding the amount of such benefit, and shall fix a day for the hearing of said apportionment. The county auditor shall prepare a notice in writing directed to the resident lot or land owners, or to the municipal or private corporations affected by the improvement, setting forth a general description of the improvement, together with a tabular statement of the apportionment of the cost as hereinbefore provided for, which notice shall be served upon each lot or land owner and upon each member of any public board of authority and upon an officer or agent of such private corporation, in the manner provided for the service of a summons, at least eight days before the day set for the hearing, and return of service shall be made in the mode provided for the return of service of a summons in a civil action, and the notice and return shall be filed with the county auditor on or before the day of hear-

ing, and the county auditor shall at the same time give like notice to each nonresident lot or land owner, either in the mode above prescribed or by publication in a newspaper printed and of general circulation in the county for at least two consecutive weeks before the day set for the hearing, proof of which service shall be by affidavit of the publication of said notice during said time by the printer of such paper or other person knowing the fact, which proof shall be filed with the county auditor on or before said day of hearing. [L. '95, p. 143, § 3.]

§ 4271. Commissioners to Examine Apportionment.—The county commissioners shall meet at their regular place of meeting on the day fixed for the hearing, and shall first determine whether the required notice has been given. If they find that due notice has not been given they shall continue the hearing to a day to be fixed by them, and order the notice to be served as hereinbefore provided, and when they find due notice has been given they shall examine said apportionment, and if it is in all respects fair and just according to benefits they shall approve and confirm the same. [L. '95, p. 144, § 4.]

§ 4272. Unjust Apportionment.—If the commissioners find that the apportionment is unfair and unjust, and ought not to be confirmed, they shall so order and amend it as to make it fair and just in proportion to benefits, and if necessary, in their opinion, they may adjourn the further hearing not exceeding twenty days to a day to be fixed by them, and go upon the premises and by actual view apportion the entire cost of location and construction, or any part thereof, according to benefits, as may seem just and proper, and on the day so fixed by them they shall again meet and determine the apportionment. [L. '95, p. 144, § 5.]

§ 4273. Exceptions Filed.—Any person or corporation party to the proceedings may file exceptions to the apportionment at any time before the time set for the final hearing of the report and apportionment. The commissioners may hear testimony and examine all witnesses upon questions made by the exceptions, and for that purpose may compel the attendance of the witnesses by subpoena, which the clerk of the superior court shall issue on demand, and their decision on the exceptions shall be entered upon the journal, and if they sustain the exceptions the cost of hearing thereon shall be paid out of the county treasury, and if they overrule the same such costs shall be taxed against such person or corporation filing the exceptions. [L. '95, p. 114, § 6.]

§ 4274. Assessments, When Made — Collections, How Made.—When the cost of said ditch shall have been approved as hereinbefore

provided the commissioners shall determine at what time and in what number of assessments, not to exceed four, they will require the same to be paid, and order that the assessments as made by them be placed upon the tax-roll accordingly against the lots or lands assessed. When the commissioners make an assessment they shall cause an entry to be made directing the clerk of the board of county commissioners to make and furnish to the treasurer of the county a special tax-roll with the assessment arranged thereon, as required by their order, and the clerk of the board of county commissioners shall retain a copy thereof in his office, and all assessments shall be liens on the property against which they are assessed, and shall be collected and accounted for by the treasurer as taxes: Provided, that the treasurer shall accept in payment of assessments the bonds issued under the provisions of section 4269, and said treasurer shall place the assessment so collected in said ditch fund. The list thus prepared must remain in the office of the treasurer for thirty days, or longer if ordered by the board of trustees; and during the time it so remains any person may pay the amount of the charges against any tract to the treasurer without costs; or, if so ordered by the board of county commissioners, said payments may be by installments; and if, at the end of thirty days, or the longer period fixed by the said commissioners, any of the charges, or any of the installments ordered by them already due, has not been paid, the treasurer must transmit the list to the county attorney, who must at once proceed, by civil action, to collect such charges and foreclose the liens therefor. All moneys in said ditch fund shall be applied to the payment of any bonds issued by the county commissioners, on the faith of said ditch fund, and to the payment of warrants issued for the construction of said ditch or drain and appurtenances and right of way, in the order of their issue. Wherever any assessments heretofore levied for said ditch have been paid, due credit for such payments shall be allowed, and the receipt given for such payments shall be received in lieu of a payment of a sum of money equal to the sum receipted for in the receipt. [L. '95, p. 144, § 7.]

Cited in 30 Wash. 631.

§ 4275. Railroads to Pay for Benefits.—When the improvement drains or benefits the whole or a part of any public or corporate road or railroad, there shall be apportioned to the county, if the road is a state, county or free turnpike road, or to the corporation if a corporate road or railroad, a share of the costs and expense thereof proportionate to the benefits to said road or railroad. All lands of the state or any county, school district or other municipal corporation, shall be subject to the provisions of this chapter. [And when any assessment shall be apportioned against any school lands of the state,

the county shall pay the same out of its general fund and have a lien on the proceeds of the sale of such lands, from which it shall be reimbursed.] [L. '95, p. 146, § 8.]

Cited in 28 Wash. 46.

The portion in brackets is unconstitutional.

§ 4276. Assessment Inadequate—Proportionate Payment of Expenses.—Whenever assessments have been made or shall hereafter be made, under the provisions of sections 4268–4275, supra, and the assessments realized are inadequate and insufficient, after deducting therefrom the amount of bonds issued for damages for rights of way to pay said warrants heretofore issued under the act of March 19, 1890, the same shall be paid in the proportion which the whole number of warrants issued under said act of March 19, 1890, bears to the assessments realized and available for the payment of said warrants, regardless of the number, or order of issue. [L. '03, p. 390, § 2.]

§ 4277. Payment of Expenses Incurred Under Act of 1895.—When any drainage district has been or shall be established and created under the provisions of Chapter II of this title, and when the drainage commissioners of such district have employed surveyors or draftsmen or legal assistance as provided in section 4146, and have incurred expenses for the compensation of such surveyors, draftsmen and legal assistance, and have issued to such surveyors, draftsmen or person rendering said legal assistance any warrants, orders, vouchers or other evidence of indebtedness for said expenses so incurred, and when such warrants, orders, vouchers or other evidences of indebtedness remain outstanding and unpaid, and when from any cause no further proceedings are had as provided for in said Chapter II, within a reasonable time, it shall be the duty of the county commissioners of the county in which such drainage district is located to assess in accordance with the provisions of this act the lands constituting and embraced within such drainage district for the purpose of paying such outstanding warrants, orders, vouchers, or other evidences of indebtedness, together with interest thereon. [L. '03, p. 87, § 1.]

"This act," refers to §§ 4277–4285.

§ 4278. Claims—Notice, Registration—Failure to Present.—The county auditor of any county in which such drainage district is located upon the written request of any holder or owner of any such warrant, order, voucher or other evidence of indebtedness, mentioned in the preceding section, shall forthwith cause to be published in the newspaper doing the county printing, if any such there be, and if not, then in some newspaper of general circulation in the county, a

notice directing any and all holders or owners of any such warrants, orders, vouchers, or other evidences of indebtedness, to present the same to him, at his office, for registration within ninety days from the date of the first publication of such notice; and such notice shall be published once a week for six consecutive weeks. Said notice shall be directed to all holders and owners of warrants, orders, vouchers or other evidences of indebtedness issued by the drainage commissioners of the particular district giving its name and number, and shall designate the character of the warrants, orders, vouchers, or other evidences of indebtedness, the registration of which is called for by said notice. Upon the presentation to him of such warrants, orders, vouchers or other evidences of indebtedness, the county auditor shall register the same in a separate [separate] book to be kept for that purpose, showing the date of registration, the date of issue, the purpose of issue when the same is shown upon the face, the name of the person by whom presented, and the face value thereof. Any such warrants, orders, vouchers or other evidences of indebtedness, not presented within the time prescribed in such notice, shall not share in the benefits of this act, and no assessment or reassessment shall thereafter be made for the purpose of paying the same. [L. '03, p. 87, § 2.]

Cited in 51 Wash. 17.
"This act," refers to §§ 4277–4285.

§ 4279. Petition to Court to Order Assessment—Contents.—At any time after the expiration of the time within which warrants, orders, vouchers or other evidences of indebtedness, may be registered as provided in the preceding section, the holder or owner of any such registered warrant, order, voucher or other evidence of indebtedness, may for himself and in behalf of all other holders or owners of such registered warrants, orders, vouchers, or other evidences of indebtedness, file a petition in the superior court of the county in which such drainage district is located praying for an order directing the publication and posting of the notice hereinafter provided for, and for a hearing upon said petition, and for an order directing the board of county commissioners to assess the lands embraced within said drainage district for the purpose of paying such registered warrants, orders, vouchers or other evidences of indebtedness and the costs of the proceedings provided for in this act. Said petition shall set fourth [forth]:

1. That said drainage district was duly established and created, giving the time.

2. The facts in connection with the expenses incurred by the drainage commissioners in the employment of surveyors, draftsmen, or

legal assistance and the issuance of such registered warrants, orders, vouchers or other evidences of indebtedness.

3. The facts in connection with the compliance with the provisions of this act.

4. A list of such registered warrants, orders, vouchers or other evidences of indebtedness showing the names of owners or holders, the amounts, the date of issuance, the purpose for which issued, when shown upon the face thereof, and the date of presentation for payment, respectively. [L. '03, p. 88, § 3.]

"This act," refers to §§ 4277–4285.

§ 4280. Hearing After Sixty Days.—Upon the filing of such petition it shall be the duty of the judge of the said superior court to fix a time for a hearing of said petition, which time shall be not less than sixty days from the time of the filing of said petition, and to enter an order directed to the sheriff of the said county ordering said sheriff to cause to be published and posted the notice as provided for in the next succeeding section. [L. '03, p. 89, § 4.]

§ 4281. Notice—Contents, Publication, etc.—Upon the issuance of the order as provided for in the next preceding section it shall be the duty of the sheriff of said county to post, at the courthouse of said county and at three public places in said drainage district, and to cause to be published in a newspaper of general circulation in said county a notice of the time and place fixed by said order of court for the hearing of said petition. Said notice shall contain a statement that said petition has been filed as above provided for, that the said court has fixed a time and place for the hearing of said petition, which time and place shall be stated in said notice, a brief statement of the object of said proceeding upon said petition, a statement of the issuance of the said order of court directing the posting and publishing of said notice, a statement that all persons having any interest in any land in such drainage district, describing the same by its corporate name, may at or before the time fixed for said hearing appear and file objections or exceptions to the granting of the prayer of said petition: A statement that upon the hearing of said petition in case no objections or exceptions have been filed in said proceeding, or in case any objections or exceptions filed be not sustained, and that the allegations of said petition are proven to the satisfaction of the court an order will be entered in accordance with the prayer of said petition. Said notice shall be signed by the sheriff of said county. [L. '03, p. 89, § 5.]

§ 4282. Hearing—Objections, Findings, etc.—Tax Levy.—At the time and place fixed in said order for the hearing of said petition, or at such time to which the court may continue said hearing, the

court shall proceed to a hearing upon said petition and upon any objections or exceptions which have been filed thereto. And upon it appearing to the satisfaction of the court from the proofs offered in support thereof that the allegations of said petition are true, the said court shall ascertain the total amount of said registered warrants, orders, vouchers or other evidences of indebtedness with the accrued interest and the costs of said proceedings, and thereupon the said court shall enter an order directing the board of county commissioners to levy a tax upon all the real estate within said drainage district exclusive of improvements, taking as a basis the last equalized assessment of said real estate for state and county purposes, sufficient to pay said outstanding registered warrants, orders, vouchers or other evidences of indebtedness with interest as aforesaid and the costs of said proceeding, and the cost of levying said tax, and further directing the county auditor to issue a warrant on the county treasurer to the petitioner for the costs advanced by him in such proceeding, which shall be paid in the same manner as the said registered warrants, orders, vouchers or other evidences of indebtedness. [L. '03, p. 90, § 6.]

Cited in 51 Wash. 14.

§ 4283. Tax Levy—Extension on Tax-rolls—Collection.—The clerk of said superior court shall certify the said order to the board of county commissioners, and to the county auditor and upon receipt of said order by said board it shall proceed forthwith to execute said order, and upon said levy being made it shall be extended upon the tax-rolls, certified and collected at the same time, in the same manner as other special district taxes. [L. '03, p. 90, § 7.]

§ 4284. Dismissal of Petition, When.—If upon said hearing the court shall find that the petitioner is not entitled to an order granting the prayer of said petition the court shall enter an order dismissing said petition and taxing the costs against said petitioner. [L. '03, p. 90, § 8.]

§ 4285. Appeals.—From any final order entered by the said superior court as above provided for, any party to said proceeding feeling himself aggrieved thereby may take an appeal to the supreme court of the state of Washington, as provided by the general appeal law of this state. [L. '03, p. 91, § 9.]

§ 4286. Payment of Expenses Incurred Under Act of 1888.—Where any dike, dam or any portion thereof, has been constructed and maintained in compliance with the provisions of an act of the legislative assembly of the territory of Washington, entitled, "An act to provide for the construction and maintenance of dikes and dams in certain cases," approved February 2, 1888, or any acts

amendatory thereof, and where any warrants or orders, issued in connection with the expense of the construction and maintenance thereof, remain outstanding and unpaid, it shall be the duty of the board of county commissioners of the county in which the same are located to assess the lands benefited thereby for the purpose of paying said outstanding warrants, or orders together with interest thereon from the date of their issuance until paid, at the rate of six per cent per annum: Provided, that no such assessment shall be made, nor shall any proceeding under this act be had, unless such dike or system of dikes shall have been so constructed and maintained and be at the time of the initiation of such assessment proceeding in such a condition as to constitute an actual substantial benefit to the land included within the limits of said diking district, by so protecting said lands from overflow as to render them suitable for cultivation. [L. '05, p. 282, § 1.]

"This act," refers to §§ 4286–4301.

§ 4287. Notice to Present Warrants—Failure to Register.—The county auditor of any county in which such dike or dam is located upon the written request of any holder or owner of any such warrant or order, shall forthwith cause to be published in the newspaper doing the county printing, if any such there be, and if not, then in some newspaper of general circulation in the county, a notice directing any and all holders or owners of any such warrants or orders to present the same to him, at his office for registration within ninety days from the date of the first publication of such notice; and such notice shall be published once a week for six consecutive weeks. Upon the presentation to him of such warrants or orders, the county auditor shall register the same in a separate book to be kept for that purpose, showing the date of registration, the date of issuance, the name of the person by whom presented and the face value thereof: Provided, however, that warrants or orders on the several diking districts organized under said act or any act amendatory thereof, shall be registered separately. Any such warrant or order not presented within the time prescribed in such notice, shall not share in the benefits of this act, and no assessment or reassessment shall thereafter be made for the purpose of paying the same. [L. '05, p. 283, § 2.]

§ 4288. Acquisition of Necessary Lands—Purchase—Condemnation.—Where the land included within the boundaries of any diking district established in accordance with the said act approved February 2, 1888, or of any acts amendatory thereof, are included within the boundaries of any diking district or districts organized in accordance with the provisions of Chapter I of this title, no condemnation proceedings for the purpose of acquiring title to the lands upon

which such dikes or dams are located shall be necessary. But where the lands included within the boundaries of any diking district organized under said act approved February 2, 1888, or any acts amendatory thereof, are not included within the boundaries of any diking district or districts organized under said Chapter I, it shall be the duty of the board of county commissioners of any county in which said dike or dams are located to purchase the lands occupied by, or necessary to said dikes or dams, and of any spurs, offshoots or appurtenances thereto, or acquire the same by condemnation proceedings, whether title to such land has not already been acquired, and to that end are hereby authorized to institute and maintain, in the name of the county, the proceedings provided by sections 921–936 of this code. [L. '05, p. 283, § 3.]

§ 4289. **Assessment — Procedure — Completion of Work.**—Where the lands [are] within the boundaries of any diking district or districts organized under said Chapter I of this title, the board of county commissioners at the end of ninety days after the date of the first publication of the notice provided for in section 4287, supra, shall forthwith proceed to levy an assessment against such lands for the purpose of paying such outstanding warrants or orders, with interest thereon as referred to in section 4286, supra. And where such lands are not so included, the board of county commissioners shall forthwith proceed to acquire by purchase or condemnation proceedings the necessary lands as provided for in section 4288, supra. Said board of county commissioners shall establish a fund for each diking district organized under said act approved February 2, 1888, or acts amendatory thereof, to be called, "Old Diking Fund No. ——." (here insert No. of diking district established under said act approved February 2, 1888, or any acts amendatory thereof) and for the purpose of paying for the lands to be acquired as provided in section 4288, supra, shall borrow money wholly on the faith of and to be repaid wholly from the money in said fund by issuing bonds payable out of said fund in denominations of not to exceed twenty dollars each due on or before five years from date and drawing not to exceed six per cent interest per annum. Where any such dike or dam is uncompleted and the lands for the benefit of which the same was constructed, are not included within the boundaries of any diking district or districts organized under said Chapter I, said board shall proceed to finish said dike or dam according to the survey and report of said improvement made in accordance with the provisions of said act of February 2, 1888, or of any act amendatory thereof, and to pay for the same by warrants duly issued on said dike fund and the total cost of said improvement, including the expenses heretofore issued for the location of right of way and construction or mainte-

nance of said dike or dam shall be paid as hereinafter provided. [L. '05, p. 284, § 4.]

§ 4290. Reassessment—Procedure—Notice, Objections, etc.—For the purpose of paying outstanding warrants or orders together with interest thereon, issued in connection with the expense of constructing or maintaining any dike or dam of any diking district organized under said act approved February 2, 1888, or any acts amendatory thereof, and also for the purpose of paying for acquiring the title to lands as provided for in section 4288, supra, and for the completion of any dike or dam as provided for in section 4289, supra, where the acquiring of such title, or the completion of such dike or dam is required under the provisions of this act, the board of county commissioners shall determine the aggregate cost of such dikes or dams and shall apportion the same to each lot or tract of land, road or railroad, according to the benefit which has resulted, or will result to each from said improvement, not exceeding the amount of such benefits: Provided, that such new assessment shall be for an amount which shall not exceed the actual cost and value of the improvement, together with interest thereon as provided for in this act, and costs, and that such amount shall be equitably apportioned upon the property benefited thereby, according to the provisions of the laws in force at the time such reassessment is made notwithstanding the proceedings of the county commissioners or of any of the officers of the county in which such improvement may be located may be found irregular or defected [defective], whether jurisdictional or otherwise. When such reassessment is completed all sums paid on the former attempted assessments shall be credited to the property on account of which the same was paid. The board of county commissioners shall cause the clerk of the board to make out a list of the lands benefited, giving a description of each tract or lot separately, and showing the sum apportioned to each of such tracts or lots, but said list need not contain the names of the owners of said tracts or lots. Said list shall be filed with the county auditor, and upon the filing thereof he shall forthwith cause to be published in the newspaper doing the county printing, if any such there be, and if not, then in such newspaper as he may select, a notice that said list is on file in his office and is open to inspection. Said notice shall give the number of the diking district organized under said act approved February 2, 1888, or any act amendatory thereof, state the total face value of warrants or orders registered in compliance with section 4287, supra, and contain a description by sections, townships and range, and by blocks where land has been platted, of the land claimed to be benefited. Where an entire section or block is not benefited a description of the part of such section or block claimed to be benefited shall be

given. Said notice shall direct any and all persons or corporations interested, who desire to do so, to file with the county auditor exceptions to the apportionment made to lands claimed to be benefited, or to warrants or orders registered, the exceptions, if any, to the latter, to be on the ground that the same were not issued in connection with the expense of the construction or maintenance of dikes or dams, or were fraudulently issued, and all exceptions herein provided shall be filed within sixty days after the date of the first publication of said notice. Said notice shall also give the date on which the board of county commissioners will meet to hear and pass upon such exceptions, which shall be on the sixtieth day after the date of the first publication of said notice; said notice shall be published once a week for six consecutive weeks. [L. '05, p. 285, § 5.]

"This act" refers to §§ 4286–4301.

§ 4291. Hearing on Exceptions—Amendments, etc.—Costs.—Upon the day stated in said notice the board of county commissioners shall meet at their regular place of meeting and proceed to hear and pass upon exceptions filed with the county auditor as provided in section 4290, supra. If they find that the apportionment is unfair and unjust, and ought not to be confirmed, they shall so order and amend it to make it fair and just in proportion to benefits, and if necessary, in their opinion, they may adjourn the further hearing not to exceed twenty days, to a day to be fixed by them, and go upon the premises and by actual view apportion the entire cost of location and construction or maintenance, or any part thereof, according to benefits as may seem just and proper, and on the day so fixed by them they shall again meet and determine the apportionment. The cost of the publication of the notice in this act provided for shall be considered as a part of the costs to be apportioned to said lands. The commissioners may hear testimony and examine all witnesses upon questions made by the exceptions, and for that purpose may compel the attendance of witnesses, by subpoena, which the clerk of the superior court shall issue or demand, and their decision on the exceptions shall be entered on the journal, and if they sustain the exceptions the cost of the hearing thereof shall be paid out of the county treasury, and if they overrule the same such costs shall be taxed against the person or corporation filing the exceptions: Provided, however, that if exceptions to warrants or orders registered with the auditor are sustained the costs of the hearing thereof shall be taxed against the owner of such warrants or orders. Where costs are taxed against any person or corporation it shall be the duty of the prosecuting attorney, to institute action in the superior court for the recovery of the same. [L. '05, p. 286, § 6.]

"This act" refers to §§ 4286–4301,

§ 4292. Exceptions to Warrants—Hearing on.—Where exceptions are filed to warrants or orders registered with the auditor of the board of county commissioners, on the day of their meeting provided for in section 4291, supra, shall set the same down for hearing at a day not later than thirty days thereafter and shall direct the auditor to notify the person or corporation who presented said warrants or orders to him for registration of such exceptions, and shall state the time when and place where such exceptions shall be heard; and said notice shall be deposited by the county auditor in the postoffice at the county seat at least twenty days before the day set for such hearing, postage prepaid, and addressed to such person or corporation at his last known address, or at its principal place of business. The affidavit of the auditor shall be proof of such service. [L. '05, p. 287, § 7.]

§ 4293. Appeals—Procedure.—Any person or corporation feeling aggrieved by the ruling of the board of county commissioners upon exceptions filed as hereinbefore provided for, may appeal to the superior court. Upon such appeal no bond shall be required and no stay shall be allowed. If the appeal be from the ruling of the board of county commissioners in relation to the apportionment of costs or assessments of benefits to land, such appeal shall bring before the superior court the justness of the amount of benefits in respect to the parties to the appeal. Such appeal shall be made by filing a written notice of appeal with the clerk of the board of county commissioners within ten days after such new assessment or reassessment-roll shall have been approved and confirmed by the board of county commissioners; and said notice shall describe the property and the objections of such appellant to such assessment or reassessment, and such appellant shall also file with the clerk of the superior court aforesaid within twenty days from the approval and confirmation of such roll by the board of county commissioners a copy of said notice, appeal, reassessment-roll and proceeding thereon, certified by the clerk of such board of county commissioners; and the case shall be docketed by the clerk of such court in the name of the person taking such appeal against said county as "an appeal from assessments." Said cause shall then be at issue, and shall have preference over all civil cases pending in said court, except proceedings under the acts relating to eminent domain by cities and towns, and actions of forcible entry and detainer. Such appeal shall be tried in said court as in the case of equitable causes, except that no pleadings shall be necessary. The judgment of the court shall be either to confirm, modify, or annul the assessment in so far as the same affects the property of the appellant, from which judgment an appeal shall lie to the supreme court as in other cases. In case the assessment is confirmed,

the fees of the clerk of the board of county commissioners for copies of the record shall be taxed against the appellant with other costs. If the appeal be from a ruling of the board of county commissioners in relation to exceptions filed to warrants or orders registered with the county auditor, such appeal shall be taken in the manner provided by law for appeals from the action of the board of county commissioners in other cases. [L. '05, p. 287, § 8.]

§ 4294. Apportionment to Highways, Railroads, State Lands, etc. When the improvement protects or benefits the whole or any part of any public or corporate road or railroad there shall be apportioned to the county, if the road is a state, county or free turnpike road, or to the corporation if a corporate road or railroad, a share of the cost and expenses thereof proportionate to the benefits to said road or railroad. All lands of the state or any county school district or other municipal corporation shall be subject to the provisions of this act. [L. '05, p. 288, § 9.]

"Act" refers to §§ 4286–4301.

§ 4295. Time and Manner of Payments—Extension of Tax-roll.—When said apportionment or assessment of benefits shall have been approved as hereinbefore provided, the commissioners shall determine at what time and in what number of assessments, not to exceed four, they will require the same to be paid, and order that the assessments, as made by them, be placed upon the tax-roll accordingly against the lots or lands assessed. When the commissioners make an assessment they shall cause an entry to be made directing the clerk of the board of county commissioners to make and furnish to the treasurer of the county a special tax-roll with the assessment arranged thereon as required by their order, and the clerk of the board of county commissioners shall retain a copy thereof in his office, and all assessments shall be liens upon the property against which they are assessed, and shall be collected and accounted for by the treasurer as taxes: Provided, that the treasurer shall accept in payment of assessments the bonds issued under the provisions of section 4289, supra, and said treasurer shall place the assessment so collected in said dike fund. The list thus prepared must remain in the office of the treasurer for thirty days or longer if ordered by the board of county commissioners, and during the time it so remains any person may pay the amount of charges against any tract to the treasurer without costs, or if so ordered by the board of county commissioners said payments may be by installments, and if at the end of thirty days or the longer period fixed by said commissioners, any of the charges or any of the installments ordered by them already due have not been paid, the treasurer must transmit a list to the prosecuting attorney, who must at once proceed by civil action to collect such

charges and foreclose the liens therefor, and such charges or liens shall draw interest at the same rate as the delinquent taxes for state and county purposes. [L. '05, p. 288, § 10.]

§ 4296. Payment of County Costs from Diking Fund.—Where exceptions to the apportionment or assessment are sustained by the county commissioners the costs of the hearing thereon shall be paid out of the county general fund, and where upon any appeal provided for in this act costs are taxed against the county, such costs shall be paid in the same manner, and the county shall be reimbursed therefor out of the first moneys paid into the said diking fund provided for in this act. If by reason of the payment of such costs, or the reduction or annulment of any assessment on appeal, the apportionment or assessment made by the board of county commissioners shall be found insufficient to make the payments required by this act, then said board shall increase such apportionment or assessment in the same proportion as such apportionment or assessment was made: Provided, however, that the total apportionment to and assessment against any tract or lot shall not exceed the benefits derived by the same. [L. '05, p. 289, § 11.]

§ 4297. Action Brought in Name of County.—All actions authorized by this act to be brought by the prosecuting attorney shall be brought in the name of the county. [L. '05, p. 290, § 12.]

"Act" refers to §§ 4286–4301.

§ 4298. Lists of Prior Assessments, etc., to be Filed.—The county treasurer of any county in which any diking district or districts were organized under said act approved February 2, 1888, or any acts amendatory thereof, shall within ninety days after the date of the first publication of the notice provided for in section 4287, supra, make out and file with the board of county commissioners a list for each of such diking districts; said list to contain a description of each tract or lot of land against which assessments were made under said act approved February 2, 1888, or any acts amendatory thereof, and to show any and all assessments made against the same and what payments were made upon the same. [L. '05, p. 290, § 13.]

§ 4299. No Other Costs to be Taxed.—No costs shall be taxed for the work required to be done according to the provisions of this act by the county treasurer or the county auditor or the clerk of the board of county commissioners except as herein otherwise provided. [L. '05, p. 290, § 14.]

Cited in 80 Wash. 104, 105, 107.

§ 4300. Outstanding Warrants—Order of Payment—Interest.—Outstanding warrants or orders, together with interest thereon, issued in connection with the expenses of the construction or maintenance

of dikes or dams constructed or maintained under the provisions of said act approved February 2, 1888, or of any acts amendatory thereof, shall be paid first and shall be paid in the order of their issuance; and thereafter indebtedness such as is authorized by this act, incurred by said board of county commissioners, shall be paid in the order of the issuance of the evidence of such indebtedness. Warrants issued by the said board shall draw interest at the rate of six per cent per annum. [L. '05, p. 290, § 15.]

§ 4301. Irregularities not to Invalidate.—The fact that a contract has been let, or such improvement shall have been made and completed in whole or in part shall not prevent such assessments being made; nor shall the omission, failure or neglect of any officer or officers to comply with the provisions of law governing such county or county commissioners as to petition, notice, resolution to improve, estimate, survey, diagram, manner of letting the contract or section of work, or any other matter whatsoever connected with the improvement and the first assessment thereof, operate to invalidate or in any way to affect the making of the new assessment or reassessment as provided for herein, charging the property benefited with the expense thereof: Provided, that such new assessment shall be for an amount which shall not exceed the actual cost and value of the improvement, together with the interest and costs as herein provided for, and that such amount be equitably apportioned upon the property benefited thereby according to the provisions of the laws of this state relative to municipal corporations. [L. '05, p. 290, § 16.]

Distribution. Of decedent's estates, see §§ 1364–1371, 1579–1609.
Districts. See "Congressional Districts and Elections," § 3673.
Ditches. See "Dikes and Drains"; "Irrigation and Water Rights," § 6343.
Divorce. See §§ 982–997.
Domestic Animals. See "Animals," § 3140.
Drains. See "Dikes and Drains."
Drug and Food Act. See "Health," § 5453.
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CHAPTER I.

School System and State Officers.

§ 4302. Uniform School System.—A general and uniform system of public schools shall be maintained throughout the state of Washington, and shall embrace common schools (including high and ele-

mentary schools, schools for special help and discipline, schools or departments for special instruction), technical schools, the University of Washington, the State College of Washington, state normal schools, state training schools, schools for defective youth, and such other educational institutions as may be established by law and maintained at public expense. [L. '09, p. 230, § 1. Cf. L. '90, p. 348, § 1; 1 H. C., § 8769; L. '97, p. 356, § 1.]

Former laws cited in 13 Wash. 362, 702; 25 Wash. 124; 29 Wash. 598; 32 Wash. 274, 666; 36 Wash. 409, 422, 432; 43 Wash. 242; 69 Wash. 192; 72 Wash. 455.

For former enactments relating to common schools in Washington Territory, see L. '54, pp. 319–328; L. '55, p. 112; L. '57, pp. 33, 34; L. '58, pp. 19–23; L. '60, p. 297 and pp. 304–318; L. '61, pp. 21–22; L. '62, p. 46; L. '63, pp. 456–473; L. '66, pp. 3–23; L. '67, pp. 23–43; L. '68, pp. 18–88; L. '71, pp. 12–30; L. '73, pp. 419–436; L. '75, p. 113; L. '77, pp. 257–283; L. '83, pp. 1–24; L. '86, pp. 1–31; L. '88, pp. 21–24 and 199–203.

See Const., Art. IX, § 2.

§ 4303. Administration.—The administration of the public school system shall be intrusted to a superintendent of public instruction, a state board of education, to regents or trustees for educational institutions, to county superintendents of common schools, to boards of directors and district clerks. [L. '90, p. 348, § 2; 1 H. C., § 770; L. '97, p. 363, § 19; L. '09, p. 230, § 2.]

Cited in 84 Wash. 83.

§ 4304. Vacancies.—Whenever any vacancy in the board shall occur, whether by death, removal, resignation or otherwise, the governor shall fill the vacancy by appointment. [L. '90, p. 355, § 9; 1 H. C., § 774; L. '97, p. 367, § 26.]

§ 4305. State Superintendent—Term of Office.—A superintendent of public instruction shall be elected by the qualified electors of the state, on the first Tuesday after the first Monday in November of the year in which state officers are elected, and shall hold his office for the term of four years, and until his successor is elected and qualified. [L. '09, p. 231, § 1. Cf. L. '61, pp. 55, 56; L. '90, p. 348, § 3; L. '91, p. 237, § 1; 1 H. C., § 119; L. '97, p. 363, § 20.]

See Const., Art. 3, §§ 1, 3 and § 8986, infra, time of election and term of office.

See infra, § 8987, oath.

§ 4306. Salary.—The superintendent of public instruction shall receive an annual salary of three thousand dollars, payable monthly, upon warrant of the state auditor, drawn upon the state treasurer, in the same manner as other state officers are paid. [L. '09, p. 231, § 2. Cf. L. '97, p. 363, § 21; L. '07, p. 174, § 1.]

See Const., Art. III, § 22.

See infra, § 8985.

§ 4307. Powers and Duties Enumerated.—The powers and duties of the superintendent of public instruction shall be:

First. To have supervision over all matters pertaining to the public schools of the state.

Second. To report biennially to the governor on or before the first day of November preceding the regular session of the legislature, of which report five thousand copies shall be printed and delivered to the superintendent of public instruction, who shall furnish one copy to be deposited in the state library, one copy to each county superintendent of schools and one copy to each district library. Said report shall contain a statement of the general condition of the public schools of the state, with full statistical tables by counties showing the number of schools and the attendance, the state and county funds apportioned, amount received from special tax and from other sources, amount expended for salaries of teachers, the salaries paid by the several counties to the county superintendents of schools and the amount paid for incidentals and expenses; the amount paid for building and providing schoolhouses with furniture and apparatus, the amount of bonded and other school indebtedness, with the rate of interest paid thereon, the reports of all state educational institutions, or such portions of them as he may think advisable, together with such other facts as he may deem of general interest. He shall also include in his report a statement of plans for the management and improvement of the schools.

Third. To prepare and have printed such blanks, forms, registers, courses of study, rules and regulations for the government of the common schools, questions prepared for the examination of teachers, and such other blanks and books as may be necessary for the discharge of the duties of teachers and officers charged with the administration of the laws relating to the common schools, and to distribute the same to the county superintendents.

Fourth. To travel, without neglecting his other official duties as superintendent of public instruction, for the purpose of attending educational meetings or conventions within this or adjoining states, of visiting schools, of consulting county superintendents or other school officers.

Fifth. To submit to the state auditor a monthly statement of his expenditures for traveling expenses.

Sixth. To cause to be printed with an appendix of appropriate forms and instructions for carrying into execution the laws relating to public schools, and to distribute to each county superintendent a sufficient number of copies to supply each district officer, and to cause the same to be printed and distributed as often as any change in the laws shall make it of sufficient importance, in his opinion, to justify the same.

Seventh. To act as ex-officio president of the state board of education.

Eighth. To hold, annually, a convention of the county superintendents of the state at such time and place as he may deem convenient, for the discussion of questions pertaining to supervision and the administration of the school laws and such other subjects affecting the welfare and interests of the common schools as may be brought before it. Said convention shall continue in session not less than two days nor more than three days at the option of the superintendent of public instruction. It shall be the duty of every county superintendent in this state to attend said convention during its entire session, and any county superintendent who attends the convention shall receive actual traveling expenses in attending said convention.

Ninth. He shall file all papers, reports and public documents transmitted to him by the school officers of the several counties of the state, each year separately. Copies of all papers filed in his office, and his official acts, may be certified by him and attested by his official seal, and when so certified shall be evidence equally and in like manner as the original paper.

Tenth. To require annually, on or before the fifteenth day of August, of the president, manager, or principal of every educational institution in this state, a report of such facts arranged in such form as he may prescribe, and he shall furnish blanks for such reports; and it is hereby made the duty of every president, manager or principal, to fill up and return such blanks within such time as the superintendent of public instruction shall direct.

Eleventh. To keep in his office a directory of all boards of regents and trustees of state educational institutions, of the faculties of said institutions, and of all teachers receiving certificates to teach in the common schools of this state.

Twelfth. To issue certificates as provided by law.

Thirteenth. To keep in his office at the capital of the state, all books and papers pertaining to the business of his office, and to keep and preserve in his office a complete record of statistics, and all matters pertaining to the educational interests of the state, as well as a record of the meetings of the state board of education.

Fourteenth. To decide all points of law which may be submitted to him in writing by any county superintendent, or that may be submitted to him by any other person, upon appeal from the decision of any county superintendent; and he shall publish his rulings and decisions from time to time for the information of school officers and teachers; and his decisions shall be final unless set aside by a court of competent jurisdiction.

Fifteenth. To administer oaths and affirmations in the discharge of his official duties.

Sixteenth. To deliver over to his successor, at the expiration of his term of office, all records, books, maps, documents and papers of whatever kind belonging to his office or which may have been received by him for the use of his office.

Seventeenth. To prepare and from time to time to revise a state manual of Washington, which shall be sold at actual cost of publication and distribution, said manual to contain a sketch of the history of the state, an outline of the constitution of the state, excerpts from the school code, the courses of study and rules for the general government of the common schools, a map of the state, and a map of the topography of the state, and such other matter as the state superintendent or the state board of education from time to time shall determine.

Eighteenth. To make a certified copy of papers filed in his office and of his official acts, attested by his official seal. He shall charge for such certified copy fifteen cents per folio, and all money so received shall be immediately paid to the state treasurer and credited to the general fund of the state.

Nineteenth. To perform such other duties as may be required by law. [L. '09, p. 231, § 3. Cf. L. '90, pp. 348–351, §§ 3, 4; L. '91, pp. 237–230, §§ 1, 2; 1 H. C., §§ 119, 120; L. '97, p. 363, § 22; L. '99, p. 307, § 4; L. '01, p. 41, § 1; L. '01, p. 376, § 6; L. '03, p. 166, § 9; L. '07, p. 604, § 1.]

See infra, § 9009, printing of reports.

§ 4308. Assistant, Deputy and Stenographer.—The superintendent of public instruction is hereby authorized to appoint one assistant superintendent of public instruction, who shall be the holder of not less than a first grade certificate; a deputy superintendent of public instruction, who shall also act as an inspector of schools, who shall be the holder of not less than a first grade certificate; a stenographer, and also to employ such other assistance as the needs of his office shall require from time to time, and for the payment of whose services appropriations shall have been made by the legislature of this state. [L. '09, p. 234, § 4. Cf. L. '90, p. 351, § 5; 1 H. C., § 121; L. '97, p. 366, § 23; L. '03, p. 169, § 10; L. '05, p. 104, § 1.]

§ 4309. State Board of Education—Term of Office.—The state board of education shall consist of the superintendent of public instruction, the president of the University of Washington, the president of the State College of Washington, the principal of one of the state normal schools elected by the principals of the state normal schools, and three persons holding life diplomas issued under the

authority of this state and actively engaged in educational work, appointed by the governor, one of whom shall be a superintendent of a district of the first class, one a county superintendent of schools, one a principal of a fully accredited four year high school.

The appointed and elected members of the board shall hold their office for two years from the date of appointment and shall serve until their successors are appointed and qualified. [L. '09, p. 234, § 1. Cf. L. '90, p. 352, § 6; 1 H. C., § 771; L. '97, p. 366, § 24; L. '01, p. 376, § 6; L. '07, p. 608, § 2.]

Vacancies how filled: See supra, § 4304.

§ 4310. President of Board.—The superintendent of public instruction shall be ex-officio president of the board, and shall furnish all necessary record-books and blanks for its use, and shall represent the board in directing the work of high school inspection. [L. '09, p. 235, § 2.]

§ 4311. Secretary of Board.—The deputy superintendent of public instruction shall be ex-officio secretary of said board, but shall not be entitled to a vote in its proceedings. He shall keep a correct record of its proceedings in a good and well-bound book, which shall be kept in the office of the superintendent of public instruction. He shall also, upon request, furnish to the executive head of any or all of the state institutions of higher education a certified copy of such proceedings. [L. '09, p. 235, § 3.]

§ 4312. Meetings—Expenses.—The state board of education shall hold an annual meeting at the capital of the state on the third Tuesday of June of each year, and may hold such special meetings as may be deemed necessary for the transaction of public business, such special meetings to be called by the superintendent of public instruction. The persons serving as members of the state board of education shall be reimbursed for the actual expenses incurred in the performance of their duties, which expenses shall be paid by the state treasurer on warrants of the state auditor, out of funds not otherwise appropriated, upon the certificate of the superintendent of public instruction: Provided, that members of the board who are not under salary to whom special committee work is assigned shall be paid for such services five dollars per day. [L. '09, p. 235, § 4. Cf. L. '90, p. 352, § 7; 1 H. C., § 772; L. '97, p. 367, § 25; L. '03, p. 169, § 11.]

§ 4313. Powers and Duties of Board.—The state board of education shall have power, and it shall be its duty:

First. To approve the preparatory requirements for entrance to the University of Washington, the State College of Washington, and the state normal schools of Washington.

Second. To approve courses for the state normal schools, for the department of education of the University of Washington, and the State College of Washington, and for all normal training departments of higher institutions within the state of Washington which may be accredited and whose graduates may become entitled to receive teachers' life diplomas or professional certificates.

Third. To investigate the character of the work required to be performed as a condition of entrance to and graduation from normal schools, colleges, universities and other institutions of higher education and to prepare an accredited list of those higher institutions of learning of this and other states whose graduates may be awarded teachers' certificates by the superintendent of public instruction without examination except upon the state manual of Washington: Provided, that the entrance and graduation requirements of all colleges and universities whose diplomas are accredited must be equal to those of the University of Washington; and the requirements for normal schools shall be equal to the advanced course of the state normal schools of this state.

Fourth. To prepare an accredited list of state life certificates and life diplomas issued in other states by examination, upon which certificates may be issued in this state without examination, except in Washington State Manual: Provided, that the requirements to obtain such certificates and diplomas must be equal to the requirements for a life certificate in this state.

Fifth. To examine and accredit secondary schools: Provided, that no private academy shall be placed upon the accredited list so long as secret societies are allowed to exist among its students.

Sixth. When requested by any institution of higher learning situated within the state maintaining a normal training department the board shall send an inspector, qualified for such service, to examine the equipment of such department and to ascertain the extent and character of the courses provided and the preparatory requirements for admission to them, which requirements must include the completion of a high school course or its equivalent, and particularly the qualifications and experience of the instructors and supervisors who are responsible for the work of this department.

The inspector shall make a detailed report, including declaration of his opinion of the adequacy of the department for the work of educating and training teachers, which report shall be placed on file in the office of the superintendent of public instruction.

If any such normal training department is ascertained to be equipped and manned adequately for the education and training of teachers and to be under reliable and responsible management and upon a basis of efficiency equal to that of the normal schools maintained by the state it shall be the duty of the board to accredit such

department and to grant life diplomas to graduates who present diplomas certifying that the holders have completed the courses approved by the board when the applicants have complied with the other requirements for life diplomas. It shall be the further duty of the board to inspect all accredited normal training departments each year.

Seventh. To prepare an outline course or courses of study for the primary, grammar and high school departments of the common schools, and to prescribe such rules for the general government of the common schools, as shall secure regularity of attendance, prevent truancy, secure efficiency and promote the true interests of the common schools.

Eighth. To prepare a uniform series of questions to be used by the county superintendents in the examination of teachers, and to determine rules and regulations for conducting the same, and to prepare questions for the examination of applicants for state elementary certificates, and life diplomas.

Ninth. To prepare answers to all examination questions which are prepared by the board.

Tenth. To prepare uniform questions for use in the examination of the pupils of the schools of the state completing the grammar school course of study, and to prescribe uniform rules and regulations for the conducting of such examinations.

Eleventh. To hear and decide appeals as provided by law. [L. '09, p. 236, § 5. Cf. L. '90, p. 352, § 8; 1 H. C., § 773; L. '95, p. 373, § 1; L. '97, p. 367, § 27; L. '03, p. 170, § 12; L. '07, p. 609, § 3.]

Former laws cited in 36 Wash, 409, 414, 415, 422.

See supra, § 4307, appeals.

§ 4314. Further Duties of Board.—The board shall arrange such courses and adopt and enforce such regulations as will place the state institutions in harmonious relations with the common schools and with each other, and unify the work of the public school system. [L. '09, p. 238, § 6. Cf. L. '97, p. 368, § 29.]

§ 4315. Seal.—The state board of education shall adopt a seal, which shall be kept in the office of the superintendent of public instruction. [L. '09, p. 238, § 7.]

CHAPTER II.

University of Washington.

§ 4316. Designation.—The State University, as heretofore located and established in the city of Seattle, county of King, shall be designated and named the University of Washington. [L. '09, p. 238, § 1. Cf. L. '90, p. 395, § 1; 1 H. C., § 934; L. '97, p. 427, § 182.]

Former laws cited in 3 Wash. 129; 74 Wash. 578.
See infra, § 5041, etc., University funds.
See infra, § 6636, etc., University lands.
See infra, § 6992, museum of.
See infra, § 8988, state board of control to visit.

§ 4317. Purpose—Tuition—Admission of Students.—The aim and the purpose of the University of Washington shall be to provide for students of both sexes, on equal terms, a liberal instruction in the different branches of literature, science, art, law, medicine, military science and such other departments of instruction as may be established therein from time to time by the board of regents. Tuition in the University of Washington, except as may be provided by the board of regents with reference to the arts or to special courses of study, shall be free to all bona fide residents of this state. Non-residents of this state shall be admitted to the state university on such terms as may from time to time be prescribed by the board of regents: Provided, that no student shall be admitted to any department of the university who is under the age of sixteen years. The said university shall, as far as practicable, begin its course of study in its literary and scientific departments at the points where the same are completed in the public high schools of this state. No student shall be admitted except upon examination satisfactory to the faculty of the university: Provided, however, that students shall be admitted without examination upon presentation of certificates from those public high schools and other educational institutions in this state whose courses of study shall have been approved by said faculty of the university, and accredited by the state board of education: Provided, that said faculty shall have power to specify the preparation required for admission to any department of the university. [L. '09, p. 238, § 2. Cf. L. '90, p. 296, § 2; 1 H. C., § 935; L. '93, p. 296, § 6; L. '97, p. 427, § 183.]

Cited in 71 Wash. 216.

§ 4318. Regents—Term—Quorum—Vacancy, etc.—The government of the University of Washington shall be vested in the board of regents to consist of seven members, who shall be appointed by the governor of the state, by and with the advice and consent of the senate, and who shall hold their offices respectively for a term of six years from the second Monday in March next succeeding their appointment and until their successors shall be appointed and shall qualify: Provided, that regents now serving upon such board shall continue as such during the terms for which they were respectively appointed. Four members of said board shall constitute a quorum for the transaction of business. Whenever there shall be a vacancy in the said board of regents, from any cause whatever, it shall be the duty of the governor to fill such office by appointment, and the

person or persons so appointed shall continue in office until the close of the legislature next thereafter, or until others are appointed and qualified in their stead. Each regent before entering upon the duties of his office must qualify by taking the usual oath of office before some officer authorized by law to administer the same and file a copy of said oath with the secretary of state. [L. '09, p. 239, § 3. Cf. L. '90, p. 396, §§ 3, 4; 1 H. C., §§ 936, 937; L. '95, p. 193, § 1; L. '97, p. 428, § 184.]

§ 4319. Organization of Board—Meetings.—The board shall organize by electing from its membership a president and an executive committee, of which committee the president shall be ex-officio chairman. The board shall hold regular quarterly meetings, and during the interim between such meetings the executive committee may transact business for the whole board: Provided, that the executive committee may call special meetings of the whole board when such action is deemed necessary. [L. '97, p. 428, § 185; L. '09, p. 240, § 4.]

See infra, § 5396, president a member of the geological survey board.

§ 4320. Secretary and Treasurer, Appointment of—Duties.—The regents shall appoint a secretary, a treasurer, and librarian, who shall hold their respective offices during the pleasure of the board. It shall be the duty of the secretary to record all proceedings of the board and carefully preserve the same, and all the books and papers. The treasurer shall keep a true and faithful account of all moneys received and paid out by him, and shall give bonds for the faithful performance of the duties of his office in such amount as the regents may require. [L. '90, p. 396, § 6; 1 H. C., § 939.]

Cited in 74 Wash. 578.

§ 4321. Powers and Duties of Regents Enumerated.—The board of regents may adopt by-laws or rules and regulations for its own government. The powers and duties of the board of regents are as follows:

First. The said board shall have full control of the university and its property of various kinds, and shall employ the president, members of the faculty, assistants and employees of the institution, who shall hold their positions during the pleasure of said board of regents.

Second. It shall be the duty of the board of regents, with the assistance of the faculty of the university, to prescribe the course of study in the various departments of the institution and to publish the annual catalogue.

Third. The said board shall grant to every student, upon graduation, a suitable diploma or degree, such student having been rec-

ommended for such honor by the faculty. The board shall also have power, upon recommendation of the faculty, to confer the usual honorary degrees upon other persons than graduates of this university in recognition of their learning or devotion to literature, art or science; but no degree shall ever be conferred in consideration of the payment of money or other valuable thing. The said board is also empowered, upon recommendation of the faculty, to grant normal diplomas which shall entitle the holder to teach in any public school in the state for a period of five years; and to grant university life diplomas to candidates who shall give satisfactory evidence of having taught successfully for twenty-four months: Provided, that all candidates for the normal diploma and life diploma shall have satisfactorily completed not less than twelve semester hours in the department of education.

Fourth. The board of regents is authorized to receive such bequests and gratuities as may be granted to the said university and to invest or expend the same according to the terms of said bequests or gratuities. The said board shall adopt proper rules to govern and protect the receipt and expenditure of the proceeds of all fees, bequests or gratuities, and shall make full report of the same in the customary biennial report to the governor, or more frequently if required by law.

Fifth. The board of regents is authorized and empowered to give and execute, on behalf of the state of Washington, the bonds and other papers required by the war department for the safekeeping of the arms and equipments loaned by the United States to the University of Washington.

Sixth. The board of regents shall transmit, on the first day of January preceding each regular session of the legislature, to the governor a printed report of all the doings since their last report, not exceeding three hundred in number, giving full information of the receipt and expenditure of money, furnish an estimate of the needs of the institution, and give such information as will be helpful to the state authorities in providing for the said institution.

Seventh. The members of said board of regents shall serve without compensation. Each regent, however, shall be paid his actual traveling expenses in going to and coming from any meeting of said board, and such claims for expenses shall be audited on vouchers issued by the president and secretary of said board the same as any other claims are audited. [L. '09, p. 240, § 5. Cf. L. '90, pp. 396–398, §§ 7, 9, 11; 1 H. C., §§ 938, 949, 950; L. '93, p. 299, § 10; L. '95, p. 194, § 2; L. '97, p. 429, § 186.]

Cited in 74 Wash. 577, 578.

See infra, § 6653, control of university lands.

See infra, § 4551, authorized to apply for participation in Carnegie fund.

§ 4322. Faculty, How Constituted.—The faculty of the University of Washington shall consist of the president and the professors, and the said faculty shall have charge of the immediate government of the institution under such rules as may be prescribed by the board of regents. [L. '09, p. 241, § 6. Cf. 1 H. C., § 944; L. '97, p. 430, § 187.]

§ 4323. Nonsectarian.—The University of Washington shall never be under the control of any religious or sectarian denomination or society whatever. [L. '90, p. 396, § 5; 1 H. C., § 947; L. '97, p. 430; § 188; L. '09, p. 242, § 7.]

See Const., Art. IX, § 4.

§ 4324. Attorney General Legal Adviser.—The attorney general of the state shall be the legal adviser of the president and the board of regents of the university, and he shall institute and prosecute or defend all suits in behalf of the same. [L. '90, p. 399, § 19; 1 H. C., § 952; L. '97, p. 430, § 189; L. '09, p. 242, § 8.]

§ 4325. Authority of Regents to Expend Income.—The board of regents is authorized to expend such portion of the income of the university fund as it may deem expedient for the purchase of apparatus, library, and cabinets of natural history, providing suitable means to keep and preserve the same, and in the procurement of other means of facility for instruction. [L. '90, p. 397, § 8; 1 H. C., § 946.]

Quaere: Whether this section is superseded by § 4321, supra.

§ 4326. Erection of Buildings.—It shall be the duty of the board of regents herein provided for, as soon after their organization as practicable, and as soon as there shall be an appropriation therefor in the hands of the state treasurer in any amount sufficient to warrant the beginning the erection of the several buildings herein provided for, or any wing or section of the same, to enter into contracts with one or more contractors for the erection and construction of such suitable buildings and improvements for the institution created by this chapter as in their judgment shall be deemed best, or the funds aforesaid shall warrant, all things considered; such contract or contracts to be let after open public notice and competition under such regulations as shall be established by said board to the person or persons who offer to execute such work on the most advantageous terms: Provided, that in all cases said board shall require from contractors a good and sufficient bond for the faithful performance of their work, and the full protection of the state against mechanics' and other liens: And provided further, that the board shall not have the power to enter into any contract for the erection of any buildings or improvements which shall bind said board to pay out any

sum of money in excess of the amount provided for said purpose. [L. '09, p. 242, § 9.]

The meaning of "several buildings herein provided for" is not clear, as this act does not authorize or provide for any.

§ 4327. Regents may Employ Architects.—The board provided for in this chapter shall have power in their discretion to employ skilled architects and superintendents to prepare plans and specifications, and to supervise the construction of any of the buildings provided for in this chapter, and to fix the compensation for such services subject to the provisions and restrictions of this act. [L. '09, p. 242, § 10.]

See note to last section.

§ 4328. Disbursement of Funds.—Whenever there shall be any money in the hands of the state treasurer to the credit of any of the specific funds set apart for that institution created by this chapter, deemed sufficient by the board to commence the erection of any of the necessary buildings or improvements, or to pay the necessary running or other expenses of said institution, the state auditor, on the request in writing of said board, shall, and it is hereby made his duty to draw his warrant in favor of the treasurer of said board and upon the state treasury against the specific fund belonging to said institution in such sum not exceeding the amount on hand in such specific fund at such time as said board may deem necessary: Provided, that said board shall draw said money as it may be necessary to disburse the same. [L. '09, p. 243, § 11.]

§ 4329. Donations to be Kept as Separate Fund.—All donations of money, security, or other property shall be paid into the state treasury and invested as other funds of the university, and donations may be made to and for the sole use of any one of the departments of the university, and donations so made shall be kept as a separate fund for the use of such department. [L. '90, p. 399, § 18; 1 H. C., § 956.]

It seems that subdivision 4 of § 4321, supra, may supersede parts of this section.

§ 4330. Restrictions upon Regents as to Debts, etc.—The board of regents are hereby prohibited from creating any debt as against the university, or in any manner encumbering the same, or of incurring any expense beyond their ability from the annual income of the university for the then current year. [L. '90, p. 399, § 20; 1 H. C., § 957.]

Cited in 74 Wash. 578.

CHAPTER III.

State College of Washington.

§ 4332. Designation.—The name of the Washington Agricultural College Experiment Station and School of Science be and the same is hereby changed to the State College of Washington. [L. '05, p. 83, § 1.]

Cited in 51 Wash. 551.

§ 4333. Establishment—Purpose—Admission of Students.—The State College, Experiment Station and School of Science of the state of Washington, as heretofore located at Pullman, Whitman county, shall be an institution of learning open to the children of all residents of this state, and to such other persons as the board of regents may determine, under such rules and regulations as may be prescribed by the board of regents; shall be nonsectarian in character, and devoted to practical instruction in agriculture, mechanical arts, and natural sciences connected therewith, as well as a thorough course of instruction in all branches of learning upon agricultural and other industrial pursuits.

No student shall be admitted except upon examination satisfactory to the faculty of the state college: Provided, however, that students shall be admitted without examination upon presentation of certificates from those public high schools and other educational institutions in this state whose courses of study shall have been approved by said faculty of the state college and accredited by the state board of education: Provided further, that said faculty shall have power to specify the preparation required for admission to any department of the state college. [L. '09, p. 243, § 1. Cf. L. '91, p. 334, §§ 1, 2; 1 H. C., §§ 960, 961; L. '97, p. 430, § 190.]

Cited in 51 Wash. 551; 71 Wash. 216.

§ 4334. Ex-officio Visitors.—The governor of the state of Washington, the superintendent of public instruction, members of the legislature, and county commissioners shall be ex-officio visitors of said college. But said visitors shall have no power granted to control the action of the board of regents or to negative its duties as defined by law. [L. '09, p. 244, § 2. Cf. L. '90, p. 262, § 5; L. '97, p. 431, § 191.]

Cited in 51 Wash. 552.

See infra, § 8933, visitation by state board of control.

§ 4335. Courses of Instruction.—The course of instruction of said college shall embrace the English language, literature, mathematics, philosophy, civil and mechanical engineering, chemistry, animal and vegetable anatomy and physiology, the veterinary art, entomology, geology, political economy, rural and household economy, horticul-

ture, moral philosophy, history, mechanics, and such other courses of instruction as shall be prescribed by the board of regents. One of the objects of said college shall be to train teachers of physical science, and thereby further the application of the principles of physical science to industrial pursuits; to collect information as to schemes of technical instruction adopted in other parts of the United States and in foreign countries, and to hold farmers' institutes at such times and places and under such regulations as the board of regents may determine: Provided, that no student shall be admitted to any department of the state college who is under the age of sixteen years. [L. '09, p. 244, § 3. Cf. L. '91, p. 334, § 3; 1 H. C., § 962; L. '97, p. 431, § 192.]

Cited in 51 Wash. 553.

§ 4336. Laboratories and Departments of Instruction—Military Tactics.—The board of regents shall provide that all instruction given in the college shall, to the utmost practicable extent, be conveyed by means of practical work in the laboratory, and shall provide in connection with said college the following laboratories: One physical laboratory or more, one chemical laboratory or more, and one biological laboratory or more, and suitably furnish and equip the same. Said board of regents shall provide that all male students shall be trained in military tactics. Said board of regents shall establish a department of elementary science, and in connection therewith provide instruction in the following subjects: Elementary mathematics, including elementary trigonometry, elementary mechanics, elementary and mechanical drawing and land surveying. Said board of regents shall establish a department of said college to be designated as the department of agriculture, and in connection therewith shall provide instruction in the following subjects—First: Physics, with special application of its principles to agriculture. Second: Chemistry, with special application of its principles to agriculture. Third: Morphology and physiology of plants, with special reference to the commonly grown crops and their fungus enemies. Fourth: Morphology and physiology of the lower forms of animal life, with special reference to insect pests. Fifth: Morphology and physiology of the higher forms of animal life, and in particular of the horse, cow, sheep and swine. Sixth: Agriculture, with special reference to the breeding and feeding of livestock, and the best mode of cultivation of farm produce. Seventh: Mining and metallurgy. And it shall appoint demonstrators in each of these subjects, to superintend the equipment of a laboratory and to give practical instruction in the same. Said board of regents shall establish an agricultural experiment station in connection with the department of agriculture of said college, appoint its officers and prescribe such regulations for its management as it

may deem expedient. Said board of regents may establish other departments of said college, and provide courses of instruction therein, when those are, in its judgment, required for the better carrying out of the object of the college. [L. '09, p. 244, § 4. Cf. L. '90, p. 263, § 8; 1 H. C., § 963; L. '97, p. 431, § 193.]

Cited in 51 Wash. 553.

§ 4337. Management, in Whom Vested—Regents—Term—Bond, etc.—The management of said college and experiment station, the care and preservation of all property of which the institution shall become possessed, the erection and construction of all buildings necessary for the use of said college and station, and the disbursement and expenditure of all money provided for by this chapter, shall be vested in a board of five regents, said five members of the board of regents shall be appointed in the manner provided by law; said regents and their successors in office shall have the right to cause all things to be done necessary to carry out the provisions of this chapter. The board of regents provided for in this chapter, shall be appointed by the governor, by and with the consent of the senate, one for a term of two years, two for a term of four years, and two for a term of six years; and each regent shall, before entering upon the discharge of his respective duties as such, execute a good and sufficient bond to the state of Washington, with two or more sufficient sureties, residents of the state, in the penal sum of not less than five thousand dollars ($5,000) each, conditioned for the faithful performance of his duties as such regent: Provided, that all appointments made to fill vacancies caused by death, resignation or otherwise, shall be for the unexpired term of the incumbent whose place shall have become vacant. All other appointments made subsequent to the appointment of the first board of regents provided for in this act shall be for the term of six years and until the appointment and qualification of a successor to each appointee: Provided further, that regents now serving upon such board shall continue as such during the term for which they were respectively appointed. [L. '09, p. 245, § 5. Cf. L. '91, p. 335, § 4; 1 H. C., § 964; L. '97, p. 432, § 194.]

Cited in 51 Wash. 551.

See infra, § 4551, authorized to apply for participation in Carnegie fund.

§ 4338. Organization of Board—Treasurer, Bond of—Secretary, Bond of.—The board of regents shall meet and organize by the election of its president and treasurer from their own number, on the first Wednesday in April of each year. The person so elected as treasurer shall, before entering upon the discharge of his duties as such, execute a good and sufficient bond to the state of Washington

with two or more sufficient sureties, residents of the state, in the penal sum of not less than forty thousand dollars ($40,000), conditioned for the faithful performance of his duties as such treasurer, and that he will faithfully account for and pay over to the person or persons entitled thereto all moneys which shall come into his hands as such officer, which bond shall be approved by the governor of the state, and shall be filed with the secretary of state. The president of the college shall be secretary of the board of regents, and shall perform all the duties pertaining to that office, but shall not have the right to vote. The secretary shall in like manner as the treasurer give a bond in the penal sum of not less than five thousand dollars ($5,000), conditioned for the faithful performance of his duties as such officer. [L. '09, p. 246, § 6. Cf. L. '91, p. 336, § 6; 1 H. C., § 966; L. '97, p. 433, § 195.]

Cited in 51 Wash. 551.

§ 4339. Duties of President, Treasurer and Secretary.—The president of said board shall be the chief executive officer, shall preside at all meetings thereof, except that in his absence the board may appoint a president pro tempore, and sign all instruments required to be executed by said board. The treasurer shall be the financial officer of said board, shall keep a true account of all moneys received and expended by him. The secretary shall be the recording officer of said board, shall attest all instruments required to be signed by the president, and shall keep a true record of all the proceedings of said board, and do all other things required of him by said board. [L. '09, p. 247, § 7. Cf. L. '91, p. 336, § 7; 1 H. C., § 967; L. '97, p. 434, § 196.]

Cited in 51 Wash. 551.

§ 4340. By-laws, Enactment of—Experimental Station.—The regents shall have the power, and it shall be their duty, to enact laws for the government of said State College, Experiment Station and School of Science: Provided, the board of regents shall maintain at least one experimental station in the western portion of the state. [L. '09, p. 247, § 8. Cf. L. '91, p. 336, § 8; 1 H. C., § 968; L. '97, p. 434, § 197.]

§ 4341. Disposition of Moneys and Rules for Management of.—The board of regents shall direct the disposition of any moneys belonging to or appropriated to the agricultural college, experiment station and school of science, established by this act, and shall make all rules and regulations necessary for the management of the same, adopt plans and specifications for necessary buildings, and superintend the construction of said buildings, and fix the salaries of professors, teachers and other employees, and tuition fees to be charged

in said college. [L. '09, p. 247, § 9. Cf. L. '91, p. 337, § 9; 1 H. C., § 969; L. '97, p. 434, § 198.]

Cited in 51 Wash. 551.

§ 4342. Experimental Station Established by Congress.—The agricultural experiment station provided for in this act in connection with the state college shall be under the direction of said board of regents of said college for the purpose of conducting experiments in agriculture according to the terms of section one (1) of an act of congress approved March 2, 1887, and entitled "An act to establish agricultural experiment stations in connection with the colleges established in the several states, under the provisions of an act approved July 2, 1862, and of the acts supplementary thereto." The said college and experiment station shall be entitled to receive all the benefits and donations made and given to similar institutions of learning in other states and territories of the United States by the legislation of the congress of the United States now in force, or that may be enacted, and particularly to the benefits and donations given by the provisions of an act of congress entitled "An act donating public lands to the several states and territories which may provide colleges for the benefit of agricultural and mechanic arts," approved July 2, 1862, and all acts supplementary thereto, including the acts entitled "An act to establish agricultural experiment stations in connection with colleges established in the several cities [states] under the provisions of an act approved July 2, 1862, and of the acts supplementary thereto," which said last entitled act was approved March 2, 1887; also, "An act to apply a portion of the proceeds of the public lands to the more complete endowment and support of the colleges for the benefit of agriculture and the mechanic arts, established under the provisions of an act of congress approved July 2, 1862," which said last mentioned act was approved August 30, 1890. [L. '09, p. 247, § 10. Cf. L. '91, p. 337, § 10; 1 H. C., § 970; L. '97, p. 434, § 199.]

§ 4343. Assent to Congressional Requirements.—The assent of the legislature of the state of Washington is hereby given, in pursuance of the requirements of section nine (9) of said act of congress, approved March 2, 1887, to the granting of money therein made to the establishment of experiment stations in accordance with section one (1) of said last mentioned act, and assent is hereby given to carry out, within the state of Washington, every provision of said act. [L. '09, p. 248, § 11. Cf. L. '91, p. 338, § 11; 1 H. C., § 971; L. '97, p. 435, § 200.]

§ 4343-1. To Receive and Expend Moneys Granted.—The board of regents of the State College of Washington is hereby authorized and empowered to receive and expend the moneys appropriated under

the act of congress approved May 8, 1914, and entitled "An act to provide for co-operative agricultural extension work between the agricultural colleges in the several states receiving the benefits of the act of congress approved July 2, 1862, and of acts supplemental thereto, and the United States Department of Agriculture," and to organize and conduct agricultural extension work in connection with the State College of Washington in accordance with the terms and conditions expressed in said act of congress. [L. '15, p. 349, § 1.]

§ 4343-2. Appropriation.—For the purpose of complying with the conditions expressed in said act of congress approved May 8, 1914, there is hereby appropriated out of the general fund the sum of eighteen thousand four hundred eighty-one dollars. [L. '15, p. 350, § 2.]

§ 4344. Acceptance of Federal Aid.—The state of Washington hereby assents to the purposes, terms, provisions and conditions of the grant of money provided in an act of congress approved March 16, 1906, said act being entitled "An act to provide for an increased annual appropriation for agricultural experiment stations and regulating the expenditure thereof," and having for its purpose the more complete endowment and maintenance of agricultural experiment stations theretofore or thereafter established under an act of congress approved March 2, 1887. [L. '07, p. 423, § 1.]

Cited in 51 Wash. 555.

§ 4345. Disposition of Appropriation.—Said annual sum appropriated and granted to the state of Washington in pursuance of said act of congress approved March 16, 1906, shall be paid as therein provided to the treasurer or other officer duly appointed by the board of regents of the State Agricultural Experiment Station at Pullman, Washington; and the board of regents of such experiment station are hereby required to report to the secretary of agriculture on or before the first day of September of each year a detailed statement of the amount so received and of its disbursements on schedules prescribed by the secretary of agriculture. [L. '07, p. 424, § 2.]

Cited in 51 Wash. 555.

Superseded, in part, by § 5049, infra, requiring payment to the state treasurer.

§ 4346. Experimental Station at Puyallup.—The operation and conduct of the agricultural experiment station heretofore established at Puyallup, Washington, shall be under the supervision and control of the board of regents of the agricultural college and school of science, and the state auditor is hereby authorized to audit all claims and, if found correct, to issue warrants upon the state treasurer in payment of bills duly authorized by said board as provided by law,

and the state treasurer is hereby directed to pay the same. [L. '99, p. 132, § 1.]

§ 4347. Acquisition of Lands for Experimental Purposes.—The board of regents of the State College of Washington is hereby authorized and empowered to acquire by lease or gift, any tract or tracts of land, which, in its judgment, are necessary for experimental or demonstrational purposes, or for otherwise carrying out the purposes or work of the college as defined by law, and to pay for the same out of the maintenance fund of the college: Provided, that not more than twelve hundred dollars a year shall be paid from said fund for said purposes: Provided further, that when said land is leased by the state for the purposes of this act, such land shall be exempt from taxation. [L. '09, p. 815, § 1.]

See infra, § 5047, disposition of lands.
See infra, § 6655, sale of lands.

§ 4348. Meetings of Board.—The meetings of the board of regents may be called in such manner as the board may prescribe, and the majority of said board shall constitute a quorum for the transaction of business; but a less number may adjourn from time to time. No vacancy in said board shall impair the rights of the remaining board. A full meeting of the board shall be called at least once a year. [L. '09, p. 248, § 12. Cf. L. '91, p. 338, § 12; 1 H. C., § 972; L. '97, p. 435, § 201.]

§ 4349. Oath of Regents.—Each member of the board of regents, created by this chapter shall, before entering upon his duties, take and subscribe an oath to discharge faithfully and honestly his duties in the premises, and to perform strictly and impartially the same to the best of his ability; said oath shall be filed with the secretary of state. [L. '09, p. 248, § 13. Cf. L. '91, p. 338, § 14; 1 H. C., § 974; L. '97, p. 435, § 202.]

§ 4350. Expenses of Regents.—The regents shall be allowed their actual and necessary traveling expenses in going to and returning from all the necessary sessions of the board; and also their necessary expenses while in actual attendance upon the same. [L. '09, p. 249, § 14. Cf. L. '91, p. 338, § 15; 1 H. C., § 975; L. '97, p. 436, § 203.]

§ 4351. Annual Report.—The board of regents shall, on or before the first day of November of each year, make a full and true report in detail of all their acts and doings during the previous year, their receipts and expenditures, the exact status of their institution, and other information they may deem proper and useful, or which may be called for by the governor, which said report shall be made to the governor, who shall transmit the same to the succeeding session of the legislature. A copy of said report shall be furnished to the

superintendent of public instruction. [L. '09, p. 249, § 15. Cf. L. '91, p. 339, § 16; 1 H. C., § 976; L. '97, p. 436, § 204.]

§ 4352. Disbursement of Funds.—The treasurer of said board shall make disbursement of the funds in his hands on the order of the board, which order shall be countersigned by the secretary of the board, and shall state on what account the disbursement is made. [L. '09, p. 249, § 16. Cf. L. '91, p. 340, § 19; 1 H. C., § 979; L. '97, p. 436, § 205.]

Cited in 51 Wash. 551.
See infra, § 5048, funds.
See infra, § 5056, investment of funds.
Superseded by § 5049, infra.

§ 4353. No Employee Shall have Pecuniary Interest in Contracts. No employee or member of the board created by this chapter shall be interested pecuniarily, either directly or indirectly, in any contract for any building or improvement of said institution, or for the furnishing of supplies for the same. [L. '09, p. 249, § 17. Cf. L. '91, p. 340, § 21; 1 H. C., § 981; L. '97, p. 436, § 206.]

§ 4354. Governor Ex-officio Member of Board.—The governor of the state shall be ex-officio advisory member of the board provided for in this chapter, but shall not have the right to vote nor be eligible to office therein. [L. '91, p. 340, § 22; 1 H. C., § 982; L. '97, p. 436, § 207; L. '09, p. 249, § 18.]

§ 4355. Board may Grant Degrees.—The board of regents shall grant to every student, upon graduation, a suitable diploma or degree, such student having been recommended for such honor by the faculty. The board shall also have power, upon recommendation of the faculty, to confer the usual honorary degrees upon other persons than graduates of this college in recognition of their learning or devotion to literature, art or science; but no degree shall ever be conferred in consideration of the payment of money or other valuable thing. The said board is also empowered, upon recommendation of the faculty, to grant normal diplomas which shall entitle the holder to teach in any public school in the state for a period of five years; and to grant life diplomas to candidates who shall give satisfactory evidence of having taught successfully for twenty-four (24) months: Provided, that all candidates for the normal diploma and life diploma shall have satisfactorily completed not less than twelve semester hours in the department of education. [L. '09, p. 249, § 19. Cf. L. '95, p. 365, § 1; L. '97, p. 436, § 208.]

§ 4356. To Supervise the Construction of Improvements.—It shall be the duty of the board of regents herein provided for, as soon after their organization as practicable, and as soon as there shall be an appropriation therefor in the hands of the state treasurer in any

amount sufficient to warrant the beginning the erection of the several buildings herein provided for, or any wing or section of the same, to enter into contracts with one or more contractors for the erection and construction of such suitable buildings and improvements for the institution created by this chapter as in their judgment shall be deemed best, or the funds aforesaid shall warrant, all things considered; such contract or contracts to be let after open public notice and competition under such regulations as shall be established by said board to the person or persons who offer to execute such work on the most advantageous terms: Provided, that in all cases said board shall require from contractors a good and sufficient bond for the faithful performance of the work, and the full protection of the state against mechanics' and other liens: And provided further, that the board shall not have the power to enter into any contract for the erection of any buildings or improvements which shall bind said board to pay out any sum of money in excess of the amount provided for said purpose. [L. '09, p. 250, § 20. Cf. L. '91, p. 339, § 17; 1 H. C., § 977; L. '97, p. 437, § 209.]

§ 4357. To Employ Architects.—The board provided for in this chapter shall have power in their discretion to employ skilled architects and superintendents to prepare plans and specifications, and to supervise the construction of any of the buildings provided for in this chapter, and to fix the compensation for such services subject to the provisions and restrictions of this act. [L. '09, p. 250, § 21. Cf. L. '91, p. 340, § 18; 1 H. C., § 978; L. '97, p. 437, § 210.]

§ 4358. State Auditor to Issue Warrants on Proper Funds.—Whenever there shall be any money in the hands of the state treasurer to the credit of any of the specific funds set apart for that institution created by this chapter, deemed sufficient by the board to commence the erection of any of the necessary buildings or improvements, or to pay the necessary running or other expenses of said institution, and any proper indebtedness has been incurred, the state auditor upon receipt of properly audited vouchers shall, and it is hereby made his duty to draw his warrants for the payment thereof upon the state treasurer against the specific fund belonging to said institution in such sum, not exceeding the amount on hand in such specific fund at such time, provided proper appropriations have been made therefor. [L. '09, p. 251, § 22. Cf. L. '91, p. 340, § 20; 1 H. C., § 980; L. '97, p. 437, § 211.]

§ 4359. Board may Execute Bonds to United States.—The board of regents of the agricultural college and school of science is authorized and empowered to give and execute, on behalf of the state of Washington, the bonds and other papers required by the war

department for the safekeeping of the arms and equipments loaned by the United States to the agricultural college and school of science. [L. '99, p. 175, § 1.]

CHAPTER IV.

Normal Schools.

§ 4360. Establishment — Corporate Title.—The State Normal School at Cheney, the State Normal School at Bellingham, the State Normal School at Ellensburg, and such other state normal schools as may hereafter be established, shall each be under the management and control of a board of three trustees, to be known as "Board of Trustees of the State Normal School at ——." Said trustees shall be appointed by the governor, by and with the advice and consent of the senate. [L. '09, p. 251, § 1. Cf. L. '93, p. 254, § 1; L. '97, p. 438, § 212.]

See infra, §§ 5045, 5056, normal school funds.

§ 4361. Appointment of Trustees—Term of.—All trustees of the state normal schools serving at the time of the passage of this act shall continue to hold their respective offices as such trustees for the full term for which they were appointed; and thereafter all trustees shall be appointed for six years, except in cases of appointments to fill vacancies, in which cases the appointment shall be made for the unexpired term of the trustee whose office has become vacant. In case of the establishment of any additional state normal schools, unless otherwise expressly provided by law, the governor shall appoint one trustee for two years, one for four years and one for six years. [L. '09, p. 251, § 2. Cf. L. '93, p. 255, § 2; L. '97, p. 438, § 213.]

§ 4362. Trustees to Elect Officers and Enact By-laws—Quorum.—Each board of normal school trustees shall elect one of its members chairman, and it shall elect a secretary, who may or may not be a member of the board. Each board shall have power to adopt by-laws for its government and for the government of the school, which by-laws shall not be inconsistent with the provisions of this act, and to prescribe the duties of its officers, committees and employees. A majority of the board shall constitute a quorum for the transaction of all business. [L. '09, p. 252, § 3. Cf. L. '93, p. 255, § 3; L. '97, p. 438, § 214.]

§ 4363. Powers and Duties Enumerated.—Each board of normal school trustees shall have power, and it shall be its duty—First: To elect a principal and such other teachers, assistants and employees as the necessities of the school may require for a period not exceeding four years. Second: For good and lawful reasons to discharge

any or all such teachers and employees. Third: To adopt the necessary text-books, and to provide books of reference for the use of students and teachers, and to provide for the proper care of the same. Fourth: To have charge of the erection of all buildings pertaining to the school, unless otherwise expressly provided, and to have the care and management of all buildings and other property belonging to the school. Fifth: To audit all accounts against the school, and to certify all bills, which may be allowed, to the state auditor, who shall draw warrants on the state treasurer for such amounts as he shall find to have been properly or legally allowed. Sixth: To purchase all supplies for the use of the school, to provide a library suited to its wants, to provide for lectures on subjects pertaining to education and the art or science of teaching, and to do such other things not forbidden by law as may become necessary for the good of the school. [L. '09, p. 252, § 4. Cf. L. '93, p. 255, § 4; L. '97, p. 438, § 215; L. '05, p. 170, § 1.]

Former laws cited in 17 Wash. 486.

For former laws on this subject see L. '90, pp. 278, 281.

§ 4364. Boarding-houses.—Each board of normal school trustees shall have power to establish and maintain a boarding-house or houses for the accommodation of students, to employ a matron and such other assistance as may become necessary to conduct the same, to make such rules for its government and management as they may deem necessary, and to charge such rates for board and entertainment as will make such boarding-house or houses self-sustaining. [L. '09, p. 252, § 5. Cf. L. '93, p. 256, § 5; L. '97, p. 439, § 216.]

§ 4365. Meetings.—Each board of normal school trustees shall hold two regular or stated meetings each year, at such times as may be provided in its by-laws, and such special meetings shall be held as may be deemed necessary, whenever called by the chairman or by a majority of the board. [L. '09, p. 253, § 6. Cf. L. '93, p. 256, § 6; L. '97, p. 439, § 217.]

§ 4366. Duties of Principal.—The principal of each state normal school shall have a general supervision of the school, shall see that all laws and rules of the board of trustees are observed by teachers and students, that the course or courses of study prescribed are faithfully pursued, shall assign students to their proper classes or grades, and unless otherwise specially provided, he shall designate the work to be performed by each teacher. He shall, at the close of each school year, make a detailed annual report to the board of trustees, containing a classified catalogue of all students that have been enrolled during the year, and such other information as he may deem advisable or as the board may require, and it shall be his duty to superintend the printing of the same. It shall also be his duty, when

required by the board of trustees, to attend county institutes and other educational gatherings, and to lecture upon educational topics that are calculated to enhance the interests of popular education or of his school. The board of trustees shall audit and allow all his necessary expenses incurred in traveling. [L. '09, p. 253, § 7. Cf. L. '93, p. 256, § 7; L. '97, p. 439, § 218.]

Cited in 71 Wash. 216.

§ 4367. Model and Manual Training Departments.—A model school or training department shall be provided for each state normal school contemplated by this act, in which all students, before graduation, shall have actual practice in teaching for not less than eighteen weeks under the supervision and observation of critic and training teachers. A manual training department for each school under its control shall also be provided, and a suitable teacher employed for each. [L. '09, p. 253, § 8. Cf. L. '93, p. 258, § 12; L. '97, p. 440, § 219.]

Cited in 51 Wash. 500.

§ 4368. Trustees to Estimate Number of Pupils Required for Model School.—The board of trustees of any normal school having a model school or training department in connection therewith, as authorized by section 4367 shall be authorized, and it shall be their duty on or before the first Monday of September of each year, to file with the board of the school district in which such normal school is situated, a certified statement showing an estimate of the number of public school pupils who will be required to make up such model school, specifying the number required for each grade for which training for students is required. [L. '07, p. 180, § 1.]

Cited in 51 Wash. 552.

§ 4369. Selection of Pupils from Public Schools.—It shall thereupon be the duty of the board of the school district with which such statement has been filed, to apportion for attendance to the said training school, a sufficient number of pupils from the public schools under the supervision of said board as will furnish to such normal school the number of pupils required in order to maintain such training school: Provided, that the principal of said normal school may refuse to accept such pupil as in his judgment by reason of incorrigibility, or mental defects would tend to reduce the efficiency of said training department. [L. '07, p. 181, § 2.]

§ 4370. Report of Attendance of Common School Pupils.—Annually, on or before the date for reporting the school attendance of the school district in which said normal school is situated, for the purpose of taxation for the support of the common schools, the board of trustees in each such normal school shall file with the board of

the school district in which such normal school is situated, a report showing the number of common school pupils in attendance at each such normal school, during the school year last past, and the period of their attendance in the same form that reports of public schools are made. The clerk of such school district shall, in reporting the attendance in said school district, segregate the attendance at said model school, from the attendance in the other schools of said district. [L. '07, p. 181, § 3.]

§ 4372. Diplomas and Certificates Issued, How.—Every diploma of graduation from a state normal school, or certificate issued therefrom, shall be signed by the president of the board of trustees and by the principal of the normal school at which the holder graduated, and by the state superintendent of public instruction; and all diplomas and certificates shall be stamped with the seal of the state superintendent of public instruction. Every diploma and certificate shall specifically state what course of study the holder has taken, and for what length of time said diploma or certificate is valid as a certificate to teach in the schools of the state. [L. '09, p. 254, § 9. Cf. L. '93, p. 259, § 13; L. '95, p. 366, § 2; L. '97, p. 440, § 220; L. '05, p. 171, § 2.]

§ 4373. Tuition Free—Students Admitted—Expulsion.—No charge shall be made against any student for tuition in any of the normal schools contemplated by this act. All students shall be required to furnish satisfactory evidence of good moral character, and any student may be suspended or expelled from any state normal school contemplated by this act who is found to be immoral, or who has refused to comply with its rules and regulations for its government. [L. '09, p. 254, § 10. Cf. L. '93, p. 259, § 14; L. '97, p. 440, § 221; L. '05, p. 171, § 3.]

§ 4374. Courses of Study—Diplomas.—The state board of education shall prescribe courses of study for the normal schools of the state as follows: (1) An elementary course of two years; (2) a secondary course of two years; (3) advanced courses of two and three years; (4) a complete course of five years; (5) an advanced course of one year for graduates from colleges and universities. Upon the satisfactory completion of any one of these courses a student shall be awarded an appropriate certificate or diploma as follows: Upon the completion of the elementary course, a certificate to be known as an elementary normal school certificate, which shall authorize the holder to teach in any elementary school for a period of two years; upon the completion of the secondary course a certificate to be known as a secondary normal school certificate, which shall authorize the holder to teach in the common schools of the state for

a period of three years; upon the completion of any advanced course a diploma to be known as a normal school diploma, which shall authorize the holder to teach in the common schools of the state for a period of five years, and upon satisfactory evidence of having taught successfully for three years such person shall receive a life diploma countersigned by the superintendent of public instruction. Upon the completion of the work of the junior year any student may be given a secondary normal school certificate by vote of the faculty: Provided, that no one shall receive a diploma or secondary normal school certificate who has not attained the age of nineteen years, and attended the same state normal school one full school year of thirty-six weeks: Provided further, that no one shall receive a secondary normal school certificate or a normal school diploma who has not given evidence of ability to teach and govern a school by successful practice in the training department for a period of not less than eighteen weeks. The state board of education shall also prescribe uniform terms of admission to, and graduation from, the state normal schools, and shall define the qualifications for admission to each of the several courses. [L. '09, p. 254, § 11. Cf. L. '93, pp. 257, 258, §§ 10, 11; L. '97, p. 441, § 222; L. '99, p. 325, § 267; L. '05, p. 171, § 4.]

§ 4375. Free Text-books—Deposit Fee—Library Fund.—The board of trustees may provide out of the funds appropriated for the purpose, such text-books and supplies as are needful for successfully carrying into effect the courses of study prescribed. Each student upon admission to the school may be required to pay into the library fund of the school a sum not to exceed ten dollars, one-half of which shall be applied to the support of the general library and reading-room, and the remaining half shall be kept as indemnity for loss or damage of books belonging to the school in the hands of the student, and shall be returned to him after deducting such amount as may be justly charged for all loss or damage beyond reasonable wear. [L. '09, p. 255, § 12. Cf. L. '93, p. 260, § 15; L. '97, p. 442, § 223; L. '99, p. 326, § 27; L. '05, p. 172, § 5.]

§ 4376. Requirements for Admission.—No person shall be admitted to any state normal school as a student who has not attained the age of sixteen years, if a male, or fifteen years if a female, nor until by an entrance examination or otherwise he or she shall have established the fact that he or she is qualified to enter some one of the grades or courses provided for in the course of study. [L. '09, p. 255, § 13. Cf. L. '93, p. 262, § 18; L. '97, p. 442, § 224.]

§ 4377. Annual Meeting of Principals.—It shall be the duty of the principals of the several state normal schools contemplated by this act to meet once annually to consult with each other relative to matters concerning their school work, and to discuss methods of

teaching and plans of management. [L. '09, p. 256, § 14. Cf. L. '93, p. 262, § 19; L. '97, p. 442, § 225.]

§ 4378. Biennial Report.—Each board of normal school trustees shall biennially on or before the first day of October next preceding each regular session of the state legislature of this state, make, through its secretary, a report to the governor of the state, which report shall be included with and constitute a part of the biennial report of the superintendent of public instruction. Said normal school report shall embrace a statement of the receipts and expenditures of the schools, and the purpose for which all moneys have been expended; a classified catalogue of all students enrolled in each of said schools; a directory of all graduates of each school properly classified; the course or courses of study pursued in the several schools, and such other information as may be deemed advisable. [L. '09, p. 256, § 15. Cf. L. '93, p. 262, § 20; L. '95, p. 368, § 3; L. '97, p. 442, § 226.]

§ 4379. Trustees Shall have No Pecuniary Interest in Contracts. No normal school trustee shall be awarded any contract for the erection, repair or the furnishing of any building belonging to any state normal school contemplated by this act, nor for the furnishing of supplies or materials for the same; and no such trustee shall act as agent for any publishing house proposing to furnish books for such school. Any trustee who shall violate any of the above named provisions shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars, and his office as such trustee shall be declared vacant. [L. '09, p. 256, § 16. Cf. L. '93, p. 263, § 22; L. '97, p. 443, § 227.]

CHAPTER V.

Washington State Training School.

§ 4380. Change of Designation.—The reform school at Chehalis, in Lewis county, shall be known as the Washington State Training School. [L. '09, p. 456, § 1.]

This and the next six sections relate to the reform school, and do not entirely harmonize with other general laws on that subject.

See infra, § 8596, establishment.

See infra, § 4386–1, state school for girls.

§ 4381. Purpose.—The said school shall be for the keeping and reformatory training of all youths between the ages of eight and eighteen years who are residents of the state of Washington and who are committed to said institution by a court of competent jurisdiction. [L. '09, p. 256, § 2.]

This section is not in harmony with § 8597.

§ 4382. Causes for Commitment.—When a boy of sane mind between the ages of eight and sixteen years or a girl of sane mind

between the ages of eight and eighteen (18) years shall, in any court of record in this state, be found guilty of any crime except murder, or manslaughter, or highway robbery, or who for want of proper paternal care is growing up in mendicancy or vagrancy, or is incorrigible, or has been expelled from a public school, and complaint thereof is made and properly sustained, the court may if in its opinion the accused is a proper subject therefor, instead of entering judgment cause an order to be entered that said boy or girl be sent to the State Training School, in pursuance of the provisions of this act, and a copy of said order under seal of said court shall be sufficient warrant for carrying said boy or girl to the said school and for his or her commitment to the custody of the superintendent thereof. [L. '09, p. 257, § 3.]

See infra, § 4386–1, state school for girls, a later enactment.
This section is not in harmony with § 1980, supra, nor with the Penal Code of 1909, § 2276, supra, a later enactment.

§ 4383. Management by Board of Control.—The state board of control shall have full charge of the management of the said State Training School. It shall have power to adopt rules and regulations for its government, and shall prescribe, in a manner consistent with the provisions of the laws of this state, the duties of the persons connected with the management of the institution. [L. 09, p. 257, § 4.]

This section harmonizes with § 8933.
See infra, § 8598, audit and payment of bills.
See infra, §§ 8601, 8602, complaints, departments, etc.
See infra, § 8599, matron to control female department.

§ 4384. Superintendent.—The state board of control shall employ a competent person who shall be known as the superintendent of the Washington State Training School. He shall be the executive head of the said institution, and he shall hold his office during the pleasure of the state board of control. [L. '09, p. 257, § 5.]

This section conflicts with § 8936, providing for a four year term of office.
See supra, § 4307, annual report to state superintendent.
See infra, §§ 8599–8604, powers, duties, etc.

§ 4385. Assistants and Employees, Appointed by Superintendent. The superintendent of the said State Training School shall have power to appoint all assistants and employees required for the management of the institution placed in his charge, the number of said assistants and employees to be determined and fixed by the state board of control. The superintendent may at his pleasure discharge any person therein employed. [L. '09, p. 257, § 6.]

This section harmonizes with § 8936.

§ 4386. Curriculum.—All branches taught in the first eight grades of the public schools shall be taught in the State Training School.

The inmates shall be taught and trained in morality, temperance, frugality, and they shall also be instructed in the different trades and callings of the two sexes, as far as possible, in the scope of the institution. [L. '09, p. 257, § 7.]

This is the same as § 8603.

CHAPTER V–A.

State School for Girls.

§ 4386–1. School for Girls.—That there be established an institution which shall be known as the State School for Girls. [L. '13, p. 513, § 1.]

§ 4386–2. Commission to Construct Buildings.—The governor shall appoint four electors of the state of Washington, two of whom shall be women, who, together with the members of the state board of control, shall select a site for such school, to consist of not more than one hundred sixty acres of fertile land, and at a cost not to exceed the sum of one hundred fifty dollars ($150) per acre, said site to be within a radius of not less than one mile and not more than ten miles of the State Training School at Chehalis. As soon as the site has been selected, the state board of control shall at once proceed to the erection and equipment of such buildings as may be necessary, the number, kind and character of which shall be determined by the state board of control acting as a joint commission with the four electors above mentioned. In the construction and arrangement of buildings, the cottage plan shall be followed as far as practicable, each cottage to provide for a group of not to exceed thirty girls: Provided, that the above-named electors shall serve without compensation other than necessary expenses. [L. '13, p. 513, § 2.]

§ 4386–3. Management—Superintendent.—The government, control and business management of such school shall be vested in the state board of control. The board shall, with the approval of the governor, appoint a suitable superintendent of said school and shall designate the number of subordinate officers and employees to be employed, and fix their respective salaries, and have power, with the like approval, to make and enforce all such rules and regulations for the administration, government and discipline of the school as they may deem just and proper, not inconsistent with this act. The superintendent and all subordinate officers of the school shall be women: Provided, however, if a married woman be appointed superintendent or to any subordinate position, the husband of such appointee may, with the consent of the board, reside at the institution, and may be assigned such duties or employment as the board may prescribe. [L. '13, p. 514, § 3.]

§ 4386–4. Bond of Superintendent.—Before entering upon the discharge of her duties, the superintendent shall give a surety bond payable to the state of Washington in such sum as the board of control shall prescribe, to be approved by the said board, conditioned for the faithful performance of her duties, and that she will faithfully account for all moneys, property and effects of the institution or the inmates intrusted to her care. [L. '13, p. 514, § 4.]

§ 4386–5. Duties of Superintendent.—The superintendent, subject to the direction and approval of the board of control shall: (1) Have general supervision and control of the grounds and buildings of the institution, the subordinate officers and employees, and the inmates thereof, and all matters relating to their government and discipline; (2) make such rules, regulations and orders, not inconsistent with law or with the rules, regulations or directions of the board of control, as may seem to her proper or necessary for the government of such institution and for the employment, discipline and education of the inmates; (3) exercise such other powers, and perform such other duties as the board of control may prescribe; and (4) have power to engage and remove all employees, subject to the approval of the board of control. [L. '13, p. 515, § 5.]

§ 4386–6. Commitment of Girls.—Any girl more than ten and under eighteen years of age, who has been found delinquent under the juvenile delinquency law of this state, may be committed by the court to the state school for girls, there to remain until twenty-one years of age, unless sooner paroled or discharged as provided in sections 4386–8 and 4386–9, and such commitment shall not be subject to modification or revocation. [L. '13, p. 515, § 6.]

§ 4386–7. Court Record of Girl—Age.—The superior court shall cause a memorandum to be made and kept of the name, age, birthplace, occupation, last place of residence, and previous record of such girl, and the names and places of residence of the parents, next of kin or guardian of such girl, a copy of which shall be furnished to the superintendent at the time of the commitment to the school. The court shall find and determine the age of the girl, which shall be stated in the order for commitment. Such finding shall be conclusive evidence as to such age in any action to recover damages for detention and shall be presumptive evidence in any other inquiry, action or proceeding. [L. '13, p. 515, § 7.]

§ 4386–8. Parole—Behavior Credits.—The board of control, acting with the superintendent, shall, under a system of marks, or otherwise, fix upon a uniform plan by which girls may be paroled or discharged from the school, which system shall be subject to revision from time to time. Each girl shall be credited for personal

demeanor, diligence in labor or study and for the results accomplished, and charged for derelictions, negligence or offense. The standing of each girl shall be made known to her as often as once a month. [L. '13, p. 516, § 8.]

§ 4386–9. Conditional Parole.—Every girl shall be entitled to a trial on parole before reaching the age of twenty years, such parole to continue for at least one year unless violated. The superintendent and resident physician, with the approval of the board of control, shall determine whether such parole has been violated. Any girl committed to the school who shall escape therefrom, or who shall violate a parole, may be apprehended and returned to the school be any officer or citizen on written order or request of the superintendent. Any person who shall go upon the school grounds except on lawful business, or by consent of the superintendent, or who shall entice any girl away from the school, or who shall in any way interfere with its management or discipline, shall be guilty of a misdemeanor. [L. '13, p. 516, § 9.]

§ 4386–10. Health of Inmates.—No girl shall be received in the State School for Girls who is not of sound mind, or who is subject to epileptic or other fits, or is not possessed of that degree of bodily health which should render her a fit subject for the discipline of the school. It shall be the duty of the court committing her to cause such girl to be examined by a reputable physician to be appointed by the court, who will certify to the above facts, which certificate shall be forwarded to the school with the commitment. Any girl who may have been committed to the school, not complying with the above requirements, may be returned by the superintendent to the court making the commitment, or to the officer or institution last having her in charge. The board of control shall arrange for the transportation of all girls to and from the school. [L. '13, p. 516, § 10.]

§ 4386–11. Instruction—Part of School System.—It shall be the duty of the superintendent, subject to the approval of the board of control, to employ teachers, and as far as practicable, to instruct the girls in all of the branches usually taught in the grades of the common schools of the state, also in such trades and vocational occupations as may be found desirable. The educational work of the school shall be a part of the educational system of the state, and as such shall be under the supervision of the state board of education. Only those certified by the state superintendent of public instruction shall be employed as teachers. [L. '13, p. 517, § 11.]

§ 4386–12. Hiring Out — Apprenticeships. — The superintendent shall have power to place any girl under the age of eighteen years at any employment for account of the institution or the girl employed,

and receive and hold the whole or any part of her wages for the benefit of the girl less the amount necessary for her board and keep, and may also, with the consent of any girl over fourteen years of age, and the approval of the state board of control indorsed thereon, execute indentures of apprenticeship, which shall be binding on all parties thereto. In case any girl so apprenticed shall prove untrustworthy or unsatisfactory, the superintendent may permit her to be returned to the school, and the indenture may thereupon be canceled. If such girl shall have an unsuitable employer, the superintendent may, with the approval of the board of control, take her back to the school, and cancel the indenture of apprenticeship. All indentures so made shall be filed and kept in the school. A system may also be established, providing for compensation for girls for services rendered, and payments may be made from time to time, not to exceed in the aggregate to any one girl the sum of twenty-five dollars for each year of service. [L. '13, p. 517, § 12.]

§ 4386–13. Transfer of Girls from State Training School. — As soon as the school buildings have been erected and equipped all girls then in the Washington State Training School at Chehalis, shall be transferred to the State School for Girls, all who may then be on parole shall be transferred to the supervision of said school. Both shall thereafter be subject to all the laws, rules and regulations governing the school last mentioned. [L. '13, p. 517, § 13.]

CHAPTER VI.

State School for the Deaf and the Blind.

§ 4387. Management by Board of Control.—The State School for the Deaf and the Blind at Vancouver shall be under the direction of the state board of control, and the funds for its maintenance shall be appropriated by the legislature of the state of Washington. [L. '09, p. 258, § 1. Cf. L. '07, p. 378, § 2. Cf. L. '86, p. 136, §§ 1, 3; 1 H. C., §§ 983, 984; L. '97, p. 443, § 228; L. '05, p. 254, § 1.]

See infra, § 8933.

See infra, § 4509, subdiv. 4, schools for defective youth in districts of first class.

§ 4387–1. Separation of School for Deaf and Blind. — Upon the taking effect of this act, the State School for the Deaf and Blind at Vancouver shall be divided into two institutions, one for the blind to be known as the State School for the Blind, and one for the deaf to be known as the State School for the Deaf, each of said institutions to be located at Vancouver. The state board of conrtol shall appoint a superintendent for each institution. All provisions of law relating to the State School for the Deaf and Blind shall, so far as the same are applicable, govern the management of the State

School for the Deaf and the State School for the Blind hereby created. [L. '13, p. 6, § 1.]

§ 4388. Annual Term. — The regular term of said school shall begin on the second Wednesday of September, and close on the second Wednesday of the following June. [L. '09, p. 258, § 2. Cf. L. '86, p. 139, § 23; 1 H. C., § 1003; L. '97, p. 446, § 246; L. '03, p. 276, § 2.]

§ 4389. Free Tuition—Age.—The institution shall be free to residents of the state of Washington who are between the ages of six and twenty-one years, and who are deaf and blind, or either deaf or blind: Provided, that they are free from loathsome or contagious diseases. [L. '09, p. 258, § 3. Cf. L. '86, p. 136, § 2; 1 H. C., § 985; L. '97, p. 443, § 229; L. '03, p. 266, § 1.]

§ 4390. Admission of Persons from Other States. — The state board of control may admit to this school deaf or blind children from other states, but the parents or guardians of such children will be required to pay annually or quarterly in advance a sufficient amount to cover the cost of maintaining and educating such children. [L. '09, p. 258, § 4. Cf. L. '86, p. 141, § 32; 1 H. C., § 1002; L. '97, p. 446, § 251.]

§ 4391. Superintendent — Appointment — Term — Qualification — Employees.—The superintendent shall be appointed by the state board of control, for a term of four years, subject to removal at the discretion of the board of control. Said superintendent must be not less than thirty nor more than seventy years of age and must be practically acquainted with the school management and class instruction of the deaf and the blind, having had at least ten years' actual experience in teaching in schools for the deaf and the blind. The superintendent shall have power to appoint all subordinates. The state board of control shall have power to fix the number of employees and the salary paid to each and may discharge any employee at its discretion. [L. '09, p. 258, § 5. Cf. L. '07, p. 278, § 3.]

See infra, § 8936.

§ 4392. Duty of District School Clerk.—It shall be the duty of the clerks of all school districts in the state of Washington at the time for making the annual reports, to report to the school superintendent of their respective counties the names of all deaf, mute, blind or feeble-minded youth residing within their respective districts who are between the ages of six and twenty-one years. [L. '90, p. 497, § 1; 1 H. C., § 1013; L. '97, p. 446, § 252; L. '09, p. 258, § 6.]

Superseded as to feeble-minded youth by § 4401, infra.

§ 4393. County Superintendent to Report.—It shall be the duty of each county school superintendent to make a full and specific report of such deaf, mute or blind youth to the county commissioners of his county at the regular meeting of said commissioners held in August in each year. He shall also, at the same time, transmit a duplicate copy of said report to the state board of control and the superintendent of the School for the Deaf and the Blind. [L. '09, p. 259. § 7. Cf. L. '90, p. 497, § 2; 1 H. C., § 1014; L. '97, p. 447, § 253.]

§ 4394. Compulsory Attendance.—It shall be the duty of the parents or the guardians of all such deaf or blind youth to send them each year to the said state school for the deaf and the blind. The county superintendent shall take all action necessary to enforce this section or [of] this act: Provided, that if satisfactory evidence shall be laid before the county superintendent that any deaf or blind youth is being properly educated at home or in some suitable institution other than the State School for the Deaf and the Blind, the county superintendent shall take no other action in such case further than to make a record of such fact, and take such steps as may be necessary to satisfy himself that such defective youth shall continue to receive a proper education. [L. '09, p. 259, § 8. Cf. L. '90, p. 498, § 3; 1 H. C., § 1015; L. '97, p. 447, § 254.]

§ 4395. Expenses of Indigent Pupils.—If it appears to the satisfaction of the county commissioners that the parents of any such deaf or blind youth within their county are unable to bear the expense of sending and returning them to said state school it shall then be the duty of the commissioners to send and return them to and from said school or maintain them at said school during vacation at the expense of the county. [L. '09, p. 259, § 9. Cf. L. '90, p. 498, § 4; 1 H. C., § 1016; L. '97, p. 447, § 255a; L. '99, p. 131, § 2; L. '99, p. 326, § 28.]

§ 4395½. Penalty.—Any parent, guardian, school superintendent or county commissioner who shall, without a proper cause, fail to carry into effect the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof, upon the complaint of any officer or citizen of the county or state, before any justice of the peace or superior court, shall be fined in any sum not less than fifty nor more than two hundred dollars, in the discretion of the court. [L. '09, p. 259, § 10. Cf. L. '90, p. 498, § 5; 1 H. C., § 1017; L. '97, p. 447, § 256.]

CHAPTER VII.

State Institution for Feeble-minded.

§ 4396. Establishment.—A state institution hereby is established to be known as "The State Institution for Feeble-minded," for the care and education of the defective and feeble-minded youth of the state of Washington. [L. '05, p. 133, § 1.]

§ 4397. Under Management of Board of Control.—The State Institution for Feeble-minded now located at Medical Lake shall be under the direction of the state board of control, and funds for its maintenance shall be appropriated by the legislature of the state of Washington. [L. '09, p. 260, § 1. Cf. L. '05, p. 133, § 3; L. '07, p. 378, § 2.]

See infra, § 8933.

§ 4398. Location.—The location of the said institution shall be near Medical Lake, in Spokane County, Washington, and shall be on land now owned by the state of Washington, and within two miles of the Eastern Washington Hospital for the Insane. [L. '05, p. 133, § 2.]

The last part of this section is omitted as superseded.

§ 4399. Admission—Free Tuition.—This institution shall be free to residents of the state of Washington who are between the ages of six and twenty-one years, and who are idiotic or feeble-minded: Provided, that they are free from loathsome or contagious diseases: Provided, also, that children who are idiotic, epileptic or afflicted in any particular that renders them unfitted for companiouship with other children shall be segregated and provided with suitable accommodations and care in separate wards or buildings: Provided further, that expert medical service shall be provided for this institution. [L. '09, p. 260, § 2. Cf. L. '05, p. 133, § 5.]

§ 4399–2. Who may be Admitted.—The State Institution for Feeble-minded shall be free to residents of the state of Washington under the age of twenty-one years who are feeble-minded, idiotic or epileptic, or who are physically defective to such extent as to prevent them from being educated in the common schools: Provided, that they are free from contagious diseases. Admission may be applied for as follows:

First. By the father or mother, if father and mother are living together.

Second. If father and mother are not living together, then by the one having the custody of the child.

Third. By the guardian duly appointed.

Fourth. By the superintendent or other officer having charge of any institution or asylum where children are cared for.

Fifth. By county superintendents of schools and boards of county commissioners.

Sixth. By juvenile courts under an order of commitment.

Under items three, four, five and six consent of parents is not required. [L. '13, p. 598, § 2.]

§ 4399–3. Application for Admission. — The form of application for admission into said State Institution for Feeble-minded and the necessary checks against improper admission shall be such as the board of control may prescribe and each application shall be accompanied by answers under oath to such interrogatories as the said board shall prescribe, and county superintendents of schools are hereby authorized to administer oaths in such cases. [L. '13, p. 598, § 3.]

§ 4399–4. Approval of Application. — County superintendents of schools shall cause to be filled out the prescribed blank applications for admission for such children in their respective districts, who by reason of mental or physical defects are incapable of receiving instruction in the common schools of this state, or whose habits are such as to render them unfit for companionship with normal children. except such as in the judgment of the county superintendent are receiving proper care and education and are being safely kept at home. All applications for admission of defectives under twenty-one years of age except those committed by the juvenile court, shall be made through the county superintendent of schools, who shall keep a record of such and certify to the board of county commissioners all applications that are accepted by the superintendent of the State School and Colony. [L. '13, p. 598, § 4.]

§ 4399–5. School Clerks to Report Defectives. — It shall be the duty of the clerks of all school districts in the state of Washington, at the time for making the annual reports, to report to the school superintendent of their respective counties, the names and addresses of all feeble-minded youths residing within their respective districts, who are under the age of twenty-one years. And each county school superintendent shall make a full report of such defective youth to the county commissioners of their respective counties at their regular August meeting of each year, transmitting a copy of said report to the state board of control and the superintendent of the State Institution for Feeble-minded. [L. '13, p. 599, § 5.]

§ 4399–6. Parents to Send Defective Children.—Upon notification by the superintendent of the State Institution for Feeble-minded, of acceptance of application for admission, it shall be the duty of the parents or the guardian of such defective youth to send them to said institution and the county superintendent of schools shall take all

action necessary to enforce this section of this act. [L. '13, p. 599, § 6.]

§ 4399–7. County to Pay Expense, When.—If it appears to the satisfaction of the county commissioners that the parents of any such defective youth who have been accepted for admission are unable to pay the expense of sending them to the said institution, it shall be the duty of the commissioners to send them at the expense of the county. [L. '13, p. 599, § 7.]

§ 4399–8. Patients Held After Majority.—Inmates arriving at the age of twenty-one years while in the institution, and who, in the judgment of the superintendent, are unfit to be discharged, shall be reported to the superior court of competent jurisdiction, which court, after due examination and finding the case a proper subject for institutional care, may issue an order of commitment to said State School and Colony. [L. '13, p. 599, § 8.]

§ 4399–9. Feeble-minded Adults.—Adults under fifty years of age who may be determined to be feeble-minded, and who are of such inoffensive habits as to make them proper subjects for classification, education and discipline in an institution for feeble-minded, may be admitted free upon pursuing the same course of legal commitment as governs admission to the hospitals for insane; but no insane persons, or those who are proper subjects for county poor farms, hospitals or asylums, or cases of senile dementia, shall be admitted to the State School and Colony. [L. '13, p. 600, § 9.]

§ 4399–10. Period of Detention.—The superintendent of the State School and Colony shall detain inmates admitted to the institution until satisfied that they are in normal condition and safe and competent to be at large, or that they can receive proper care and education at the home of relatives, or in some other home or institutions. In such cases, or for other good and sufficient reasons, he may grant discharges; or, in his discretion, permit inmates to visit their homes for stated periods, upon request of parents or guardians approved by the county superintendent of schools. [L. '13, p. 600, § 10.]

§ 4399–11. Tuition Fee.—Any parent or guardian who may wish to enter a child in said institution and pay all expenses of care and maintenance, may do so under terms, rules and regulations prescribed by the board of control. [L. '13, p. 600, § 11.]

§ 4399–12. Support Charged to Estate.—When not otherwise provided, the superintendent shall provide the inmates with suitable clothing, the actual cost of which shall be a charge against the parents, guardian or estate of such inmates, and in the event that such parent, guardian or estate is unable or is insufficient to provide or pay for such clothing, the same shall be provided by the state.

The board of county commissioners, county superintendent of schools, or other authorized officers, in recommending an applicant for admission to said institution, shall state whether or not such person has an estate of sufficient value, or a parent of sufficient financial ability to defray the expense in whole or in part for such clothing. The expense of personal clothing provided by the state shall be a charge against the parents or estate of inmates if such parents or estate are financially able to pay the same; after proper investigation, the state may proceed against the party or parties or estate and collect the same through the courts as other accounts are collected. [L. '13, p. 600, § 12.]

§ 4399–13. Fireproof Buildings—Sexes Separated.—The future construction of the buildings of the State School and Colony shall be fireproof as far as possible. They shall be in two groups for each sex; one for the educational and industrial department and one for the custodial or colony department, with such subdivisions as will best classify and separate the many diverse forms of the infirmity to be cared for. [L. '13, p. 601, § 13.]

§ 4399–14. School Training—Agricultural Training.—A school department shall be maintained from September 1st to June 1st each year, for the benefit of those who can be educated along lines best suited to individual capabilities. The processes of agricultural training shall receive consideration and the employment of the inmates in the care and raising of stock, in dairying and in the cultivation of fruits, vegetables, etc., shall be made tributary as far as possible to the maintenance of the institution. Manual training shall also be carried on along such lines as will be of greatest benefit to both the inmates and the institution. [L. '13, p. 601, § 14.]

§ 4399–15. Penalty for Violation of Act.—Any parent, guardian or proper officer who shall, without proper cause, fail to carry into effect the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof, upon the complaint of any officer or citizen of the county or state, before any justice of the peace or superior court, shall be fined in any sum not less than fifty nor more than two hundred dollars ($200), in the discretion of the court. [L. '13, p. 601, § 15.]

§ 4400. Same—Children from Other States.—The state board of control may admit to this institution feeble-minded children from other states, but the parents or guardians of such children must be required to pay annually or quarterly in advance a sufficient amount to cover the cost of maintaining and educating such children. [L. '05, p. 135, § 7; L. '09, p. 260, § 3.]

§ 4401. School Clerks to Report Defectives to County Superintendent.—It shall be the duty of the clerks of all school districts in the state of Washington at the time for making the annual reports to report to the school superintendent of their respective counties the names of all feeble-minded youth residing within their respective districts who are between the age of six and twenty-one years. [L. '05, p. 135, § 8; L. '09, p. 260, § 4.]

§ 4402. Superintendent to Report to Commissioners and Board of Control.—It shall be the duty of each county school superintendent to make a full and specific report of such defective youth to the county commissioners of his county at the regular meeting of said commissioners held in August in each year. He shall also, at the same time, transmit a duplicate copy of said report to the state board of control. [L. '05, p. 135, § 8; L. '09, p. 260, § 5.]

See infra, § 8936, salary, etc.

§ 4403. Compulsory Attendance.—It shall be the duty of the parents or the guardians of all such defective youth to send them each year to the said state institution for feeble-minded. The county superintendent shall take all action necessary to enforce this section of this act: Provided, that if satisfactory evidence shall be laid before the county superintendent that any defective youth is being properly educated at home or in some suitable institution other than the State Institution for Feeble-minded, the county superintendent shall take no other action in such case further than to make a record of such fact, and take such steps as may be necessary to satisfy himself that such defective youth shall continue to receive a proper education. [L. '09, p. 261, § 6. Cf. L. '05, p. 135, § 9.]

§ 4404. Transportation of Poor.—If it appears to the satisfaction of the county commissioners that the parents of any such defective youth within their county are unable to bear the expenses of sending and returning them to said state school, it shall then be the duty of the commissioners to send and return them to and from said school. [L. '09, p. 261, § 7.]

§ 4405. Neglect of Duty—Penalty.—Any parent, guardian, school superintendent or county commissioner who shall, without a proper cause, fail to carry into effect the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof, upon the complaint of any officer or citizen of the county or state, before any justice of the peace or superior court, shall be fined in any sum not less than fifty nor more than two hundred dollars, in the discretion of the court. [L. '09, p. 261, § 8. Cf. L. '05, p. 135, § 9.]

CHAPTER VIII.

General Provisions Relating to Common School System.

§ 4406. Common Schools, What are—Admission.—Common schools shall include schools that are maintained at public expense in each school district and under the control of boards of directors. Every common school, not otherwise provided for by law, shall be open to the admission of all children between the ages of six and twenty-one years residing in that school district. [L. '09, p. 261, § 1. Cf. L. '90, p. 371, § 44; 1 H. C., § 809; L. '97, p. 384, § 64.]

Cited in 71 Wash. 214, 216.

§ 4407. Subjects to be Taught.—All common schools shall be taught in the English language, and instruction shall be given in the following branches, viz.: Reading, penmanship, orthography, written arithmetic, mental arithmetic, geography, English grammar, physiology and hygiene with special reference to the effects of alcoholic stimulants and narcotics on the human system, history of the United States, and such other studies as may be prescribed by the state board of education. Attention must be given during the entire course to the cultivation of manners, and the fundamental principles of honesty, honor, industry and economy, to the laws of health, physical exercise, ventilation and temperature of the schoolroom, and not less than ten minutes each week must be devoted to the systematic teaching of kindness to not only our domestic animals, but to all living creatures. [L. '09, p. 262, § 2. Cf. L. '86, pp. 29–31; L. '90, p. 372, § 45; 1 H. C., § 810; L. '95, p. 8, § 1; L. '97, p. 384, § 65.]

§ 4408. School Day and Month Defined.—A school day shall consist of six hours for all pupils above the primary grades, exclusive of an intermission at noon; but any board of directors may fix as a school day for their district a less number of hours than six: Provided, that for pupils belonging to the primary grades the school day shall not be less than four hours, exclusive of an intermission at noon, and for pupils belonging to grades above the primary grade the minimum school day shall not be less than five hours, exclusive of an intermission at noon. In the absence of any by-law or order of the board of directors defining the school day for their district, any teacher may dismiss all pupils belonging to the primary grades after an attendance of four hours, exclusive of said intermission. The school month shall consist of twenty days, or four weeks of five days each, and the term "school year," for all matters pertaining to experience in teaching and for all matters pertaining to the granting of or renewing of certificates, shall consist of not fewer than nine school months. [L. '09, p. 262, § 3. Cf. L. '90, p. 372, § 46; 1 H. C., § 811; L. '97, p. 384, § 66; L. '03, p. 178, § 22.]

§ 4409. School Year.—The school year shall begin on the first day of July and end with the last day of June. [L. '90, p. 373, § 49; 1 H. C., § 814; L. '97, p. 384, § 66; L. '09, p. 262, § 4.]

School year of nine months, see last section.

§ 4410. Contagious Diseases.—No teacher, pupil or janitor shall be permitted to attend school from any house in which smallpox, varioloid, scarlet fever, diphtheria or any other contagious or infectious diseases are prevalent. No teacher, pupil or janitor shall be permitted to return to school from any house where the above-mentioned diseases, or any form of them, have prevailed, until three weeks shall have elapsed from the beginning of convalescence of the patient, or upon the certificate of a registered physician in good standing that there is no danger of contagion. In case of whooping-cough, chicken-pox and measles, certified by a physician to be not of a malignant character, this rule shall not apply to teachers, pupils or janitors who have had the diseases and have entirely recovered from them: Provided, that no pupil, teacher or janitor can attend school or be employed who is afflicted with the pulmonary tuberculosis. [L. '09, p. 262, § 5. Cf. L. '90, p. 372, § 47; 1 H. C., § 812; L. '97, p. 384, § 68.]

§ 4411. Pupils Shall Comply With Regulations.—All pupils who may attend the common schools shall comply with the regulations established in pursuance of the law for the government of the schools, shall pursue the required course of studies, and shall submit to the authority of the teachers of such schools. Continued and willful disobedience or open defiance of authority of the teacher shall constitute good cause for expulsion from school. [Cf. L. '90, p. 372, § 48; 1 H. C., § 813; L. '97, p. 385, § 69; L. '09, p. 263, § 6.]

Cited in 43 Wash. 449.

§ 4412. Minimum Length of School Term.—All school districts in this state shall maintain school during at least six months each year. [L. '09, p. 263, § 7. Cf. L. '97, p. 385, § 70; L. '03, p. 179, § 23.]

Cited in 84 Wash. 85.

§ 4413. Construction of Words "He" or "His," etc.—Whenever the word "he" or "his" occurs in this act, referring to either the members of the city board of directors, county superintendents of common schools, city superintendents, directors, clerks, state board of education or other school officers, it shall be understood to mean also "she" or "her," and any woman possessing all of the qualifications of an elector, except as to sex, and possessing all of the other qualifications required by law for such offices shall be eligible to hold such offices. [Cf. L. '90, p. 382, § 78; 1 H. C., § 856; L. '95, p. 66, § 1; L. '97, p. 425, § 176; L. '09, p. 263, § 8.]

§ 4414. Free from Sectarian Influence.—All schools maintained or supported wholly or in part by the public funds shall be forever free from sectarian control or influence. [L. '09, p. 263, § 9.]

See Const., Art. IX, § 4.

CHAPTER IX.

School Districts, Classification and Powers.

§ 4415. County District Defined.—For purposes of supervision and administration each county in the state shall constitute one county district. [L. '97, p. 357, § 2; L. '09, p. 264, § 1.]

§ 4416. First Class.—Any school district in this state containing a city of the first class or of the second class, or containing a city having the population requisite for a city of the first class or of the second class, as shown by any regular or special census, shall be a school district of the first class. [L. '09, p. 264, § 2.]

§ 4417. Second Class.—Any school district in this state containing a city of the third class or of the fourth class, or containing a city having the population requisite for a city of the third or of the fourth class, as shown by any regular or special census, shall be a school district of the second class. [L. '09, p. 264, § 3.]

§ 4418. Third Class.—All other school districts shall be school districts of the third class. [L. '09, p. 264, § 4.]

§ 4419. Consolidated Districts.—Any school district which has been formed by the consolidation of two or more school districts shall be designated as a consolidated school district. [L. '09, p. 264, § 5.]

§ 4420. Joint District.—Any school district composed of territory in two or more counties shall be designated as a joint school district. [L. '09, p. 264, § 6.]

§ 4421. Union High School District.—Any school district established for the purpose of maintaining a high school by the union of two or more contiguous districts in the same county, shall be designated as a union high school district. [L. '09, p. 264, § 7.]

§ 4422. Designation.—The term "school district," as used in this act, is declared to mean the territory under the jurisdiction of a single board designated as a board of school directors, and shall be organized in form and manner as hereinafter provided, and shall be known as —— (here insert name of city in case of districts of first or second class) School District No. ——, —— county, state of Washington: Provided, that all school districts now existing as shown by the records of the county superintendent are hereby recognized as legally organized districts, subject to the classification of this chapter.

[L. '09, p. 264, § 1. Cf. L. '90, p. 361, § 18; 1 H. C., § 783; L. '97, p. 357, § 3.]

§ 4423. Corporate Powers.—A school district shall constitute a body corporate and shall possess all the usual powers of a corporation for public purposes, and in that name and style may sue and be sued, purchase, hold and sell such personal and real estate, and enter into such obligations as are authorized by law; and the title to all school buildings or other property, real or personal, owned by any such school district shall, upon the organization of a district under the provisions of this act, vest immediately in the new district, and the board of directors of such school district shall have exclusive control of the same for all purposes herein contemplated. [L. '09, p. 265, § 2.]

See infra, §§ 4294, 5775, assessments for local improvements.

§ 4424. Each Incorporated City Shall Constitute One District.—Each incorporated city in the state shall be comprised in one school district, and shall be under the control of one board of directors: Provided, that nothing in this section shall be so construed as to prevent the extension of such city district a reasonable distance beyond the limits of such city: And provided further, that nothing in this section shall be so construed as to change or disturb the boundaries of any school district organized prior to the incorporation of any city, except in cases of incorporation of cities lying partly in two or more school districts organized prior to the incorporation of such city, or the extension of the boundaries of cities beyond the limits of the school districts in which they are situated, or in cases where two or more cities unite, as provided by law: And provided further, that the fact of the issuance of bonds by school districts, heretofore or hereafter, shall not prevent the formation of new school districts, whether or not such bonds have been redeemed, canceled, or paid in whole or in part and shall not prevent the transfer or uniting with another school district of a portion or the whole of a district where bonds have been or may hereafter be issued. [L. '09, p. 265, § 3. Cf. L. '90, p. 379, § 65; L. '91, p. 257, § 23; 1 H. C., § 834; L. '97, p. 385, § 72.]

Former laws cited in 36 Wash. 411.

§ 4425. Purchase of Schoolhouse Sites.—Any school district may purchase, under the provisions of law governing the sale thereof, a schoolhouse site or sites of not less than three acres nor more than ten acres each, of any school lands of the state of Washington. [L. '95, p. 17, § 1; L. '97, p. 359, § 7; L. '09, p. 265, § 4.]

§ 4426. Preference Right to Purchase.—In all cases when a schoolhouse is or may be erected upon any school lands of this state the

school district to which such schoolhouse belongs shall have the preference right for six months after the filing of the final appraisal of such school lands not already appraised, to purchase schoolhouse sites to include the lands occupied by such schoolhouses, at the appraised value thereof. [L. '95, p. 17, § 2; L. '97, p. 359, § 8.]

§ 4426–1. Insurance Fund in First Class District.—School districts of the first class shall, when in the judgment of the board of directors it be deemed expedient, have power to create and maintain a permanent insurance fund for said districts, to be used to meet losses by fire, if any, of said school districts. [L. '11, p. 378, § 1.]

§ 4426–2. Estimate.—The board of directors shall annually, at the same time and in the same manner as provided for reporting to the board of county commissioners an estimate of the amount of funds required for the support of the schools, report the additional amount of funds determined upon for creating or adding to the permanent insurance fund of the district, and the board of county commissioners are hereby authorized and required to levy and collect such additional amount of funds, the same as other school taxes. [L. '11, p. 378, § 2.]

§ 4426–3. Investment.—The county treasurer, when authorized to do so by the board of directors of any school district, may invest any accumulated permanent insurance fund of said district in school, county, or state warrants of the state of Washington, and all profits accruing from such investment, and the funds so invested, shall revert to the permanent insurance fund of said district, and the county treasurer shall be the custodian of all warrants purchased by and with said permanent insurance fund until the same are redeemed, and the county treasurer shall submit a statement of such fund and warrants as a part of his monthly report to each district. [L. '11, p. 378, § 3.]

CHAPTER X.

New Districts and Alteration of Boundaries.

§ 4427. Petition for New District, Requisites of.—For the purpose of organizing a new district, a petition in writing shall be made to the county superintendent, signed by at least five heads of families residing within the boundaries of the proposed new district, which petition shall describe the boundaries of the proposed new district and give the names of all the children of school age residing within the boundaries of such proposed new district, at the date of presenting said petition. [L. '09, p. 266, § 1. Cf. L. '90, p. 361, § 19; L. '91, p 246, § 7; 1 H. C., § 784; L. '97, p. 357, § 4; L. '99, p. 18, § 1.]

Former laws cited in 40 Wash. 253; 72 Wash. 455.

§ 4428. Notice—Hearing.—The county superintendent shall give notice to the parties interested by causing notices to be posted at least twenty (20) days prior to the time appointed by him for considering said petition, in at least three of the most public places in the proposed new district, and one on the schoolhouse door of each district affected by the proposed change, and in one of the most public places of the territory affected by the proposed change. On the day fixed in the notice, he shall proceed to hear said petition, and if he deem it advisable to grant the petition he shall make an order establishing said district and describing the boundaries thereof and shall certify his action to the board of county commissioners at their next regular meeting. [L. '09, p. 266, § 2.]

Cited in 69 Wash. 343.

§ 4429. Conditions to be Performed.—No new district formed by the subdivision of an old one shall be entitled to any share of public money belonging to the old district until a school has actually been taught one month in the new district and unless within eight months from the order of the county superintendent granting such new district a school is opened, the action making a new district shall be void, and all elections or appointments of directors or clerks made in consequence of such action, and all rights and office of parties so elected or appointed shall cease and determine, and all taxes which may have been levied in such old district shall be valid and binding upon the real and personal property of such new district, and shall be collected and paid into the school fund of the old district. [L. '09, p. 266, § 3. Cf. L. '90, p. 362, § 21; 1 H. C., § 786; L. '97, p. 400, § 115.]

§ 4430. Apportionment of Funds Between New and Old District. When a new district is formed from one or more old districts it shall be entitled to a just share of the school money to the credit of the one or more old districts, from which the new district is formed, at the time the petition was granted to establish the new district. And the county superintendent (or in case of an appeal, the board of county commissioners), shall divide such money and also such money as may, for the current year, afterward be apportioned to the said one or more old districts, according to the number of school children resident in the new district, as may be ascertained by a census taken for that purpose: Provided, that the new district shall be entitled to all school district tax levied within the boundaries of the new district, for the current year in which the new district is formed. And if such tax, or any part of it has already been collected and placed to the credit of the aforementioned one or more old districts, it shall be the duty of the county treasurer, upon the order of the county superintendent, to transfer the money received from such special tax

to the credit of the new district. [L. '09, p. 267, § 4. Cf. L. '90, p. 363, § 22; 1 H. C., § 787; L. '93, p. 265, § 1; L. '97, p. 401, § 116; L. '99, p. 22, § 3.]

§ 4431. Adjustment of Property, Debts, etc.—Appeal.—At the hearing for the formation of a new school district, the county superintendent shall, in case the petition is granted, hear testimony offered by any person or school district interested therein, for the purpose of finding and determining the amount and value of all school property of whatever nature involved in the proposed action, the nature and amount and value of all bonded, warrant and other indebtedness of the original school district or districts out of whose territory such new district is formed, including all legal uncompleted obligations then existing, and in so doing shall consider the amount of such outstanding indebtedness incurred for current expenses, the amount incurred for permanent improvement, and the location of such improvements, and shall make an equitable adjustment of all property, debts and liabilities among the districts involved.

He shall make a full record of all such findings and terms of adjustment and the decision of said county superintendent shall be final unless appealed from in the manner provided by law, in which case the decision of the board of county commissioners shall be final. [L. '09, p. 267, § 5.]

Cited in 69 Wash. 343.

§ 4432. Tax Levy to Pay Indebtedness.—When a new school district is formed in the manner provided by this article it shall be the duty of the county commissioners to provide by appropriate levies on the property of such new district, in the manner provided by law, for the payment of such indebtedness as may be imposed upon it by the decision of the county superintendent, or in case of appeal by the board of county commissioners. [L. '09, p. 268, § 6.]

§ 4433. Alterations of Boundaries of School Districts—Requisites of Petition for.—For the purpose of transferring territory from one district to another or enlarging the boundaries of any school district, a petition in writing shall be presented to the county superintendent, signed by a majority of heads of families residing in the territory which it is proposed to transfer or include, or in case there be no family resident in such territory then by the board of directors in one of the districts affected by such proposed change, which petition shall describe the change which it is proposed to have made. It shall also state the reason for desiring said change, and the number of children of school age if any residing in the territory to be transferred. For such proposed transfer of territory the notices shall be posted and the hearing and appeal shall be the same as for the formation of a

new district: Provided, that whenever any part of a school district of the third class in which no high school is maintained is bounded on three sides by a school district of the second class in which a high school is situated and maintained, the county superintendent of schools may without petition, transfer the territory of the school district of the third class so bounded to the school district of the second class in which said high school is situated and maintained: Provided, that the county superintendent of schools, shall hold a hearing upon the advisability of said transfer, and shall give notice of the time and place of said hearing to the parties interested, by causing notices to be posted at least twenty (20) days prior to the time appointed by him for said hearing, in at least three of the most public places in the territory proposed to be transferred, and one on the schoolhouse door of each district affected by the proposed change. On the day, and at the place fixed in the notice, he shall hold said hearing, and if he deem it advisable to make such transfer, he shall make an order establishing said transfer, and shall certify his action to the board of county commissioners at their next regular meeting. Upon making such transfer of territory the county superintendent of schools shall fix a time and place for adjusting the assets and liabilities of the school districts affected, and shall give notice thereof by posting said notice at least twenty days prior to the appointed time in not less than three of the most public places in the district from which the territory was transferred (at least one of which shall be in the territory transferred), and a like number in the district to which the territory is transferred. At the time and place fixed he shall hear the testimony offered by any interested party or district, and make an equitable adjustment of all property, debts and liabilities among the districts affected in the same manner and to the same effect as is provided in section 4434 of Remington & Ballinger's Annotated Codes and Statutes of Washington. [L. '15, p. 171, § 1. Cf. L. '09, p. 268, § 1; L. '90, p. 362, § 20; L. '91, p. 247, § 8; 1 H. C., § 785; L. '97, p. 358, § 5; L. '01, p. 370, § 1; L. '03, p. 157, § 1.]

Cited in 69 Wash. 343; 72 Wash. 455.

See infra, § 9107, to correspond with road districts.

§ 4434. Hearing—Adjustment of Property and Liabilities.—At the hearing for the alteration of any school district the county superintendent shall, in case the petition is granted, hear testimony offered by any person or school district, for the purpose of finding and determining the value and amount of any school property of whatever nature involved in the proposed action, the nature and amount and value of all bonded, warrant and other indebtedness of each school district affected by the action, including all legal uncompleted obligations then existing, and in so doing shall consider

the amount of such outstanding indebtedness incurred for current expenses, the amount incurred for permanent improvements and the location of such improvements, and shall make an equitable adjustment of all property, debts and liabilities among the districts involved.

He shall make a full report of all such findings and terms of adjustment and the decision of said county superintendent shall be final unless appealed from in the manner provided by law, in which case the decision of the board of county commissioners shall be final. [L. '09, p. 268, § 2.]

§ 4435. Levy, for Payment of Indebtedness.—In case of the alteration of any school district, in the manner provided by this article, it shall be the duty of the board of county commissioners to provide by appropriate levies on the property of such district, in the manner provided by law, for the payment of such indebtedness as may be imposed upon it by the decision of the county superintendent, or in case of appeal, by the board of county commissioners. [L. '09, p. 269, § 3.]

"Article" in this section refers to this and the last two preceding sections.

§ 4436. Alteration by Extension of City Limits—When Annexation in Effect.—Whenever an incorporated city shall extend its limits in the manner provided by law, so as to include all or a part of one or more school districts, the territory so included shall not be deemed annexed for school purposes until the thirtieth day of June next succeeding the date of annexation for municipal purposes, at which time the county superintendent shall declare the territory added to the limits of said city to be a part of the school district embracing said city: Provided, that when a schoolhouse is located within the territory annexed for municipal purposes, and yet remains the most accessible school for a part of the school district left outside of the territory so annexed to such incorporated city, the county superintendent may annex all or any part of such school district to the school district embracing such city. [L. '09, p. 269, § 1.]

Cited in 72 Wash. 455.

§ 4437. Adjustment of Property by County Superintendent.—At the time of declaring any territory to be added to the limits of a school district embracing an incorporated city, as provided in the last preceding section, the county superintendent shall make an equitable adjustment of all property, including current funds and taxes, and of all debts and liabilities between the districts involved, and shall certify his action to the board of county commissioners. Before making said adjustment, he shall give not less than ten days' written

notice to the directors of each district affected by such change, fixing the time and place of the hearing before him. [L. '09, p. 269, § 2.]

§ 4438. Hearing—Procedure as to Adjustment.—At such hearing the county superintendent shall hear testimony offered by any person or school district interested therein pertaining to the value and amount of any school property, of whatever nature, including current funds and taxes, involved in the proposed action, the assessed value of all taxable property in said districts, the nature, amount and value of all bonded, warrant and other indebtedness of each school district affected by the action, including all legal uncompleted obligations then existing; and whenever the territory so added to the school district embracing such incorporated city, shall include a part only of the school districts from which such territory shall be taken, he shall consider the amount of outstanding indebtedness, of each of said school districts, incurred for current expenses, the amount incurred for permanent improvements and the location of such improvements, for the purpose of making such equitable adjustment of all property, debts and liabilities among the districts involved. He shall make a full report of his findings and terms of adjustment, and the decision of said county superintendent shall be final unless appealed from in the manner provided by law, in which case, the decision of the board of county commissioners shall be final. [L. '09 p. 270, § 3.]

§ 4439. Corporate Existence Continued Until Indebtedness Paid.—Whenever the territory so added to a school district, embracing an incorporated city, shall include the whole of the school district from which such territory was taken, such district shall retain its corporate existence so far as necessary for that purpose, until its indebtedness as determined by such adjustment shall have been paid in full, and the officers of the district embracing such incorporated city to which its territory shall have been added shall have the power, and it shall be their duty, to provide, by appropriate levies upon such old district or districts, for the payment of such indebtedness: Provided, that when such payment of indebtedness is fully made, the clerk of the district shall enter the fact upon the records of the district, and report the same to the county superintendent of schools. [L. '09, p. 270, § 4.]

CHAPTER XI.

Consolidated and Joint Districts.

§ 4440. Petition for Consolidated District, Requisites of.—Upon receipt of a petition signed by five heads of families requesting the consolidation of two or more adjoining districts in the same county, the county superintendent shall call a special election of the voters of such school districts at some convenient place, by posting written

or printed notices in like manner as is provided for calling annual school district elections, and said notices shall state the object for which the election is called.

If a majority of the voters of each district shall vote to consolidate, the clerk of each district so proposing to consolidate, shall within ten days after the election notify the county superintendent of the holding of and the result of the election and the county superintendent shall, immediately after receipt of said notice organize and establish a consolidated school district and when such consolidated district shall have been established no new district shall be established out of any portion thereof, or any portion thereof changed to another district within five years from such consolidation. [L. '15, p. 646, § 1. Cf. L. '09, p. 271, § 1; L. '90, p. 378, § 61; L. '91, p. 255, § 19; 1 H. C., § 830; L. '97, p. 359, § 9; L. '03, p. 159, § 2.]

Cited in 69 Wash. 343; 72 Wash. 455; 74 Wash. 59.

§ 4441. Board of Directors—How Constituted.—When two or more districts are consolidated by the provisions of this act, or where two or more districts are consolidated by the uniting of two or more incorporated cities or towns, as provided by law, all the directors of the several districts so consolidated shall constitute the board of directors of the new district so formed, and shall have all the powers and authority conferred by the laws of this state upon school district directors, until the next annual school election in said district, at which times there shall be elected three directors for said district, in the manner provided by law, who shall hold their respective offices as provided for the officers of new districts. [L. '09, p. 271, § 2.]

§ 4442. When District not Entitled to Bonus.—Whenever, by reason of detachments of territory subsequent to the formation of a consolidated district, the boundaries of such district shall become practically coextensive with the boundaries of a district prior to the formation of such consolidated district, it shall be the duty of the county superintendent to report such fact to the superintendent of public instruction at the time of making his annual report, and said district shall no longer be entitled to the bonus hereinafter provided for consolidated districts. [L. '09, p. 271, § 3.]

§ 4443. City Directors Constitute Board, When City Included.—When two or more districts are consolidated only one of which contains an incorporated city, the directors of the district which contains such incorporated city shall become the directors for the consolidated district as soon as the consolidation is legally completed. [L. '09, p. 271, § 4.]

§ 4444. Change of Designation of Consolidated District.—The county superintendent of any county in which new districts are

formed by the uniting of ten [two] or more districts, or by the incorporating of any city or town lying partly in two or more school districts, shall upon being notified of such action by the board of directors of such new district, proceed to designate such new district by a number not the same as that of either component district or of any existing district, and to make a record of the boundaries thereof, and he shall certify such facts to the board of county commissioners, to the county treasurer, and to the clerk of the new district formed. The county superintendent shall also divide such consolidated district into three directors' districts which shall each comprise as nearly as possible one-third of the population of the consolidated district, and thereafter one director shall be elected from among the qualified electors of each such directors' district by the qualified electors of the consolidated district. [L. '15, p. 647, § 2. Cf. L. '09, p. 272, § 5.]

§ 4445. Entitled to All Property of Districts United.—All school districts formed by the uniting of two or more districts, as provided for in this act, shall be entitled to the public property of the school districts so united and to all current funds in excess of outstanding indebtedness other than bonded indebtedness, and the county superintendent shall transfer all such excess funds to the new district in accordance with this provision and shall certify such transfer to the county treasurer: Provided, that, for the purpose of apportionment the consolidated district shall be considered one district: Provided further, that for the purpose of apportionment the consolidated district shall be credited with two thousand days' attendance in addition to actual attendance for each district, less one, so consolidated. [L. '09, p. 272, § 6. Cf. L. '90, p. 379, § 67; L. '91, p. 258, § 25; 1 H. C., § 836; L. '97, p. 361, § 13; L. '03, p. 163, § 6.]

§ 4446. Component Districts Retain Their Corporate Existence.—Each school district composing said consolidated district shall retain its corporate existence so far as necessary for that purpose until its indebtedness has been paid in full, and the county commissioners shall have the power and it shall be their duty to provide by appropriate levies upon such old district or districts for the payment of such indebtedness: Provided, that when such payment of indebtedness is fully made the clerk of the district shall enter the fact upon the records of the district and report the same to the county superintendent of schools. [L. '09, p. 272, § 7. Cf. L. '97, p. 361, § 14.]

Cited in 66 Wash. 326.

§ 4447. Organization of Board and Election of Clerk.—When two or more school districts shall be united by the provisions of this act, the board of directors of the several districts shall, within thirty days thereafter, meet and organize the new board by the election of

one of their number as president of the board. The board shall elect a clerk for said district, and the clerks of the several districts so united shall deliver to said clerk all books, papers and records belonging to their respective offices. The board may in its discretion require the superintendent, if there be one, of such consolidated district to act as clerk. The clerk of the new district thus formed shall immediately notify the county superintendent of the organization of the board of the new district. [L. '15, p. 647, § 3; L. '09, p. 273, § 8. Cf. L. '90, p. 380, § 68; L. '91, p. 258, § 26; 1 H. C., § 837; L. '97, p. 361, § 15; L. '03, p. 163, § 7.]

§ 4448. Formation of Joint School Districts.—When the public good requires it, a school district may be formed of contiguous territory lying in two or more counties, and such districts shall be known as joint school districts. They shall be designated by a separate number for each county in which any portion of their territory may lie. [L. '09, p. 273, § 1. Cf. '95, p. 100, § 1; L. '97, p. 361, § 16.]

Cited in 72 Wash. 456, 457.

§ 4449. Petition for Joinder of Districts.—For the purpose of forming such joint districts, a petition shall be presented, drawn and signed as prescribed for the formation of other school districts, and a copy of such petition shall be presented to the county superintendent of each county affected by the formation of such proposed joint district. [L. '09, p. 273, § 2.]

§ 4450. Notice and Hearing of Petition.—The superintendents of all counties affected by the formation of the proposed joint district shall confer and shall mutually agree upon the time and place of investigating said petition, and upon such agreement each shall notify the school electors of the district or districts of his county affected by the formation of the proposed joint district, by posting notices as required in the formation of other school districts, one of which notices shall be posted upon the schoolhouse door of such district affected by the formation of the proposed joint district, and one of which shall be posted in some conspicuous place in the territory which it is proposed to include in the proposed joint district, in each county; and at the time and place mentioned in said notices the several superintendents shall meet and jointly investigate all matters pertaining to the formation of the proposed joint district. [L. '09, p. 273, § 3.]

§ 4451. Board of Directors, Appointment of.—If at the investigation provided for in the preceding section the several county superintendents shall mutually agree that said district should be formed, they shall appoint a board of directors to serve until the next regular election, and the directors appointed shall qualify within ten days.

At the next regular election a board of directors shall be elected as provided in the case of other new districts. [L. '09, p. 274, § 4.]

§ 4452. Certificate of Election, Where Filed.—Every director or clerk of the joint district shall file his certificate of election and oath of office with the county superintendent of the county in which the schoolhouse is located, and his signature with the treasurer of the same county. [L. '09, p. 274, § 5.]

§ 4453. Vacancies.—Vacancies in the office of director of a joint district shall be filled by appointment by the county superintendent in whose county the officer vacating resided while serving, and a copy of such appointment, with the oath indorsed thereon, shall be filed in the office of each county superintendent. [L. '09, p. 274, § 6.]

§ 4454. Transfers of Territory.—After a joint school district has been formed, all transfers of territory to and from said district shall be made by mutual agreement and joint action between the county superintendents of the several counties in which the territory of said joint district shall be embraced, and all notices of such transfers shall be signed by all superintendents in whose counties the territory of the joint district shall lie. [L. '09, p. 274, § 7.]

§ 4455. Transcripts of Boundaries and Transfers—Maps.—The superintendents of the several counties affected by the formation of any joint school district shall make and keep a correct transcript of the entire boundary of such district, and shall certify the same to the county treasurer and county auditor of each county and all transfers of territory to or from such joint district shall likewise be certified to such officers, said certificates being signed by all county superintendents in whose counties any part of the territory of such joint district shall be located. A map of all joint districts formed under the provisions of this section shall be filed with the superintendent of public instruction within thirty days after the formation of such districts. Said maps shall indicate the number by which the district is designated in each county, and it shall also show the location of the schoolhouse in such district, if there be one. Said map shall be certified to by all county superintendents in whose counties any part of such joint district shall be embraced. [L. '09, p. 274, § 8.]

§ 4456. Apportionment of Funds to Joint Districts.—For the purpose of the apportionment of state school funds the district shall be considered as belonging to the county in which the school building is located: Provided, that the county treasurer in whose county the schoolhouse is not located shall transfer quarterly all moneys to the treasurer of the county where the schoolhouse is located, and the same shall be placed to the credit of said joint district. [L. '09, p. 275, § 9.]

§ 4457. Adjustment of Property of Joint Districts.—At the hearing for the formation of a joint school district, the county superintendents shall, in case the petition is granted, hear testimony offered by any person or school district interested therein, for the purpose of finding and determining the amount and value of all school property of whatever nature involved in the proposed action, the nature and amount and value of all bonded, warrant and other indebtedness of the original school district or districts out of whose territory such joint district is formed, including all legal uncompleted obligations then existing, and in so doing shall consider the amount of such outstanding indebtedness incurred for current expenses, the amount incurred for permanent improvements, and the location of such improvements, and shall make an equitable adjustment of all property, debts and liabilities among the districts involved.

They shall make a full record of all such findings and terms of adjustments and the decision of said county superintendents shall be final. [L. '09, p. 275, § 10.]

Cited in 72 Wash. 456, 457.

§ 4458. Levy to Pay Indebtedness.—When a joint school district is formed in the manner provided by this chapter, it shall be the duty of the board of county commissioners to provide by appropriate levies on the property of such joint district, in the manner provided by law, for the payment of such indebtedness as may be imposed upon it by the decision of the county superintendents. [L. '09, p. 275, § 11.]

§ 4459. Reports to Superintendent of Each County.—All reports from joint districts shall be made in full to the county superintendent of each county affected thereby: Provided, that any county superintendent may order the segregation of any items of such report so as to show separately the numbers or amounts from each county affected thereby. [L. '09, p. 276, § 12; L. '03, p. 165, § 8½.]

Cited in 74 Wash. 57.

CHAPTER XII.

Union High School Districts.

§ 4460. Petition for Formation of—Statements by District Clerks. Whenever the residents of two or more adjacent or contiguous school districts in the same county may wish to unite for the purpose of establishing a union high school, the clerks of the districts, by order of the boards of directors, shall, upon a written or printed petition of five or more heads of families of their respective districts, each submit in writing a statement of the proposed union of such districts together with the question of the advisability of the formation of such union school district to the county superintendent of schools,

who shall within fifteen days report in writing to the said clerk his approval or disapproval, his action to be based upon an investigation made by him to determine whether or not either school district so applying already maintains or is capable itself of maintaining a high school without uniting with another district, or with other districts, or whether or not the educational and other conditions of the districts desiring to so unite are such as to insure the maintenance of a high school in fact according to the provisions of this chapter. [L. '09, p. 276, § 1.]

Cited in 74 Wash. 59.

§ 4461. Election on Question of Formation.—If the county superintendent shall approve of the formation of the proposed union high school district each of said clerks shall call a meeting of the voters of such school districts at some convenient place by posting written or printed notices in like manner as is provided for calling annual school district elections. If a majority of the voters of each district shall vote to unite for the purposes herein stated, the clerk of each district so proposing to unite shall, within ten days after the election, notify the county superintendent of the holding of and the result of the election, and the county superintendent shall, immediately after the receipt of said notices, designate such union high school district as "Union High School District No. ——, —— county," and shall so notify the clerks of the several districts so uniting. [L. '09, p. 276, § 2.]

§ 4462. Organization of Board of Directors.—The boards of directors of the several districts so voting to unite shall constitute the board of directors of such union high school district, and shall within ten days after the elections at which the districts voted to unite meet and organize by electing one of their number president of the board, and selecting their clerk for such union high school district, and the clerk and president chosen at such meeting shall hold their respective offices until the next annual school district election and until their successors are elected and qualified; and the election of president and clerk shall occur annually thereafter, on the second Saturday next succeeding the date at which the newly elected school district officers shall enter upon the discharge of their duties: Provided, that in union districts consisting of three or more school districts the board of directors of said union district shall be composed of the chairman of the several boards of directors of the districts comprised in such union district. [L. '09, p. 277, § 3.]

§ 4463. Notice of Formation.—The clerk of the union high school district shall within ten days after the organization of the district, by the election of a president and clerk, notify the county superintendent of the organization of said district, and the county superin-

tendent shall also, within ten days after receiving notice of the organization of the district, notify the county treasurer and county auditor of the fact of its organization, together with the numbers of the constituent districts and the names of the directors and clerk. [L. '09, p. 277, § 4.]

§ 4464. Enlargement of District.—After the formation of a union high school district the boundaries of the same may be enlarged in the manner prescribed for the formation of the said union high school district: Provided, that the board of directors of the union high school district shall not be reorganized but that the chairman of the district, or the chairmen of the districts, so united to the union high school districts shall be added to the board of directors of the union high school until the next ensuing annual school election. [L. '09, p. 277, § 5.]

§ 4465. Grades Taught—Entrance Requirements.—The directors of such union districts shall determine what grade or grades above the grammar grade of the state common school course of study shall be pursued and maintained in such schools: Provided, that the course of study for all high school grades shall not be inconsistent with the laws of this state; and shall be such as the superintendent of public instruction shall approve. If local conditions admit of it the directors of any union high school district may, at their discretion, admit pupils residing in such union district, belonging to a grade lower than the high school grades, but no pupil belonging to a grade lower than the seventh shall ever be admitted to any such union high school. The teacher or teachers of such union high schools shall keep such records and make such reports as are required of teachers in the districts composing such union districts, and shall make such other reports as may be required by the superintendent of public instruction. [L. '09, p. 278, § 6.]

§ 4466. Powers of Board and Clerks—Duties.—The board of directors and clerk provided for in the preceding section, shall, in all matters relating to the union high schools of such district, possess all the powers herein provided for other school district officers, including the power to recommend special levies of taxes for the purpose of furnishing transportation to and from school and other additional school facilities for the union district, or for the payment of teachers' wages, or for the purchase of fuel, supplies, globes, maps, charts, books of reference or other appliances for teaching, or for any or all of these purposes. They shall discharge all the duties and be governed by the laws herein provided for school district officers. [L. '09, p. 278, § 7.]

§ 4467. Apportionment of School Funds.—Each union high school district shall be entitled to and shall receive apportionments from the

state annual school fund in the manner provided by law for the apportionments from the state annual fund to other school districts. [L. '09, p. 278, § 8.]

§ 4468. Appeals from Formation of District.—In case any resident taxpayer shall feel aggrieved at the formation of a union high school district, or at the refusal of the county superintendent to approve of its formation, he shall be entitled to an appeal as provided in this act. [L. '09, p. 279, § 9.]

§ 4469. Withdrawal from Union District.—When five or more years have elapsed from the date upon which two or more school districts united for the purpose of forming a union high school district, such union may be dissolved, if at a special election called by the board of directors of such union high school district for that purpose a majority of three-fifths of the votes cast at said election are in favor of dissolution. The liabilities and assets of the union high school district so dissolved shall be justly apportioned by the county superintendent among the various districts composing the union high school district. [L. '13, p. 643, § 1; L. '09, p. 279, § 10.]

Cited in 74 Wash. 59.

CHAPTER XIII.

Discontinuance and Alteration of Districts.

§ 4470. Causes for Discontinuance.—In case any school district shall have fewer than five children of school age or shall not have maintained at least the minimum amount of school required by law, during the past preceding school year, or in case of territory which is not now a part of any school district, or in which there are no children of school age, the county superintendent shall have power to attach such territory to some contiguous school district or school districts without being petitioned to do so: Provided, that if any school district so disorganized shall have any outstanding bonds, warrants or other indebtedness, the assessable property of such district shall be holden for the payment of such indebtedness. [L. '09, p. 279, § 1.]

§ 4471. Alteration of Boundaries—Notice to Assessor.—In all cases involving the alteration of school district boundaries, the county auditor shall certify the action of the county superintendent or the county commissioners to the county assessor. [L. '09, p. 279, § 2.]

See infra, § 9107, boundaries to correspond with road districts.

§ 4471½. Minimum Size of District.—In forming new districts, or transferring territory from one district to another, or changing boundaries of districts, no school district shall contain less than four sections of land, unless said district can support six months' school

per year after such change of territory: Provided, that the county superintendent may establish a district with less than four sections on a petition signed by eighty per cent of all the heads of families of the proposed district, by and with the consent of the superintendent of public instruction. [L. '09, p. 280, § 3. Cf. L. '93, p. 142, § 1; L. '97, p. 358, § 6; L. '99, p. 306, § 1; L. '01, p. 371, § 2.]

Former laws cited in 40 Wash. 250.

CHAPTER XIV.

County Superintendents.

§ 4472. Superintendent — Election—Term—Oath—Deputy—Clerical Assistance—Vacancies.—A county superintendent of schools shall be elected in each county of the state at each general election, whose term of office shall begin on the first Monday in September next succeeding his election and continue for two years and until his successor is elected and qualified. He shall take the oath of office and shall give an official bond in a sum to be fixed by the board of county commissioners. He may appoint a deputy, who shall qualify in the same manner as the county superintendent, and perform the duties of the office, subject, however, to revision by the county superintendent: Provided, that in any county having more than one hundred school districts, the county superintendent, with the approval of the board of county commissioners, may appoint such clerical assistance as may be necessary to perform the work of his office properly. The county commissioners of each county shall fill any vacancy that may occur in the office of county superintendent until the next general election. [L. '09, p. 280, § 1. Cf. Cd. '81, § 3170; L. '90, p. 355, § 10; 1 H. C., §§ 238, 775; L. '97, p. 368, § 30; L. '99, p. 311, § 5; L. '03, p. 171, § 13.]

Former laws cited in 24 Wash. 429; 84 Wash. 84.
See infra, § 8328, approval and filing of bond.
See supra, § 4032 et seq., salaries specified.

§ 4473. Qualifications. — No person shall be eligible to hold the office of county superintendent of schools who shall not at the time of his election or appointment have taught in the public schools of this state two school years of nine months each, and who shall not at the time of such election or appointment hold a first grade or higher certificate. [L. '09, p. 280, § 2. Cf. L. '97, p. 368, § 1.]

§ 4474. Proof of Qualifications to be Filed.—The county auditor shall not place the name of any person upon the official ballot as a candidate for the office of county superintendent of schools unless such person shall have filed in the office of the county auditor, at least twenty days before the date at which the election is to be held, proof of having taught in the schools of the state one school year of

nine months, together with a copy of the certificate required by this act. [L. '09, p. 280, § 3. Cf. L. '97, p. 369, § 32.]

This section does not harmonize with the preceding section.

§ 4475. Powers and Duties.—Each county superintendent shall have the power and it shall be his duty—

First. To exercise a careful supervision over the common schools of his county, and to see that all the provisions of the common school laws are observed and followed by the teachers, supervisors and school officers.

Second. To visit the schools in his county, counsel with directors and teachers, and assist in every possible way to advance the educational interests of his county.

Third. To distribute promptly all reports, laws, forms, circulars, and instructions which he may receive for the use of the schools and the teachers, and to execute the instructions and decisions of the superintendent of public instruction, as provided by law.

Fourth. To enforce the outline course of study adopted by the state board of education, or the course of study adopted by any other lawful authority, and to enforce the rules and regulations required in the examination of teachers.

Fifth. He shall prepare an outline course of study for the books adopted in districts of the third class when the needs of the county demand: Provided, that said outline course of study shall be in harmony with the course adopted by the state board of education of this state.

Sixth. To keep on file and preserve in his office the biennial reports of the superintendent of public instruction and of the county superintendent of his county.

Seventh. To keep in good and well-bound books, to be furnished by the county commissioners, records of his official acts.

Eighth. To preserve carefully all reports of school officers and teachers, and at the close of his term of office to deliver to his successor all records, books, documents and papers belonging to the office, taking a receipt for the same, which shall be filed in the office of the county auditor.

Ninth. To administer oaths and affirmations to school directors, teachers and other persons, on all official matters connected with or relating to schools, but he shall not make or collect any charge or fee for so doing.

Tenth. To keep in a suitable book an official record of all persons under contract to teach in the schools of his county showing the number of the school district, the date of the contract, the names of the contracting parties, and the date of the expiration of the teacher's certificate and the grade thereof, the salary paid, and the

date of commencing school, with the length of term in weeks, which data shall be immediately reported to the county auditor.

Eleventh. To make an annual report to the superintendent of public instruction on the first day of August of each year, for the school year ending June 30th, next preceding. The report shall contain an abstract of the reports made to him by the district clerks, and such other matters as the superintendent of public instruction shall direct. And it shall be the duty of the county commissioners and county auditor in every county wherein the county superintendent is about to retire from office to withhold the warrant of his salary for the month of July until they shall have received a certificate from the superintendent of public instruction that the annual report of such county superintendent has been made in a satisfactory manner; and it shall be the duty of the superintendent of public instruction to transmit such certificate to the auditor immediately upon receiving such satisfactory report.

Twelfth. To keep in his office a full and correct transcript of the boundaries of each school district in the county, including joint districts. In case the boundaries of said districts are conflicting or incorrectly described, he shall change, harmonize and describe them, and at their next regular meeting he shall certify his action to the county commissioners of his county, and shall file with them a complete transcript of the boundaries of all school districts affected by his action, which shall be entered upon the journal of said board and become a part of their records. The county superintendent shall, on request, furnish the district clerks with descriptions of the boundaries of their respective districts.

Thirteenth. To appoint school district officers in districts of the second and of the third class, to fill vacancies caused by death, resignation, failure to hold election, failure to qualify before the day for taking office, and absence from the district for a period of ninety days or failure to attend four consecutive meetings of the board without a reasonable excuse; to appoint school officers for any new districts: Provided, that when any new district is organized, such of the school officers of the old district as reside within the limits of the new one shall be such school officers of the new one, and the vacancies in the old district shall be filled by appointment.

Fourteenth. To apportion school funds as provided in Chapter XXIII of this title.

Fifteenth. To grant such temporary certificates and to conduct such examination of teachers and make such records thereof as may be prescribed by law: Provided, that he shall give ten days' notice of such examination by publication in some newspaper of general circulation published in his county, or if there be no newspaper, then by posting up handbills, or otherwise.

Sixteenth. To hold teachers' institutes according to law, and to conduct such other meetings of the teachers of his county as may be for the best interests of the schools.

Seventeenth. To hold each year, if he deem it advisable, one or more directors' meetings, the expense of which shall be audited and paid by the county commissioners: Provided, that such expense shall not exceed the sum of one hundred dollars in any one year.

Eighteenth. To suspend any teacher who may be teaching in his county, against whom he files charges and in case of such suspension he shall immediately notify the superintendent of public instruction of his action, and shall clearly and fully state his reasons for said action.

Nineteenth. To furnish registers and clerks' record-books to all districts of his county upon a requisition from the school district clerk, and he shall receive pay for such books by warrants drawn against the said school district by the county auditor. At the end of each quarter of the fiscal year he shall turn over to the treasurer of his county all moneys derived from the sale of such books, together with a detailed statement of the sources from which said funds were derived. He shall also at the same time send a copy of said statement to the superintendent of public instruction.

Twentieth. To forthwith enforce the provisions of section 4539, infra, and to notify the superintendent of public instruction whenever any school board of such county shall fail to comply with the provisions required. [L. '09, p. 281, § 4. Cf. L. '90, p. 355, § 11; L. '91, p. 240, § 3; 1 H. C., § 776; L. '97, p. 369, § 33; L. '99, p. 311, § 6; L. '03, p. 171, § 14.]

Former laws cited in 10 Wash. 198, 199; 36 Wash. 409; 84 Wash. 84.
There was an error in the reference in this section, but § 4539 was evidently intended.

§ 4476. Reports of Teachers and Officers—Records.—The county superintendent shall require all reports of school district officers, teachers and others to be made promptly as required by law. He shall see that the teacher's register is kept in accordance with law and the instructions of the superintendent of public instruction, and that the records of the school district clerks are properly kept. He shall require the oath of office of all school district officers to be filed in his office, and shall furnish a directory of all such officers to the county treasurer, upon blanks furnished by the superintendent of public instruction, as soon as the election or appointment of such officers is determined and their oaths placed on file. [L. '09, p. 284, § 5. Cf. L. '97, p. 371, § 34.]

§ 4477. Office Open.—He shall keep his office open for the transaction of official business such days each week (at least one day each week) as the duties of the office may require, and shall keep posted

on the door of his office a notice of said office days and hours of such days. [L. '09, p. 284, § 6. Cf. L. '97, p. 371, § 35.]

§ 4478. Office at County Seat—Office Supplies.—The county commissioners shall provide the county superintendent with a suitable office at the county seat, and all necessary blanks, books, stationery, postage, printing and other expenses of his office shall be paid by the county treasurer out of the county funds upon a sworn statement made quarterly and allowed by the county commissioners: Provided, that, as to the necessity for the printing and issuance of circulars of information pertaining to the schools of his county, for the use of schools, school officers and teachers, the county superintendent shall determine. [L. '09, p. 284, § 7. Cf. L. '90, p. 359, § 14; L. '91, p. 244, § 5; 1 H. C., § 799; L. '97, p. 372 § 37; L. '01, p. 376, § 7.]

§ 4479. Traveling Expenses.—For all actual and necessary travel in the performance of their official duties and in attendance on the convention of county superintendents, called by the superintendent of public instruction, county superintendents shall be allowed actual traveling expenses. [L. '09, p. 285, § 8. Cf. L. '90, p. 361; 1 H. C., § 782; L. '97, p. 372, § 38; L. '01, p. 377, § 8; L. '03, p. 174, § 15.]

Former laws cited in 14 Wash. 255; 21 Wash. 84; 35 Wash. 176.
See supra, § 4032 et seq., salary of officers.

CHAPTER XV.

District Officers—General Provisions.

§ 4480. Directors—Election—Qualifications.—Directors of school districts shall be elected at the regular annual school elections. No person shall be eligible to the office of school director who is not able to read and write the English language. [L. '09, p. 285, § 1. Cf. L. '90, p. 364, § 25; 1 H. C., § 790; L. '93, p. 265, § 2; L. '97, p. 373, § 39; L. '99, p. 313, § 7; L. '01, p. 45, § 2; L. '01, p. 377, § 9; L. '03, p. 175, § 16.]

Former laws cited in 4 Wash. 663.
See supra, § 3815, effect of change of county lines.
See infra, § 4888, exception as to ballots.

§ 4481. Powers and Duties of Board of Directors.—Every board of directors, unless otherwise specially provided by law, shall have power and it shall be its duty:

First. To employ, for not more than one year, and for sufficient cause to discharge, teachers, and to fix, alter, allow and order paid their salaries and compensation. The directors, except in districts of the first class, shall make with each teacher employed by them a written or printed contract, which shall be in conformity with the laws of this state, and every such contract shall be made in duplicate, one copy of which shall be retained by the school district clerk

and the other shall be delivered to the teacher after having been approved and registered by the county superintendent as by law required.

Second. To enforce the rules and regulations prescribed by the superintendent of public instruction and the state board of education for the government of schools, pupils and teachers, and to enforce the course of study lawfully prescribed for the schools of their district.

Third. To rent, repair, furnish and insure schoolhouses, to employ janitors, laborers and mechanics.

Fourth. To cause all schoolhouses to be properly heated, lighted and ventilated, and to cause all school premises to be maintained in a cleanly and sanitary condition.

Fifth. To purchase personal property in the name of the district and to receive lease and hold for their district any real or personal property.

Sixth. To suspend or expel pupils from school who refuse to obey the rules thereof, and they shall exclude from school all children under six years of age.

Seventh. To provide free text-books and supplies to be loaned to the pupils of the school, when in their judgment the best interests of their district will be subserved thereby, and to prescribe such rules and regulations as they shall deem necessary to preserve such books and supplies from unnecessary damage.

Eighth. To require all pupils to be furnished with such books as may have been adopted by the lawful authority of this state, as a condition to membership in the schools.

Ninth. To exclude from schools and school libraries all books, tracts, papers and other publications of an immoral or pernicious tendency.

Tenth. To authorize the schoolroom to be used for summer or night schools, or for public, literary, scientific, religious, political, mechanical and agricultural meetings, under such regulations as the board of directors may adopt.

Eleventh. To provide and pay for transportation of children to and from school when in their judgment the best interests of their district will be subserved thereby, but, in case transportation is provided, the directors shall not be compelled to transport children who live within two miles of the schoolhouse.

Twelfth. To establish and maintain night schools. [L. '15, p. 144, § 1. Cf. L. '09, p. 285, § 2; L. '90, p. 364, § 26; 1 H. C., § 791; L. '97, p. 373, § 40; L. '01, p. 45, § 3; L. '01, p. 378, § 10; L. '03, p. 175, § 17; L. '07, p. 611, § 5.]

Former laws cited in 36 Wash. 410, 426, 434; 43 Wash. 238, 241.

§ 4482. Schools to Display National Flag—Exercises.—Every board of directors of the several school districts of this state shall procure a United States flag, and shall display said flag upon or near each public school building during school hours, except in unsuitable weather, and at such other times as to said board may seem proper, and shall cause appropriate flag exercises to be held in every school at least once in each week at which exercises the pupils shall recite the following salute to the flag: "I pledge allegiance to my flag and to the republic for which it stands. One nation indivisible with liberty and justice to all." [L. '15, p. 246, § 1. Cf. L. '09, p. 286, § 3; L. '97, p. 426, § 180.]

§ 4483. Liability for and Payment of Debts.—Every school district shall be liable for any debts legally due, contracted under the provisions of this act, and for judgments against the district, and such district shall pay such judgment or liability out of the proper school funds to the credit of the district. [L. '09, p. 287, § 4. Cf. L. '90, p. 365, § 27; 1 H. C., § 792; L. '97, p. 374, § 41.]

§ 4484. Tuition Charged Adults and Pupils of Other Districts.—Any board of directors shall have power to make arrangements with adults wishing to attend school, or with the directors of another district for the attendance of such children in the school of either district as may be best accommodated therein: Provided, that in case such arrangements are not made, or children from school districts not adjoining desire to attend school in their district, they may charge reasonable tuition for such attendance: Provided further that, all such money collected by any school district officer for the use of the district shall, within thirty days after the date of its collection, be turned over to the county treasurer and placed to the credit of the district. [L. '09, p. 287, § 5. Cf. L. '90, p. 365, § 28; L. '91, p. 248, § 10; 1 H. C., § 793; L. '97, p. 375, § 42; L. '99, p. 314, § 8.]

§ 4485. By-laws.—Any board of directors shall have power to make such by-laws for their own government, and the government of the common schools under their charge, as they deem expedient, not inconsistent with the provisions of this act, or the instructions of the superintendent of public instruction or the state board of education. [L. '09, p. 287, § 6. Cf. L. '90, p. 366, § 29; 1 H. C., § 794; L. '97, p. 375, § 43.]

§ 4486. May Convey Property and Transact Business.—The board of directors of each school district shall have custody of all school property belonging to the district, and shall have power, in the name of the district, to convey by deed all the interest of their district in or to any schoolhouse or lot directed to be sold by vote of the district and all conveyances of real estate made to the district shall

vest title in the district; said board, in the name of the district, shall have power to transact all business necessary for maintaining school and protecting the rights of the district. [L. '09, p. 287, § 7. Cf. L. '90, p. 366, § 30; L. '91, p. 249, § 11; 1 H. C., § 795; L. '97, p. 375, § 44.]

§ 4487. Not to have Pecuniary Interest in Contracts.—It shall be unlawful for any director to have any pecuniary interest, either directly or indirectly, in the purchase of school sites or in the erection of schoolhouses, or in the warming, ventilating, furnishing, repairing or insuring of the same, or to be in any manner interested in or connected with the furnishing of supplies for the maintenance of schools, or to receive or accept any compensation or reward for services rendered as director or be employed for hire by said district or by any person having a contract with said district: Provided, that nothing in this section shall be construed to prevent a director elected as clerk from acting as purchasing agent for his district, or from receiving such compensation for performing the duties of school district clerk as are now or may hereafter be provided by law. [L. '09, p. 287, § 8. Cf. L. '90, p. 366, § 31; 1 H. C., § 796; L. '97, p. 376, § 45.]

Cited in 32 Wash. 118.

§ 4488. Limit of Indebtedness.—It shall be unlawful for any board of directors to contract indebtedness against their district in any one year in any sum or sums exceeding the aggregate of the amount due to said district during the year from state funds, the amount of school district tax levied for the year and the estimated receipts from other sources, unless said indebtedness be authorized by a vote of the electors of said district. [L. '09, p. 288, § 9. Cf. L. '93, p. 266, § 3; L. '97, p. 376, § 46.]

See Const., Art. VIII, § 6.

§ 4489. Books, Papers, etc., Delivered to Successor.—Every school officer shall immediately deliver to his successor in office all books, papers and moneys pertaining to his office. [L. '09, p. 288, § 10. Cf. L. '90, p. 380, § 69; 1 H. C., § 829; L. '97, p. 383, § 60.]

§ 4490. Oath of Office.—Every person elected or appointed to any office mentioned in this chapter shall, before entering upon the discharge of the duties thereof, take an oath or affirmation to support the constitution of the United States and the state of Washington, and to promote the interest of education, and to faithfully discharge the duties of his office according to the best of his ability. In case any officer has a written appointment or commission, his oath or affirmation shall be indorsed thereon and sworn to before any officer authorized to administer oaths. School officers are

hereby authorized to administer all oaths or affirmations pertaining to their respective offices without charge or fee. All oaths of office as herein provided shall, when properly made, be filed with the county superintendent of schools. [L. '09, p. 288, § 11. Cf. L. '90, p. 380, § 70; 1 H. C., § 828; L. '97, p. 383, § 61.]

§ 4491. Signature to be Filed With County Auditor.—Every school district director or clerk shall, on assuming the duties of his office, place his signature, certified to by some school district officer, on file in the office of the county auditor. [L. '09, p. 289, § 12. Cf. L. '90, p. 380, § 70; 1 H. C., § 828; L. '97, p. 383, § 61.]

Cited in 15 Wash. 406.

§ 4492. Right of Eminent Domain—Limit.—The board of directors of any school district of this state may proceed to condemn and appropriate sufficient land for a schoolhouse site not to exceed five acres in extent; such condemnation proceedings shall be in accordance with the laws of this state providing for appropriating private property for public use. [L. '09, p. 289, § 13.]

See supra, § 906–920, eminent domain by school districts.

§ 4493. Approval of Plans, etc., of Buildings.—Whenever any board of directors of school districts of the third class shall be authorized, by the electors of their district, to erect a school building, it shall be the duty of such board, before entering into any contract for the erection of any buildings, to obtain the approval of the county superintendent of the county in which the building is to be erected, of the plans and specifications for the building to be erected. [L. '09, p. 289, § 14. Cf. L. '07, p. 370, § 2.]

CHAPTER XVI.

Directors of Districts of the First Class.

§ 4494. Board—How Constituted—Election—Vacancies.—The directors of school districts of the first class shall consist of five members who shall be known as the board of directors. They shall be elected by ballot by the qualified electors of the district, and shall hold their office for a term of three years and until their successors are elected and qualified.

When a district of the second or third class shall become a district of the first class the existing directors shall serve until the annual election preceding the expiration of the term for which they were elected and shall appoint two additional directors who shall serve until the next annual school election in said district. At such annual election three directors shall be elected, one for one year, and one for two years and one for three years.

In case vacancies are to be filled, and the successor or successors are to be elected to fill an unexpired term or terms, the ballot shall specify the term for which each such director is to be elected. [L. '09, p. 289, § 1.]

§ 4495. Time of Holding Election.—The regular district election in each district of the first class shall be held on the first Saturday of December in each year, and such election shall be held in the manner provided in Chapter XXXI of this title. [L. '09, p. 290, § 2. Cf. L. '90, p. 387, § 3; 1 H. C., § 859; L. '97, p. 387, § 77; L. '03, p. 220, § 2; L. '05, p. 260, § 1.]

§ 4496. Oath and Term of Office—Officers of Board.—All persons elected as members of the board of directors of districts of the first class shall, within ten days thereafter, appear before the officer authorized to administer oaths, take and subscribe the usual oath of office and deliver the same to the county superintendent of schools; in case any person elected shall fail so to do, his election shall be void and the vacancy occasioned thereby shall be filled by the board as hereinafter provided. The term of office of persons so elected shall begin on the first Monday of the month of January following their election. At the first meeting of the members of the board in the month of January of each year, they shall elect a president and vice-president from among their number who shall serve for a term of one year or until their successors are elected and qualified. In the event of the temporary absence or disability of both the president and vice-president, the board of directors may elect a president pro tempore who shall discharge all the duties of president during such temporary absence or disability. They shall also at their regular meeting in the month of January in each year elect a secretary at such salary as they may deem just; said secretary shall not be a member of the board of directors, and may be removed by the board at any time. [L. '09, p. 290, § 3.]

§ 4497. Vote, how Taken.—The election of the officers of the board of directors, the city superintendent, the secretary, teachers, janitors and all other officers of such district shall be by viva voce vote upon a call of the roll of all the members, and no person shall be declared elected unless he receives a majority vote of all the members of the board. [L. '09, p. 290, § 4.]

§ 4498. Duties of President.—It shall be the duty of the president to preside at all meetings of the board, and to perform such other duties as the board may prescribe. [L. '09, p. 290, § 5.]

§ 4499. Vice-president—Duties.—It shall be the duty of the vice-president to perform all the duties of president in case of his absence or disability. [L. '09, p. 291, § 6.]

§ 4500. Secretary—Duties.—It shall be the duty of the secretary to be present at all the meetings of the board, to keep an accurate journal of the proceedings, to take charge of its books and documents, to countersign all warrants for school moneys drawn upon the county treasurer by order of the board; he may be authorized by the board of directors to purchase needed supplies for the schools, and shall also act as superintendent of buildings, and may be charged with the special care of the school buildings and other property of the district; he shall also perform such other duties as the board may direct. [L. '09, p. 291, § 7.]

§ 4501. Secretary—Bond and Oath of Office—Annual Report.—Before entering upon the discharge of his duties, the secretary of the board shall give bonds in such sum as the board of directors may fix from time to time, but for not less than five thousand dollars ($5,000), with good and sufficient sureties, and shall take and subscribe an oath or affirmation, before a proper officer that he will support the constitution of Washington and faithfully perform the duties of his office. He shall, from time to time, as he may be required by the board, make a complete and detailed record of his transactions as secretary, which shall be combined with his annual report, to be published in the manner determined by the board. [L. '09, p. 291, § 8.]

§ 4502. Meetings of Board—Special Meetings.—The regular meetings of the board of directors shall be held monthly or oftener at such a time as the by-laws of the board may prescribe, but special meetings may be held from time to time as circumstances may demand, at the call of the president or on petition of a majority of the members of the board, and all meetings shall be open to the public unless otherwise specially ordered. [L. '09, p. 291, § 9. Cf. L. '90, p. 389, § 13; 1 H. C., § 869; L. '97, p. 390, § 86.]

Former laws cited in 3 Wash. 156.

§ 4503. Office of Board.—The board of directors shall maintain an office where all regular meetings shall be held, and all records, vouchers and other important papers belonging to the board may be preserved, and shall at all times be open for inspection of resident taxpayers. [L. '09, p. 291, § 10. Cf. L. '90, p. 389, § 14; 1 H. C., § 870; L. '97, p. 390, § 87.]

§ 4504. Payment of Claims—Signing of Warrants.—The moneys of such school districts shall be paid out only upon warrants signed by the president, or a majority of the board of directors and countersigned by the secretary: Provided, that when, in the judgment of the board of directors, the warrants issued by the district monthly shall have reached such numbers that the signing of each warrant by the

president personally imposes too great a task on the president, the board of directors, after auditing all payrolls and bills as provided by section 4507, may authorize the issuing of one general certificate to the county treasurer, to be signed by the president, authorizing said treasurer to pay all the warrants specified by date, number, name and amount, and the funds on which said warrants shall be drawn. And the secretary of said board shall be authorized to draw and sign said warrants. [L. '09, p. 292, § 11.]

§ 4505. Vacancies.—The board of directors shall have power to fill, by election, any vacancy which may occur in its body, but the election to fill such vacancy shall be valid only until the next regular district election, and the ballots and returns shall be designated as follows: "To fill unexpired term." [L. '09, p. 292, § 12. Cf. L. '90, p. 390, § 16; 1 H. C., § 872; L. '97, p. 390, § 89; L. '07, p. 40, § 3.]

§ 4506. Quorum—Compulsory Attendance—Effect of Absences.—A majority of all members of the board of directors shall constitute a quorum, but a less number in attendance at any regular meeting shall have, and a quorum at any special meeting shall have, power to compel the attendance of absent members, in such manner and under such penalties as the board may see fit to prescribe; and the absence of any member from four consecutive regular meetings of the board, unless on account of sickness or by resolution of the board, shall vacate his position in the board, which fact shall be passed upon by the board of directors and spread upon their records. [L. '09, p. 292, § 13. Cf. L. '90, p. 390, § 17; 1 H. C., § 873; L. '97, p. 390, § 90.]

§ 4507. Auditing Committee—Expenditures—Annual Examination of Accounts.—All accounts shall be audited by a committee to be styled the "auditing committee," and no expenditure greater than three hundred dollars shall be voted by the board except in accordance with a written contract, nor shall any money or appropriation be paid out of the school fund except on a recorded affirmative vote of a majority of all members of the board: Provided, that nothing herein shall be construed to prevent the board from making any repairs or improvements to the property of the district through their shop and repair department; and the accounts and the records of said board shall at all times be subject to the inspection and examination of the county superintendent of said county, whose duty it shall be, annually, to examine said records and check said accounts, and report in writing to the board of county commissioners the nature and state of said accounts, and any facts that may be required concerning said records. [L. '09, p. 292, § 14.]

§ 4508. Must Advertise for Bids, When.—When, in the opinion of the board, the cost of any furniture, supplies, building, improve-

ments or repairs will equal or exceed the sum of three hundred dollars, it shall be the duty of the board to give due notice by publication, in at least one daily newspaper published within said district, and if there be no daily, then in one or more weekly papers, in three regular consecutive issues, of the intention to receive bids therefor; and the board shall determine the specifications for such bids which shall be public: Provided, that the board may, without giving such notice, make improvements or repairs to the property of such district through their shop and repair department. [L. '09, p. 293, § 15.]

Former laws cited in 34 Wash. 429.

§ 4509. Powers of Board.—Every board of directors of a school district of the first class shall, in addition to the general powers enumerated in Chapter XVII [XV], of this title, have the power:

First. To employ for a term of not exceeding three years, a city superintendent of schools of the district, and for cause to dismiss him; and to fix his duties and compensation.

Second. To prescribe a course of study and a program of exercises which shall not be inconsistent with the course of study prepared by the state board of education for the use of the common schools of this state.

Third. To make necessary by-laws for more effectively carrying out the provisions of this act, and for facilitating the work of the board, as required by law.

Fourth. To adopt and enforce such rules and regulations as may be deemed essential to the well-being of the schools, and to establish and maintain such grades and departments, including night, high, kindergarten, manual training and industrial schools, and schools or departments for the education and training of any class or classes of defective youth, as shall, in the judgment of the board, best promote the interests of education in that district.

Fifth. To employ, and, for cause, to dismiss teachers, and janitors; to determine the length of time over and above eight (8) months that school shall be maintained, such length of time to give a consecutive vacation of not less than three months between June first of any year and September fifteenth of the same year; to fix the time for annual opening and closing of schools, and for the daily dismissal of primary pupils before the regular time for closing schools.

Sixth. To employ attorneys, an architect, inspectors of construction, superintendents of buildings and janitors, and a superintendent of supplies and other employees, and to prescribe their duties and fix their compensation.

Seventh. To employ, and, for cause, dismiss one or more assistant city superintendents and to define their duties and fix their compensation.

Eighth. To employ, and, for cause dismiss, supervisors of instruction, and to define their duties and fix their compensation.

Ninth. To maintain a shop and repair department, and to employ a foreman and the necessary help for the maintenance and conduct thereof.

Tenth. To provide free text-books and supplies for all children attending school, when so ordered by a vote of the electors; or, if free text-books are not voted by the electors, to provide books for children of indigent parents, on the written statement of the city superintendent that the parents of such children are not able to purchase them.

Eleventh. To require successful vaccination as a condition of school membership and to provide free vaccination to all who are unable to pay for the same: Provided, however, that a pupil showing a certificate by a reputable physician that the condition of such child or pupil is such that it would be injurious to its health and possibly dangerous to its life: And provided further, that a child or pupil showing certificate by a reputable physician to the effect that vaccination has failed to take effect, such child or pupil shall have access to the school and vaccination shall not be a condition to school membership to such child or pupil.

Twelfth. To require of the officers or employees of the district to give a bond for the faithful discharge of their duties in such penal sum as may be fixed by the board with good and sufficient surety, and to cause the premium for all bonds required of all such officers or employees to be paid by the district.

Thirteenth. To prohibit all secret fraternities and sororities among the students in any of the schools of the said districts.

Fourteenth. To appoint a practicing physician, resident of the school district, who shall be known as the school district medical inspector, and whose duty it shall be to decide for the board of directors all questions of sanitation and health affecting the safety and welfare of the public schools of the district; he or authorized deputies shall make monthly inspections of each school in the district and report the condition of the same to the board of education and board of health. [L. '09, p. 293, § 16.]

Former laws cited in 43 Wash. 449; 84 Wash. 85.

Chapter XVII [XV] substituted for "Article IV, Chapter IV," which was evidently an error, "Article IV, Chapter II" being probably intended [Chapter XV herein]. See, also, §§ 4520, 4532, infra, where similar errors were made.

§ 4510. Annual School Census.—The board of directors shall annually in May of each year, cause to be taken an enumeration of all persons between the ages of five and twenty-one years residing in the district, said enumeration shall be made on blanks or books

provided by the district and shall contain such items as the superintendent of public instruction shall require, including the following: The names of all persons, male and female, between the ages of five and twenty-one years residing in the district on the first day of May last past; the date of birth of such child; the names and residences of the parents or guardians of all such children. The census shall be taken by the secretary and such enumerators as he shall select, subject to the approval of the board or its proper committee. The enumerators shall receive such compensation as the board may deem just. Each enumerator shall verify by oath the correctness of his report. The secretary of the district shall report to the county superintendent of schools on or before the fifteenth day of the ensuing July, the total number of males and the total number of females enumerated, together with a complete list containing the detailed information herein required of all defective youth residing in said district. [L. '09, p. 295, § 17.]

§ 4511. Sale of School Property.—The board of directors shall have power to sell any of the property of the district which is no longer required for school purposes at public or private sale upon such terms as they may direct if the value thereof be less than two thousand dollars. The question of the sale of school property which may be found by the board of directors to be unsuitable for school purposes, and to be of greater value than two thousand dollars, shall be submitted to a vote of the electors of the district, either at a general election or at a special election called to be held for that purpose, as may be directed by the board of directors, and if a majority of the voters of the district voting thereon shall be for the sale of the property the directors may make the sale at public auction. The sale must be made for cash and good title will be conveyed by deed of the school district, executed by the president or the vice-president and the secretary of the board. [L. '09, p. 296, § 18.]

§ 4512. Estimate for Annual Tax Levy—Limit of Expenditures.—The board of directors shall annually, at a meeting next preceding the annual tax levy for state and county purposes, report to the board of county commissioners an estimate of the amount of funds, in addition to estimated receipts from the state and county apportionments for said district, required for the support of the schools, for the purchase of school sites, the erection and furnishing of school buildings, the payment of interest upon all bonds issued for school purposes, and the creation of a sinking fund for the payment of such indebtedness, if any, and the county commissioners are hereby authorized and required to levy and collect such additional amount of funds, the same as other taxes: Provided, that for the purpose of

the purchase of school sites and the erection of buildings the board of directors of a district of the first class in cities having a population of fifty thousand or less, may annually expend a sum not exceeding fifty thousand dollars; in cities having a population greater than fifty thousand and less than one hundred thousand, a sum not exceeding one hundred thousand dollars; in cities having a population greater than one hundred thousand and less than two hundred thousand, a sum not exceeding two hundred thousand dollars, and for every additional fifty thousand of population beyond two hundred thousand, a further sum of fifty thousand dollars: And provided further, that when any greater expenditure shall be required for said purposes, in any one current school year, the question shall be submitted to a vote of the electors of the district at the time and place the board of directors may appoint. The board of directors shall, previous to such election, designate in one daily paper published in the district, if there be one, if not, then in such weekly papers as may be selected by the board, the place or places where such election shall be held, the locality of the site or sites required and the proposed cost of the buildings to be erected thereon. [L. '09, p. 296, § 19. Cf. L. '90, p. 394, § 30; 1 H. C., § 886; L. '97, p. 393, § 97: L. '99, p. 318, § 14; L. '05, p. 263, § 5; L. '07, p. 41, § 4.]

Former laws cited in 3 Wash. 155, 156; 32 Wash. 274; 39 Wash. 140.
See Const., Art. VIII, § 6, limit of indebtedness.
For partial repeal, see infra, § 9208–24.

§ 4513. Limit of Tax Levy for School Purposes.—The tax levied for school purposes in districts of the first class shall in no one year exceed (1) per cent of the assessed value of all the taxable property in the district: Provided, that when any greater expenditure shall be deemed necessary in any one current school year by the directors, the question shall be submitted to a vote of the electors of the district at the time and place appointed by the board of directors; and notice thereof shall be given as provided in section 4512, which notice shall specify the amount of taxes proposed to be raised in excess of the said one (1) per cent, and if a majority of the electors voting thereon at said election shall be in favor of such additional tax, the entire amount so authorized shall be levied and collected. No levy, however, shall exceed two (2) per cent of all the taxable property of said district. [L. '09, p. 297, § 20. Cf. L. '90, p. 394, § 31; 1 H. C., § 887; L. '97, p. 394, § 98; L. '03, p. 191, § 1; L. '07, p. 42, § 5.]

See infra, § 4600, state levy.
See infra, § 4603, county levy, limit.
See infra, § 4605, district levy.
See infra, § 9098, exemptions.
See infra, § 9213, school tax not to exceed ten mills in cities of over ten thousand inhabitants.

CHAPTER XVII.

Directors of Districts of the Second Class.

§ 4514. Election—Term of Office.—Directors of school districts of the second class shall consist of three members. They shall be elected by ballot by the qualified electors of the district, and shall hold their office for a term of three years and until their successors are elected and qualified. In case vacancies are to be filled and a successor or successors to be elected to fill an unexpired term or terms, the ballot shall specify the term for which each director is to be elected. [L. '09, p. 297, § 1.]

§ 4515. Time of Holding Election.—The regular district election in each district of the second class shall be held on the first Saturday in March of each year, and such election shall be held in the manner provided in Chapter XXXI of this title. [L. '09, p. 298, § 2.]

§ 4516. Vacancies—How Filled.—In case the electors of any district of the second class shall neglect or fail to elect directors as hereinbefore provided, the county superintendent may declare vacant the office of any director at the expiration of his term; and in case of a vacancy in the board of directors from any cause, the county superintendent, in conjunction with the other directors if there be two, shall fill such vacancy by appointment until the fourth Monday following the next annual election. [L. '09, p. 298, § 3.]

§ 4517. Oath of Office.—All persons elected as members of the board of directors of districts of the second class shall, within ten days thereafter, appear before an officer authorized to administer oaths, take and subscribe the usual oath of office and deliver the same to the county superintendent of schools, and in case any person elected shall fail so to do, his election shall be void and the office shall be deemed vacant. [L. '09, p. 298, § 4.]

§ 4518. Organization of Board.—The term of office of directors of districts of the second class shall begin on the fourth Monday next succeeding their election, on which day the directors shall meet at the hour of 2 o'clock P. M., and shall at once organize by electing one of their members as chairman of the board. They shall also elect a person to act as clerk who may or may not be a member of the board of directors. The chairman and clerk shall both immediately enter upon the discharge of their duties and shall serve for a period of one year: Provided, that if any such clerk shall fail to discharge his duties in accordance with law, the board of directors may, at any time, remove such clerk and elect another person to fill the unexpired term. [L. '09, p. 298, § 5.]

§ 4519. Regular and Special Meetings of Board.—The regular meetings of the board of directors shall occur on the first Friday of

each month, and they may hold such other special or adjourned meetings as they may from time to time determine, or as may be specified in their by-laws. Special meetings may be called by the chairman or by any two members of the board. [L. '09, p. 299, § 6.]

§ 4520. Board to Provide Supplies.—Every board of directors of districts of the second class, in addition to the powers and duties enumerated in Chapter XVII [XV], of this title, shall have the power and it shall be their duty to provide and pay for such materials, supplies and libraries, as may be necessary for the schools, and to purchase such maps, charts and other apparatus as may be deemed necessary for the use of their schools. [L. '09, p. 299, § 7.]

See note to § 4509, supra.

§ 4521. Estimate for Annual Tax Levy—Limits of Levy.—The board of directors shall annually at a meeting preceding the annual tax levy for state and county purposes, report to the board of county commissioners an estimate in detail of the amount of funds which will be required by their district for all purposes for the ensuing year, and the county commissioners are hereby authorized and required to levy and collect such amount, after deducting the estimated receipts from the state and county apportionment for said districts, said estimate to be furnished by the county superintendent of schools. The levy in any one year shall not exceed one (1) per cent of the assessed value of all the taxable property of the district: Provided, that when any greater expenditure in any one current school year shall be deemed necessary, the question shall be submitted to a vote of the electors of the district at the time and place and in the manner provided for calling special elections. The notice of such election shall specify the amount of taxes proposed to be raised in excess of the said one (1) per cent and if a majority of the electors voting thereon at said election shall be in favor of such additional tax, the entire amount so authorized shall be levied and collected. No tax, however, shall exceed two (2) per cent of all the taxable property of said district. In case any board of directors shall fail to make and report the said estimate to the board of county commissioners on or before the first day of September, it shall be the duty of the county school superintendent to make such estimate, which will be accepted in lieu of the directors' estimate. [L. '09, p. 299, § 8.]

Cited in 78 Wash. 195.

For partial repeal, see infra, § 9208–24.

§ 4522. Schoolhouses—Building—Removal—Selection and Change of Site.—The board shall build or remove schoolhouses, purchase or sell lots or other real estate when directed by a vote of the district to do so and where the district shall possess a schoolhouse upon a

site owned by such district the board may by a unanimous vote of all the members thereof purchase or lease additional real estate adjacent to such site: Provided, that a schoolhouse already built on a site which has been selected by a majority vote of the legal school electors of a district shall not be removed to a new site without a two-thirds vote of the school electors voting at an annual or special election; nor shall a schoolhouse site that has been selected by a majority vote of the legal school electors, but upon which no schoolhouse has been built, be changed except by a two-thirds vote of the legal school electors voting at an annual or special election as hereinbefore provided. [L. '15, p. 337, § 1. Cf. L. '09, p. 300, § 9.]

§ 4523. Time of Employing Teachers.—No board of directors shall employ any teacher or teachers whose term or terms of service begin after the first Monday in August, until after the directors elected at the annual school election in said year shall have entered upon the discharge of their duties. [L. '09, p. 300, § 10.]

§ 4524. Superintendent—Duties—Election—Term.—In all districts of the second class the board of directors shall elect a superintendent, or principal, who shall hold a valid teacher's certificate. The said superintendent, or principal, shall have supervision over the several departments of the school and the board of directors may contract with him for a term of one year, or a term of two years as may be deemed best in their judgment. [L. '09, p. 300, § 11.]

§ 4525. Minimum Term.—In all districts of the second class the minimum school term for each year shall be six months. [L. '09, p. 300, § 12.]

CHAPTER XVIII.

Directors of Districts of the Third Class.

§ 4526. Election—Term of Office.—Directors of school districts of the third class shall consist of three members. They shall be elected by ballot by the qualified electors of the district, and shall hold their office for a term of three years and until their successors are elected and qualified. At the first annual election in all new districts three directors shall be elected for one, two and three years respectively, and the ballot at such election shall specify the term for which each is to be elected. At each election after the first, one director shall be elected for a term of three years. In case vacancies are to be filled and a successor or successors to be elected to fill an unexpired term or terms, the ballots shall specify the term for which each director is to be elected. [L. '09, p. 300, § 1.]

§ 4527. Time of Holding Election.—The regular district election in each district of the third class shall be on the first Saturday in

March of each year, and such election shall be held in the manner provided in Chapter XXXI of this title. [L. '09, p. 301, § 2.]

§ 4528. Vacancies.—In case the electors of any district of the third class shall neglect or fail to elect directors as hereinbefore provided, the county superintendent may declare vacant the office of any director at the expiration of his term; and in case of a vacancy in the board of directors from any cause, the county superintendent shall fill such vacancy by appointment until the fourth Monday following the next annual election. [L. '09, p. 301, § 3.]

§ 4529. Oath of Office.—All persons elected as members of the board of directors of districts of the third class shall, within ten days thereafter, appear before an officer authorized to administer oaths, take and subscribe the usual oath of office and deliver the same to the county superintendent of schools, and in case any person elected shall fail so to do, his election shall be void and the office shall be deemed vacant. [L. '09, p. 301, § 4.]

§ 4530. Organization of Board.—The term of office of directors of districts of the third class shall begin on the fourth Monday next succeeding their election, on which day the directors shall meet at the hour of 2 o'clock P. M., and shall at once organize by electing one of their members as chairman and another as clerk, who shall each immediately enter upon the discharge of his duties, and shall serve for the period of one year: Provided, that if any such clerk shall fail to discharge his duties in accordance with law, the board of directors may, at any time, remove such clerk and elect another of their number to fill the unexpired term. [L. '09, p. 301, § 5.]

§ 4531. Regular and Special Meetings.—A regular meeting of each board of directors of districts of the third class shall be held on the first Saturday of February, May, August and November, and they may hold such other special or adjourned meetings as they may from time to time determine, or as may be specified in their by-laws. Special meetings may be called by the chairman or by any two members of the board. [L. '09, p. 302, § 6.]

§ 4532. Board to Provide Supplies.—Every board of directors of districts of the third class shall, in addition to the powers and duties enumerated in Chapter XVII [XV], of this title, have power and it shall be their duty to provide and pay for such materials, supplies and libraries, as may be necessary for the schools, and to purchase such maps, charts and other apparatus as may have the written approval of the county school superintendent. [L. '09, p. 302, § 7.]

See note to § 4509, supra.

§ 4533. Election of Principal, When—Grades.—In all districts where the number of children of school age is sufficient to require the employment of more than one teacher, the board shall designate one of such teachers as principal, and such principal shall have general supervision over the several departments of such school. The school or schools in such districts shall be graded in such a manner as the directors thereof shall deem best suited to the conditions of such districts. [L. '09, p. 302, § 8.]

§ 4534. Election of Superintendent, When.—The directors of any districts wherein schools are maintained in two or more buildings shall elect a superintendent who may be a teacher in the schools of such district and such superintendent shall have general supervision over the schools in such district in accordance with the rules and regulations of the board of directors. [L. '09, p. 302, § 9.]

§ 4535. Report of Principal.—It shall be the duty of the principal or superintendent of any school maintaining two or more departments to report to the superintendent of public instruction such facts relating to the grading, course of study, enrollment, attendance and other matters pertaining to such schools as he may require on blanks for that purpose. [L. '09, p. 302, § 10.]

§ 4536. Time of Employing Teachers.—No board of directors shall employ any teacher or teachers whose term or terms of service begin after the first Monday in August, until after the directors elected at the annual school election in said year shall have entered upon the discharge of their duties. [L. '09, p. 302, § 11.]

§ 4537. Estimate for Annual Tax Levy—Limit of Levy.—The board of directors shall annually at a meeting preceding the annual tax levy for state and county purposes, report to the board of county commissioners an estimate in detail of the amount of funds which will be required by their district for all purposes for the ensuing year, and the county commissioners are hereby authorized and required to levy and collect such amount, after deducting the estimated receipts from the state and county apportionment for said districts. The levy in any one year shall not exceed one (1) per cent of the assessed value of all the taxable property of the district: Provided, that when any greater expenditure in any current school year shall be deemed necessary, the question shall be submitted to a vote of the electors of the district at the time and place and in the manner provided for calling special elections. The notice of such election shall specify the amount of taxes proposed to be raised in excess of the said one (1) per cent and if a majority of the electors voting thereon at said election shall be in favor of such additional tax, the entire amount so authorized shall be levied and collected.

No tax, however, shall exceed two (2) per cent of all the taxable property of said district. In case any board of directors shall fail to make and report the said estimate to the board of county commissioners on or before the first day of September, it shall be the duty of the county school superintendent to make such estimate which will be accepted in lieu of the directors' estimate. [L. '09, p. 303, § 12.]

For partial repeal, see infra, § 9208–24.

§ 4538. School Sites and Schoolhouses—Building and Removal.—The board shall build or remove schoolhouses, purchase or sell lots or other real estate, when directed by a vote of the district to do so: Provided, that a schoolhouse already built on a site which has been selected by a majority vote of the legal school electors of a district shall not be removed to a new site without a two-thirds vote of the school electors voting at an annual or special election; nor shall a schoolhouse site that has been selected by a majority vote of the legal school electors, but upon which no schoolhouse has been built, be changed except by a two-thirds vote of the legal school electors voting at an annual or special school election as hereinbefore provided. [L. '09, p. 303, § 13.]

§ 4539. Plans and Specifications for Schoolhouses—Approval by Superintendent.—Whenever any board of directors shall be authorized by the electors of their district, to erect a school building, it shall be the duty of such board, before entering into any contract for the erection of any buildings, to obtain the approval of the county superintendent, of the plans and specifications for the building to be erected, including also the heating, lighting, ventilating and safety thereof. [L. '09, p. 304, § 14.]

CHAPTER XVIII–A.

Extending Use of School Buildings.

§ 4539–1. Use for Public Purpose.—That school boards in each district of the second class and third class may provide for the free, comfortable and convenient use of the school property to promote and facilitate frequent meetings and association of the people in discussion, study, improvement, recreation and other community purposes, and may require, assemble and house material for the dissemination of information of use and interest to the farm, the home and the community, and facilities for experiment and study, especially in matters pertaining to the growing of crops, the improvement and handling of livestock, the marketing of farm products, the planning and construction of farm buildings, the subjects of household economies, home industries, good roads, and community

vocations and industries; and may call meetings for the consideration and discussion of any such matters, employ a special supervisor, or leader, if need be, and provide suitable dwellings and accommodations for teachers, supervisors and necessary assistants. [L. '13, p. 395, § 1.]

§ 4539-2. Buildings for Public Purposes.—That each school district of the second or third class, by itself or in combination with any other district or districts, shall have power, when in the judgment of the school board it shall be deemed expedient, to reconstruct, remodel, or build schoolhouses, and to erect, purchase, lease or otherwise acquire other improvements and real and personal property, and establish a communal assembly place and appurtenances, and supply the same with suitable and convenient furnishings and facilities for the uses mentioned in section 4539-1. [L. '13, p. 396, § 2.]

§ 4539-3. Commission to Pass upon Plans.—That plans of any district or combination of districts for the carrying out of the powers granted by this act shall be submitted to and approved by the board of supervisors composed of seven members, as follows: The state superintendent of public instruction; the head of the Extension Department of Washington State College; the head of the Extension Department of the University of Washington; the county superintendent of schools of the county in which such facilities are proposed to be located; these four to choose a fifth member from such county, and a sixth and a seventh member, one of whom shall be a woman, from the district or districts concerned. [L. '13, p. 396, § 3.]

§ 4539-4. Expenditures—Limitations.—No real or personal property or improvements shall be purchased, leased, exchanged, acquired or sold, nor any schoolhouses built, remodeled or removed, nor any indebtedness incurred or money expended for any of the purposes of this act except in the manner provided by law for the purchase, lease, exchange, acquisition and sale of school property, the building, remodeling and removing of schoolhouses and the incurring of indebtedness and expenditure of money for school purposes. [L. '13, p. 396, § 4.]

CHAPTER XIX.

District Clerk.

§ 4540. Notice to Superintendent of Change of Clerk or Chairman.—Every school district clerk in districts of the second and the third class shall within ten days after any change in the office of chairman or clerk, notify the county superintendent of such change in the

organization of the board. [L. '09, p. 304, § 1. Cf. L. '03, p. 177, § 19.]

§ 4541. Duties Enumerated.—The duties of the district clerk shall be as follows:

First. To attend all meetings of the board of directors; but if he shall not be present the board of directors shall select one of their number to act as clerk, who shall certify the proceedings of the meeting to the clerk of the district, to be recorded by him. He shall keep his records in a book to be furnished by the board of directors, and he shall preserve copies of all reports made to the county superintendent, and safely preserve and keep all books and documents belonging to his office, and shall turn the same over to his successor.

Second. To keep accurate and detailed accounts of all receipts and expenditures of school money. At each annual school meeting the district clerk must present his record-book for public inspection, and shall make a statement of the financial condition of the district and of the action of the directors, and such record must always be open for public inspection.

Third. To take annually in May of each year, an exact census of all children and youth between the ages of five and twenty-one years who were bona fide residents of the district on the first day of May of that year. He shall designate the name and sex of each child, and the date of its birth; the number of weeks it has attended school during the school year, and its postoffice address. Parents or guardians must be required to sign a certified statement of the correctness of this report: Provided, that Indian children not living under the guardianship of white persons, or who have not severed their tribal relations shall not be included in said census. He shall also list separately all defective youth between the ages of five and twenty-one and give such information concerning them as may be required.

Fourth. To make to the county superintendent on or before the fifteenth day of July his annual report verified by affidavit upon blanks to be furnished by the superintendent of public instruction. It shall contain such items of information as said superintendent of public instruction shall require, including the following: A full and complete report of all children enumerated; the number of schools or departments taught during the year; the number of children, male and female, enrolled in the school, and the average daily attendance; the number of teachers employed, and their compensation per month; the number of days school was taught during the past school year, and by whom; and the number of volumes, if any, in the school district library; the number of schoolhouses in the district, and the value of them; the aggregate value of all school furniture

and apparatus belonging to the district, and the clerk shall keep on file a duplicate copy of said report.

Fifth. To carry out all orders of the board of directors made at any regular or special meeting, and to keep an accurate account of all expenses incurred by him in his district in keeping the schoolhouse in repair, in providing for necessary janitor work, and in providing school supplies, and for other expenses incurred by him on account of the school, which accounts must be audited by the board of directors, and paid out of the district school fund.

Sixth. To give the required notice of all annual or special elections; also to give notice of the regular and special meetings of the board of directors as herein authorized.

Seventh. To report to the county superintendent at the beginning of each term of school the name of the teacher and the proposed length of the term, and to supply the teacher with the schooi register furnished by the county school superintendent.

Eighth. To sign all warrants ordered to be issued by the board of directors and to report to the county treasurer on or before the first Monday of each calendar month all the warrants drawn by the directors of his district, giving date, number and fund on which each warrant is drawn. [L. '09, p. 304, § 2. Cf. L. '90, p. 367, § 34; L. '91, p. 250, § 12; 1 H. C., § 799; L. '93, p. 266, § 5; L. '97, p. 377, § 49; L. '99, p. 315, § 10; L. '07, p. 371, § 3.]

§ 4542. Compensation—Allowance of.—The district clerk shall receive three dollars per day for the time actually and necessarily spent in taking the census and making his report, and he shall receive such other reasonable compensation for other services as the directors shall allow, said accounts to be audited and paid by the directors out of the funds of the district: Provided, that no account for services rendered by any district clerk shall be audited or allowed by any board of directors, or any warrant issued for the payment of any such accounts, until he shall have filed with the board of directors a certificate of the county superintendent of his county that all reports required by law have been properly made; and it shall be the duty of the county superintendent to make and transmit to the clerks of such districts as have made all the reports as required by law, on or before the last Saturday of the months of January, April, July and October of each year, the certificates required by this section. [L. '09, p. 306, § 3. Cf. L. '90, p. 369, § 35; L. '91, p. 252, § 13; 1 H. C., § 800; L. '97, p. 379, § 50.]

CHAPTER XX.

Teachers.

Certification of, see § 4630 et seq.

§ 4543. Qualifications—Must have Certificate or Diploma.—No person shall be accounted as a qualified teacher within the meaning of the school law, who is not the holder of a valid teacher's certificate or diploma issued by lawful authority of this state. [L. '09, p. 306, § 1. Cf. L. '90, p. 369, § 37; L. '91, p. 252, § 14; 1 H. C., § 802; L. '97, p. 380, § 51; L. '07, p. 613, § 6.]

Cited in 32 Wash. 667; 48 Wash. 487.

§ 4544. Annual Report to County Superintendent.—Every teacher who shall be teaching at the close of the school year, or who shall teach the last term of any school year, in any school district, shall make a report to the county superintendent immediately upon the close of such school year or term for the entire time taught in said school district since the beginning of the school year. Copies of all reports made by teachers shall be furnished to the clerk of the district, to be by him filed in his office. No board of directors shall draw any order or warrant for the salary of any teacher for the last month of his or her service, until the reports herein required shall have been made, and the same approved by the county superintendent: Provided, that in all schools acting under the direction of the city superintendent the report of such superintendent shall be accepted by the county superintendent and the directors, in lieu of the teachers' reports, and that when there is no city superintendent, the report of the principal shall be accepted in lieu of the teacher's report. [L. '09, p. 307, § 2. Cf. L. '90, p. 370, § 38; L. '91, p. 253, § 15; 1 H. C., § 803; L. '97, p. 380, § 52; L. '03, p. 178, § 20.]

§ 4545. Must Keep Register.—Every teacher shall keep a school register in the manner provided for, and no board of directors shall draw any order or warrant for the salary of any teacher for the last month of his service in the school at the end of any term or year, until they shall have received a certificate from the district clerk countersigned by the county superintendent that the said register has been properly kept, the summaries made and the statistics entered, or until, by personal examination, they shall have satisfied themselves that it has been done. [L. '09, p. 307, § 3. Cf. L. '90, p. 370, § 39; 1 H. C., § 804; L. '97, p. 381, § 53.]

§ 4546. Shall Enforce Course of Study and Regulations.—Teachers shall faithfully enforce in the schools the course of study and regulations prescribed, and shall furnish promptly all information relating to the schools which may be requested by the county

superintendent. [L. '09, p. 307, § 4. See references to last section; L. '97, p. 381, § 54; L. '99, p. 317, § 11.]

§ 4547. Shall be Employed Only on Written Order of Board.—No teacher shall be employed except by written order of a majority of the directors of the district at a regular or special meeting thereof, nor unless the holder of a legal teacher's certificate in full force and effect for the full period covered by said contract. [L. '09, p. 307, § 5. See references supra; L. '97, p. 381, § 55.]

§ 4548. Holidays.—No teacher shall be required to teach school on Saturdays, Labor Day, Thanksgiving Day and the day immediately following Thanksgiving Day, Christmas, New Year's, Washington's Birthday, Memorial Day, or Fourth of July: Provided, that no reduction from the teacher's time or salary shall be made by reason of the fact that a school day happens to be one of the days referred to in this section as a day on which school shall not be taught. [L. '09, p. 308, § 6; L. '07, p. 98, § 1. Cf. L. 90, p. 371, § 40; 1 H. C., § 805; L. '97, p. 381, § 56; L. '99, p. 317, § 12; L. '03, p. 178, § 21.]

§ 4549. May Suspend Pupils.—Every teacher shall have the power to hold every pupil to a strict accountability in school for any disorderly conduct on the way to and from school, or on the grounds of the school, or during the intermission or recess; to suspend from school any pupil for good cause: Provided, that such suspension shall be reported to the directors as soon as practicable for their decision. [L. '09, p. 308, § 7. Cf. L. '90, p. 371, § 41; 1 H. C., § 806; L. '97, p. 381, § 57.]

§ 4550. Teach Morality and Patriotism.—It shall be the duty of all teachers to endeavor to impress on the minds of their pupils the principles of morality, truth, justice, temperance, humanity and patriotism; to teach them to avoid idleness, profanity and falsehood; to instruct them in the principles of free government, and to train them up to the true comprehension of the rights, duty and dignity of American citizenship. [L. '09, p. 308, § 8. Cf. L. '90, p. 371, § 42; 1 H. C., § 807; L. '97, p. 381, § 58.]

§ 4551. Application for Carnegie Fund Authorized.—The board of regents of the University of Washington and the board of regents of the State College of Washington are authorized to apply for participation by the said University and State College of Washington in the fund of the Carnegie foundation for the advancement of teaching, and from time to time to make application for allowances for such persons as may be eligible to receive the same under the rules laid down by the board of trustees of the Carnegie foundation for the advancement of teaching. [L. '09, p. 53, § 1.]

CHAPTER XXI.

School District Finances.

Apportionments, see infra, § 4562 et seq.
School revenues, see infra, § 4598 et seq.
Bonds, see infra, § 4607 et seq.

§ 4552. Duties of County Auditor—Districts of Third Class.—The duties of the county auditor hereinafter defined shall relate only to districts of the third class unless otherwise expressly provided. [L. '09, p. 308, § 1.]

§ 4553. Shall Audit Accounts of School Districts.—The county auditors of the several counties of this state shall audit all accounts of the several school districts of their respective counties, the same as other accounts are audited with the other departments of the county. [L. '09, p. 308, § 2.]

§ 4554. Auditor to Countersign and Register Warrants.—He shall countersign and register warrants for the payment of all teachers' salaries, supplies, apparatus, and accounts against the districts upon the written order of the majority of the members of the school board of each district. [L. '09, p. 308, § 3.]

See supra, § 3947 et seq., payments of warrants.

§ 4555. Teacher must Qualify Before Issuance of Warrant.—No warrant shall be countersigned and registered for the payment of any teacher who is not qualified within the meaning of the law of this state, nor unless a written contract be filed with the county superintendent in accordance with the provisions of the law. [L. '09, p. 308, § 4.]

§ 4556. Orders for Supplies—Approval of Superintendent.—No warrants for maps, charts and apparatus shall be countersigned and registered until the order shall have been approved by the county superintendent. [L. '09, p. 309, § 5.]

§ 4557. Final Report to be Made Before Payment of Last Month's Salary.—He shall not countersign and register the warrant in payment of the last month's salary of teachers in districts of the third class until he shall receive due notice from the county superintendent that the teacher's final report has been made to the said county superintendent. [L. '09, p. 309, § 6.]

§ 4557-1. School Warrants to be Registered.—He shall cause all school warrants of the districts issued by him to be registered in the treasurer's office and retain the vouchers on file in his office. [L. '11, p. 377, § 1.]

§ 4557-2. Register of Warrants in Auditor's Office.—He shall register in his own office, and present to the treasurer for registration

in the office of the county treasurer, all warrants of the first and second class districts received from secretaries or clerks thereof before delivery of the same to claimants. [L. '11, p. 377, § 1.]

§ 4557–3. Check and Entry.—He shall check the redeemed warrants of each school district after each monthly settlement with the treasurer, enter the date redeemed in his school register, and certify as to the correctness of the treasurer's reports to such school districts. [L. '11, p. 377, § 1.]

§ 4557–4. Annual Report.—He shall make an annual report to the county superintendent of schools on or before the fifteenth day of July in such form as may be prescribed by the superintendent of public instruction. [L. '11, p. 377, § 1.]

§ 4558. County Treasurer as Treasurer of School Districts—Duties.—The county treasurer of each county of this state shall be ex-officio treasurer of the several school districts of their respective counties, and it shall be the duty of each county treasurer:

First. To receive and hold all moneys belonging to such school districts, and to pay them out only on warrants legally issued.

Second. To certify to the county superintendent of common schools and the auditor of his county, quarterly of each year at the time of the state apportionment, the amount of all school funds in his possession subject to apportionment on the last day of the preceding month, which certificate shall specify the source or sources from which said moneys were derived.

Third. To make annually, on or before the fifteenth day of July, a report to the county superintendent and auditor of his county, which report shall show the amount of school funds on hand at the beginning of the school year last past belonging to each school district; the amount of funds placed to the credit of each school district during the school year ending June 30th, last past, and the sources from which said funds were derived; the amount of warrants registered during the year, the amount of funds disbursed upon warrants of each school district during the year; the amount of funds remaining in his possession at the close of the school year subject to be paid out upon warrants, and the fund to which said moneys belong; also the amount of all unpaid warrants or bonds appearing upon his register at the close of the school year.

Fourth. He shall register all school warrants presented to him by the county auditor in a book to be known as the "Treasurer's School District Warrant Register," which register shall show the date issued, number of warrant, to whom issued, amount and purpose, date registered, date advertised, interest if any accruing on said warrant, total as redeemed, date redeemed and to whom paid. If the district has money in the fund on which the warrant is drawn no indorse-

ment on the warrant is necessary, but if there be no money to the credit of the fund on which the warrant is registered he shall indorse on said warrant the following: "This warrant bears interest at —— per cent per annum from —— until called for payment. —— County Treasurer, By —— Deputy." All warrants shall be paid in the order of their presentation to the county treasurer; and it is hereby made the duty of the county treasurer to advertise, at least quarterly, all warrants which he is prepared to pay, in the same manner in which he is required to advertise county warrants, and after the date fixed in said notice, warrants shall cease to draw interest.

Fifth. He shall prepare and submit to the secretary of each district of the first class, and to the clerk of each district of the second and third class in his county a written report of the state of the finances of such district on the first day of each month, which report shall be submitted not later than the seventh day of said month, certified to by the county auditor, which report shall contain the balance on hand the first of the preceding month, the funds paid in, warrants paid with interest thereon, if any, the number of warrants issued and not paid, and the balance on hand.

Sixth. After each monthly settlement with the county commissioners the treasurer of each county shall submit a statement of all canceled warrants of districts of the first or second class to the secretary or clerk of such district, which statement shall be verified to the county auditor. The canceled warrants of each district shall be preserved separately and shall at all times be open to inspection by the secretary or clerk or by any authorized accountant of such district.

Seventh. He shall remit all moneys derived from the sale of school registers, and school clerks' record-books to the state treasurer, as other moneys are required to be remitted, and the state treasurer shall place such money to the credit of the general fund of the state. [L. '11, p. 386, § 1. Cf. L. '09, p. 309, § 1; L. '90, p. 380, § 71; L. '91, p. 258, § 27; 1 H. C., § 819; L. '93, p. 268, § 8; L. '97, p. 381, § 59. Also, L. '97, p. 400, § 114, and L. '97, p. 390, § 88; L. '07, p. 614, § 8.]

Former laws cited in 10 Wash. 198, 199.
See supra, § 3947 et seq., payment of warrants.
See infra, § 6253, rate of interest on warrants.

CHAPTER XXII.

County Boards of Education.

§ 4559. Who Shall Constitute—Appointment—Term—Vacancies. There shall be in each county of this state a county board of education, which shall consist of five (5) members, including the county superintendent of common schools, who shall be ex-officio chairman

of the board; the other members of said board shall be appointed by the county superintendent on the first Monday of September following his election and shall hold office for a term of two years: Provided, that in the event of a vacancy in said board from any cause the county superintendent shall fill the same for the remainder of the school year by appointment. [L. '09, p. 311, § 1.]

§ 4560. Qualification and Compensation of Members. — Every member of the county board of education shall be the holder of a valid teacher's certificate for this state, and the members other than the county superintendent shall receive five dollars per day for the time spent in the performance of their official duties, and they shall also receive actual necessary traveling expenses, and the same shall be paid out of the funds of the county. [L. '09, p. 311, § 2.]

§ 4561. Duties of Board.—Every county board of education shall have power and it shall be its duty:

First. To grade the manuscripts of the pupils who take the state examination for the purpose of securing eighth grade, or grammar school certificates.

Second. To adopt text-books for use in the public schools of school districts of the second division, as defined in Chapter XXV of this title, of said county.

Third. To assist the county superintendent in the preparation of manuals, courses of study, rules and regulations for the circulating libraries, and to perform such other duties as may be required by him.

Fourth. To adopt rules and regulations for the schools of the county, not inconsistent with the code of public instruction or with the rules and regulations of the state board of education or the superintendent of public instruction. [L. '09, p. 311, § 3.]

CHAPTER XXIII.

Apportionments.

§ 4562. Apportionments Quarterly.—The superintendent of public instruction shall apportion to the several counties of the state on or before the twentieth day of July, October, January, April, May and June of each year such current state school funds as have been certified by the state auditor to be in the hands of the state and county treasurers. [L. '11, p. 613, § 1. Cf. L. '09, p. 312, § 1.]

Cited in 79 Wash. 288; 84 Wash. 82.

§ 4563. Apportionment Based on Attendance.—For the purpose of the apportionment the superintendent of public instruction shall base his calculations upon the days' attendance as shown by the several

county superintendents' last annual reports filed in his office. [L. '09, p. 312, § 2.]

Cited in 84 Wash. 82.

See supra, § 4370, pupils attending model training school.

§ 4564. Same—Minimum Credit of Attendance.—The basis of the apportionment to each county shall be on the total days of attendance in the several districts of the county: Provided, that each school district shall be credited with at least two thousand days' attendance. [L. '09, p. 312, § 3.]

§ 4565. Attendance of Nonresidents, Where Credited.—If a pupil attends any public school of the state, outside of his resident district, up to the ninth grade, during the time the resident district maintains a school of the grade in which the pupil belongs, the attendance shall be credited to the district in which the pupil resides, unless mutually agreed otherwise by the directors of the two districts. [L. '09, p. 312, § 4.]

§ 4566. Clerk may Claim Attendance of Pupils Going to Another District, When.—The clerk of any district whose resident pupils are attending school in another district may notify the clerk of the district where such pupils attend, when the school of said pupils' resident district will be in session, and of the grades that will be maintained, and he must file a duplicate copy of said notice with the county superintendent. He must name the pupils in his notice, and it shall be the duty of the district clerk so notified, on or before the thirtieth day of June, to certify to the clerk of the resident district the actual number of days' attendance at school of such pupils during the time that a school of the grade to which the pupil or pupils properly belong was in session in their resident district. And in case said clerk shall fail or refuse to furnish such information to the clerk of the resident district, then it shall be the duty of the county superintendent to grant to the district to which the attendance belongs the maximum number of days claimed by the clerk of the said district. Without the notice herein required by the clerk of the resident district, all claims to attendance will be forfeited. [L. '09, p. 312, § 5.]

See supra, § 4370, attendance at model training school.

§ 4567. Private Schools must Report Attendance.—It shall be the duty of the principal or head of every private school on or before the thirtieth day of June of each year to make a sworn report to the clerk of the district in which any pupil attending such private school resides of the actual days' attendance in said private school of each such pupil attending said private school during the preceding school year. The report shall include such pupils only as are between six

and twenty-one years of age and whose parents or guardians actually reside in the school district where the said pupil resides and each district in making up the attendance of said district for the purpose of apportionment shall be entitled to the days' attendance so reported. [L. '13, p. 518, § 1. Cf. L. '09, p. 313, § 6.]

Cited in 79 Wash. 288.

§ 4568. Attendance at High School Counted One and a Half.—For purposes of apportionment of current state school funds the attendance of all pupils in high schools shall be counted as one and one-half times the actual attendance; but in order to receive the benefit of this provision no tuition can be charged any high school pupil regardless of where his residence may be in this state, if there be no high school in the pupil's resident district. [L. '09, p. 313, § 7.]

§ 4569. Attendance at Parental Schools and Schools for Defectives, How Counted.—For purposes of apportionment of current school funds the attendance of pupils in parental schools where food and lodging are furnished the pupils shall be counted as three times the actual attendance, and in schools for defectives five times the actual attendance shall be allowed. [L. '09, p. 313, § 8.]

§ 4570. Night Schools.—In night schools authorized by the laws of this state an evening's attendance shall be counted as a half-day's attendance without maximum age limit. [L. '09, p. 312, § 9.]

§ 4571. Bonus for High School Grades.—In addition to the regular quarterly apportionments as provided by law, the superintendent of public instruction shall apportion annually to each high school the sum of one hundred ($100) dollars for each grade above the grammar grades maintained in such school. In order to receive the bonus of one hundred dollars the district must have maintained a high school in fact during the preceding school year, and must have maintained an average daily attendance in each grade of at least four students. [L. '09, p. 313, § 10.]

§ 4572. Apportionment to Districts by County Superintendent.—It shall be the duty of the county superintendent to apportion within ten days after receiving the certificate of apportionment of the superintendent of public instruction, such state annual school funds as are subject to apportionment to the several districts entitled to receive the same in accordance with the instructions of the superintendent of public instruction. He shall also at the same time apportion in the manner provided in section 4604, of this act, the county school funds that may be in the hands of the county treasurer of his county. He shall certify the result of the apportionments to the county treasurer, and also notify each clerk of the amount apportioned to his district. [L. '09, p. 314, § 11.]

§ 4573. Credit for Attendance When School Closed by Health Officers, etc.—When the school board of any district is obliged to close the schools by order of the board of health or health officer on account of the prevalence of infectious disease, or when it is impossible to maintain the school on account of any circumstances over which the school board has no control, the state superintendent of public instruction may, at his discretion, allow such district its regular apportionment of funds for the time so lost, the amount to be determined on a basis of the average daily attendance in the district for the year in which such discontinuance occurs: Provided, that in no such case may any district draw money for a period of time longer than fifteen school days. [L. '09, p. 314, § 12.]

§ 4574. Apportionment Withheld, When.—Whenever any school board shall neglect or refuse to comply with the provision of section 4539, it shall be the duty of the county superintendent to withhold the entire apportionment accruing to said district until such time as full compliance with requirements thereof has been made. [L. '09, p. 314, § 13.]

Cited in 79 Wash. 288.

The reference was to a section not in existence, but § 4539 was probably intended.

CHAPTER XXIV.

Institutes.

§ 4575. Teachers' Institutes.—Whenever the number of school districts in any county is twenty-five or more, the county superintendent must devote at least five days to institute work, three of which must be consecutive. The county superintendent must arrange for the remaining two days to be spent in district meetings, visiting days, or in any other manner which he believes will be of greatest benefit to his teachers. [L. '09, p. 315, § 1. Cf. L. '90, p. 381, § 72; 1 H. C., § 38; L. '97, p. 394, § 99; L. '99, p. 319, § 15; L. '03, p. 179, § 25.]

§ 4576. Joint Institutes.—County superintendents of contiguous counties may by mutual arrangements hold a joint institute, the expenses to be shared in proportion to the departments (rooms) maintained in the counties as shown by the county superintendent's last annual report. [L. '09, p. 315, § 2. See references to last section.]

§ 4577. All Teachers must Attend.—Every teacher holding a valid certificate, and employed in a public school in a county where an institute is held, must attend such institute during its whole time. [L. '09, p. 315, § 3.]

§ 4578. Superintendent of Certain Cities may Hold Institutes.—In districts employing more than one hundred teachers, the city

superintendent may, in his discretion, hold a teachers' institute of two, three, four of [or] five days in such district, said institute when so held by the city superintendent to be in all respects governed by the provisions of this code relating to teachers' institutes held by county superintendents. [L. '09, p. 315, § 4.]

§ 4579. Time of Holding Institute—Teachers to Receive Pay.—Each county superintendent shall determine the time for holding the teachers' institute. [L. '09, p. 315, § 5; Ex. Sess., L. '09, p. 52, § 1.]

§ 4580. Compensation of Teacher Continued—District Credited With Attendance.—When the institute is held during the time when a teacher is employed in teaching, his pay shall not be diminished by reason of his attendance, when certified to by the county superintendent, and in addition to the actual attendance earned by the district, an additional attendance shall be credited to the district, determined by multiplying the average daily attendance for the term by the number of days the teacher attended the institute. [L. '09, p. 315, § 6. Cf. L. '90, p. 381, § 75; 1 H. C., § 841; L. '97, p. 394, § 102.]

§ 4581. Institute Fund Created.—All examination fees shall be paid by the county superintendent or the city superintendent to the county treasurer, who shall place them to the credit of the proper institute fund hereby created. [L. '09, p. 316, § 7. Cf. L. '97, p. 394, § 103.]

§ 4582. Appropriations to Fund by County Commissioners.—Each county superintendent or city superintendent shall, prior to the holding of the annual teachers' institute, make an estimate of the necessary expenses thereof; and the county commissioners must, thereupon, and prior to the date of holding said institute, place at the disposal of the proper superintendent out of the county current expense fund such an amount, not to exceed two hundred thousand dollars, as in addition to the amount then in the hands of the county treasurer in the institute fund, will meet the superintendent's estimate. [L. '09, p. 316, § 8.]

§ 4583. Expenses of Institute—Vouchers—Report.—The county or city superintendent must keep an accurate account of the actual expenses of the institute with vouchers for same and make a complete report to the county auditor, which shall be placed on file in his office as a part of the regular files. [L. '09, p. 316, § 9. Cf. L. '90, p. 381, § 76; 1 H. C., § 843; L. '97, p. 394, § 104.]

CHAPTER XXV.

Text-books.

§ 4584. Districts Classified.—For the purpose of this chapter the school districts of the state of Washington shall be and they are hereby divided into and shall consist of two divisions, viz.: School districts of the first division and school districts of the second division, and the school districts of the first division shall consist of all school districts maintaining a four-year accredited high school. Every other school district of the state shall be a school district of the second division. [L. '09, p. 316, § 1. Cf. L. '01, p. 8, § 1.]

§ 4585. Text-book Commission—Oath, Term of Office, Duties, etc. The text-books for use in the public schools of each school district of the first division shall be selected by the text-book commission of such school district. The text-book commission of such school district shall consist of five persons, including the city superintendent, or, if there be none, then the principal of the high school, who shall be ex-officio chairman of the commission, and two members of the city board of school directors of the districts, to be designated by such board, and one of whom shall be ex-officio secretary of the commission, and two lawfully qualified teachers engaged in teaching in such school district, to be appointed by the board of school directors of the district. Each member of the text-book commission shall take the oath to faithfully discharge the duties of his office. The term of office of the text-book commission shall be one year and until their successors are appointed and qualified. Said text-book commission shall have power to select text-books for use in the public schools of the school district for which it is appointed, and it shall be the duty of the board of directors to require the introduction and use of all text-books lawfully adopted for use in their respective districts. The text-books selected by the commission shall cover such branches and studies as are required to be taught by the lawfully adopted course of study, and as are required to be taught by the laws of the state of Washington. Any text-book selected for use in the schools of the district shall continue in use until displaced or replaced by order of the text-book commission, and no text-book selected or introduced into the schools by the text-book commission shall be displaced or replaced within three years from the date of its introduction into the schools. But nothing in this act or any other law shall be so construed as to prevent the text-book commission of any school district of the first division from using or introducing at any time, any supplementary or additional books which may from time to time be deemed necessary in order to maintain the highest

standard of excellence in the schools of the district. [L. '09, p. 316, § 2. Cf. L. '01, p. 8, § 2.]

Former laws cited in 36 Wash. 422, 432.

§ 4586. Notice of Intention to Select Text-books.—The text-book commission of each school district of the first division shall, between the first day of April and the first day of July of each year, when any text-books are to be selected by such commission, publish an advertisement in a newspaper of general circulation published in the county, or if there be no such newspaper published in the county, then in any newspaper published and having a general circulation in the state, to the effect that the commission will, on a day therein named, select text-books for the use of the schools in such districts, and invite proposals for the furnishing of such books, the proposals to state an exchange and a retail price at which the proposer will furnish books for the schools of the district during the period of their use in such schools. [L. '09, p. 317, § 3. Cf. L. '01, p. 9, § 3.]

§ 4587. Course of Study—Approval by State Superintendent.—It shall be the duty of the superintendent or principal of each school in all districts of the first division to prepare and issue, under the direction of the board of school directors of the district, a course of study for his schools, which course of study must, before going into effect, be approved by the state superintendent of public instruction. Such course of study shall conform to the manual, or general outline, prescribed by the state superintendent of public instruction, and all examinations and promotions under the same shall be based upon the minimum credits in each study, as prescribed by the state superintendent of public instruction in his general manual or outline course of study. [L. '09, p. 318, § 4. Cf. L. '01, p. 10, § 4.]

§ 4588. Second Division Districts—Selection of Books—Advertisement for Proposals.—The county board of education in each county of this state shall, between the first day of April and the first day of July of each year when any text-books are to be selected, publish and advertise in a newspaper of general circulation in said county to the effect that said county board of education will on a day named therein select text-books for the use of all the school districts of the second division in said county, and invite proposals for the furnishing of such books, the proposals to state an exchange price, a wholesale price and a retail price at which the proposer will furnish books for the schools of all districts of the second division during the period of their use in the schools of such districts. Any text-books selected for use in the schools shall remain in use until the same shall be displaced or replaced by the county board of education; but no book selected and introduced into the schools shall in any event be changed

within five years from the date of introduction. The county board of education or the officers of any school district of the second division, shall have power to select, introduce and use additional and supplementary books at any time, when they deem it necessary, in order to establish and maintain the highest standard of excellence in their schools. The superintendent of public instruction shall have power and it shall be his duty to prescribe a uniform course of study for all schools of the second division: Provided, that any publisher or publishers of school-books furnishing books under the provisions of this act to any district or districts of this state shall deposit with the superintendent of public instruction, a copy of any and all books so furnished. [L. '09, p. 318, § 5. Cf. L. '01, p. 11, § 6.]

§ 4589. Superintendent to Sell Text-books.—Whenever any text-book adopted by lawful authority is sold within any county at a price greater than the retail price agreed upon at the time of the adoption, it shall be the duty of the company having the contract to furnish any such book, to furnish the county superintendent upon his written demand a sufficient number of copies of said book to supply the schools in the districts in which the price charged is greater than the agreed price. It shall be the duty of the county superintendent to handle said books without charge and to remit to the book company the full retail price of such books after deducting the necessary charges for all transportation. [L. '09, p. 319, § 6.]

§ 4590. Compensation of Text-book Commission.—Each member of the text-book commission in school districts of the first division shall receive as compensation for his services, the sum of three dollars for each day during which he is in attendance upon the meetings of the text-book commission, and such compensation shall be paid from the funds of the school district. [L. '09, p. 319, § 7. Cf. L. '01, p. 12, § 7.]

§ 4591. District Lying in More Than One County, Control of.—In all joint districts of the second division, that is to say, in all school districts of the second division situated in more than one county, such joint school district shall, for the purpose of this act, be held and deemed to be a school district within the said county in which the schoolhouse is located, and for all purposes of this act it shall be under the control and jurisdiction of the county board of education of that county. [L. '09, p. 319, § 8. Cf. L. '01, p. 12, § 8.]

CHAPTER XXVI.

County Circulating Libraries.

§ 4592. County Superintendent Authorized to Establish.—The county superintendent of each county of this state may establish a circulating library for the use and benefit of the pupils of the common schools of such county. [L. '09, p. 320, § 1. Cf. L. '03, p. 180, § 27.]

See infra, §§ 6971–6991, public libraries and museums.

§ 4593. Tax Levy for Library Fund.—At the time fixed for the levy of the county tax, the county commissioners of each county may levy a tax sufficient to carry into effect the provisions of section 4592: Provided, that said tax shall not exceed one-tenth of one mill on each dollar of the assessed valuation of the said county. The proceeds of said tax shall, when collected, constitute a circulating school library fund for the payment of all bills created by the purchase of books and fixtures by the county superintendent. [L. '09, p. 320, § 2.]

§ 4594. Bills Against Fund to be Certified.—The county commissioners shall allow no bill or bills against said fund until it shall have been certified to be correct by the county superintendent. [L. '09, p. 320, § 3.]

§ 4595. Sufficient Funds Before Purchasing Books.—The county superintendent shall purchase no books or fixtures for such circulating library until there shall be to the credit of the circulating school library fund sufficient money to pay the purchase price thereof. [L. '09, p. 320, § 4.]

§ 4596. Approval of Books.—No book shall be placed in a county circulating library unless it has been recommended by the state board of education, or the superintendent of public instruction. [L. '09, p. 320, § 5.]

§ 4597. County Superintendent—Duties.—It shall be the duty of the county superintendent to purchase the books and to enforce such rules and regulations for their distribution, use, care and preservation as he may deem necessary. [L. '09, p. 320, § 6.]

CHAPTER XXVII.

School Revenues.

§ 4598. Source of Funds.—The principal of the common school fund shall remain permanent and irreducible. The said fund shall be derived from the following named sources, to wit: Appropriations and donations by the state to this fund; donations and bequests by individuals to the state or public for common schools; the proceeds of lands and other property which revert to the state by escheat and

forfeiture; the proceeds of all property granted to the state, when the purpose of the grant is not specified, or is uncertain; funds accumulated in the treasury of the state for the disbursement of which provision has not been made by law; the proceeds of the sale of timber, stone, minerals or other property from school and state lands, other than those granted for specific purposes; all moneys received from persons appropriating timber, stone, minerals and other property from school and state lands, other than those granted for specific purposes, and all moneys other than rental, recovered from persons trespassing on said lands; five per centum of the proceeds of the sale of public lands lying within the state, which shall be sold by the United States subsequent to the admission of the state into the Union as approved by section 13 of the act of congress enabling the admission of the state into the Union; the principal of all funds arising from the sale of lands and other property which have been, and hereafter may be, granted to the state for the support of common schools and such other funds as may be provided by legislative enactment. [L. '09, p. 320, § 1. Cf. L. '90, p. 373, § 50; 1 H. C., § 815; L. '97, p. 397, § 109.]

This section is a copy of part of Const., Art. IX, § 3.

§ 4599. Loss of Funds by Defalcation, etc.—All losses to the permanent common school or any other state educational fund, which shall be occasioned by defalcation, mismanagement or fraud of the agents or officers controlling or managing the same, shall be audited by the proper authorities of the state. The amount so audited shall be a permanent funded debt against the state in favor of the particular fund sustaining such loss, upon which not less than six per cent annual interest shall be paid. [L. '09, p. 321, § 2. See references to next section.]

This section is a copy of part of Const., Art. IX, § 4.

§ 4600. Current Funds—Annual Tax, Levy and Limit of.—The interest accruing on said permanent school fund, together with all rentals and other revenues derived therefrom, and from lands and other property devoted to the common school fund, shall be exclusively applied to the current use of the common schools.

In addition thereto it shall be the duty of the state board of equalization, annually, at the time of levying taxes for state purposes, to levy a tax sufficient to produce a sum which, when added to the amount of money derived from interest and other income from the state permanent school fund during the preceding school year, shall equal ten dollars for each child of school age residing in the state as shown by the last reports of the several county superintendents to the superintendent of public instruction: Provided, that said tax shall not exceed five (5) mills on the dollar.

The funds provided by this section shall be known as the current state school fund. [L. '09, p. 321, § 3. Cf. L. '90, p. 373, § 51; 1 H. C., § 816; L. '97, p. 398, § 110. See also references to next section.]

Former laws cited in 10 Wash. 201; 13 Wash. 321.

School tax not to exceed eight mills, except in cities of ten thousand, where it shall not exceed ten mills: See infra, § 9213.

§ 4601. Collection of Tax.—The tax levy authorized by the preceding section, shall be certified to the several county auditors in the same manner as other state taxes are required to be certified, and shall be collected and retained as other public funds, by the county treasurers, until paid out in the manner prescribed by law.

The county treasurer shall certify to the state auditor the amount of money so collected. It shall be the duty of the state auditor, within thirty (30) days after the date at which the county treasurers are required to transmit state funds to the state treasurer, to certify to the superintendent of public instruction the amount of all current state school funds in the hands of the state treasurer and county treasurers subject to apportionment. In the event that there shall be an excess over the amount apportioned in the hands of the county treasurer, the amount shall be transmitted forthwith to the state treasurer. In the event that there shall not be in the hands of the county treasurer sufficient to pay the amount apportioned to his county, the deficiency shall be paid by the state treasurer. [L. '09, p. 322, § 4. Cf. L. '90, p. 374, § 54; L. '91, p. 253, § 16; 1 H. C., § 817; L. '95, p. 122, § 1; L. '97, p. 398, § 111; L. '99, p. 320, § 19; L. '01, p. 380, § 16; L. '07, p. 198, § 1.]

§ 4602. County Tax, Levy and Limit of.—The county commissioners of the several counties of the state of Washington shall annually, at the time of making the tax levy for county purposes, levy a tax on all the property subject to taxation in their county, sufficient to produce the sum of ten dollars for each child of school age therein, as is shown by the certificate of the county superintendent hereinafter mentioned: Provided, that such tax on said property shall in no case exceed five mills on each dollar, at the assessed valuation; such tax to be used for the support and maintenance of the public schools in such county. [L. '09, p. 322, § 5.]

§ 4603. Tax Levy Based on School Census.—It shall be the duty of the county superintendent of each county in the state of Washington, between the fifteenth day of August and the first day of September of each year, to file with the county auditor of this [his] county a certificate showing the number of children of school age in each district in his county, as is returned to him by the several school districts therein, and said certificate shall be the basis upon which said

tax levy, as mentioned in section 4602, shall be made by the county commissioners of the several counties of the state of Washington. [L. '09, p. 323, § 6.]

§ 4604. Apportionment of Funds to Districts.—At the same time that the state school funds are apportioned to the different districts, as provided in Chapter XXIII, of this title, the whole of the money derived under section 4602 shall be apportioned as follows: Two-thirds thereof shall go to the different districts of each county in proportion to the number of days of attendance in each district for the preceding school year, and one-third thereof shall go to the different districts of each county in proportion to the number of teachers employed in such district for the preceding school year: Provided, that where a district employed a second or additional teacher for a term less than eight months such district shall receive one-eighth of an apportionment for each teacher for each month she is actually employed. [L. '09, p. 323, § 7.]

§ 4605. District may Levy Tax.—In addition to the school revenues provided by sections 4600 and 4603, for the support of the common schools of this state, a tax may be levied upon all taxable property in each school district of this state, in the manner provided by law, and the funds thereby created shall be known as the "School District Fund."

The "School District Fund," together with the apportionment from the "Current State School Fund" and the county apportionments, shall constitute the "General School Fund" of each school district. [L. '09, p. 323, § 8.]

See supra, § 4513, levy in first class district.
See supra, § 4521, levy in second class district.
See supra, § 4537, levy in third class district.
See infra, § 4613, bond interest levy.

§ 4606. Fines, Penalties, and Forfeitures Belong to School Fund. Except as otherwise provided by law, all sums of money derived from fines imposed for violation of orders of injunction, mandamus and other like writs, or for contempt of court, and the net proceeds of all fines collected within the several counties of the state for breach of the penal laws, and all funds arising from the sale of lost goods and estrays, and from penalties and forfeitures, shall be paid in cash by the person collecting the same, within twenty days after the collection, to the county treasurer of the county in which the same have accrued, and shall be by him transmitted to the state treasurer, who shall place the same to the credit of the current state school fund. He shall indicate in such entry the source from which such money was derived. [L. '09, p. 323, § 9. Cf. L. '90, p. 383, § 89; 1 H. C., § 820; L. '97, p. 400, § 113; also L. '95, p. 124.]

CHAPTER XXVIII.

Bonds.

§ 4607. Directors may Borrow Money and Issue Bonds.—The board of directors of any school district, provided for in this act, or hereafter created in this state may borrow money and issue negotiable coupon bonds therefor to any amount not to exceed five (5) per cent of the taxable property in such district, as shown by the last assessment-roll for county and state purposes previous to the incurring of such indebtedness; except that in incorporated cities the assessment shall be taken from the last assessment for city purposes, for the purpose of funding outstanding indebtedness, or bonds heretofore issued, or issued under the provisions of this act, or for the purchase of schoolhouse site or sites, building one or more schoolhouses and providing the same with all necessary furniture, apparatus or equipment, or for any or all of these purposes, when authorized by a vote of the district so to do as provided in the next section: Provided, that the bonds so issued shall bear a rate of interest not to exceed six per cent per annum, interest payable annually or semi-annually, payable and redeemable at such time as may be designated in the bonds, but not to exceed twenty (20) years from date of issue. [L. '09, p. 324, § 1. Cf. L. '90, p. 45, § 1; 1 H. C., § 2697; L. '97, p. 401, § 117; L. '03, p. 310, § 1; L. '07, p. 195, § 1; L. '07, p. 613, § 7½.]

Former laws cited in 1 Wash. 307; 4 Wash. 302, 396; 28 Wash. 339. See Const., Art. VIII, § 6, limit of indebtedness.

§ 4608. Bond Election—Notice.—The question whether bonds shall be issued, as provided in the preceding section, shall be determined at an election to be held in the manner prescribed by law for holding annual school elections. Notice therefor shall state the amount of bonds proposed to be issued, time they are to run, and purpose for which the money is to be used. The ballots must contain the words "Bonds, yes," or "Bonds, no." If a majority of the votes cast at such election are "Bonds, yes," the board of directors must issue such bonds: Provided, that the amount of bonds to be issued, together with any outstanding indebtedness of the district, exceeds one and one-half per cent of the taxable property in said district, then three-fifths of the votes cast at such election must be "Bonds, yes," before the board of directors are authorized to issue said bonds. The bonds shall be in such form as the board of directors may prescribe, and shall with the coupons, be signed by the board of directors and countersigned by the clerk of the school district: Provided, that in school districts of the first class said bonds with the coupons, shall be signed in the corporate name of the district by the president of the board of directors thereof and attested by

the secretary of the board, except that said coupons may bear the lithograph signatures, only, of the said president and secretary; in districts of the first class the corporate seal of the said district shall be affixed to each bond by the secretary thereof. [L. '09, p. 324, § 2. Cf. L. '90, p. 46, § 2; 1 H. C., § 2698; L. '97, p. 402, § 118.]

Former laws cited in 4 Wash. 301, 303; 28 Wash. 339.

§ 4609. Advertisement, Form and Registry of Bonds.—When authorized and empowered to issue bonds, as provided in sections 4607, 4608, the board of directors shall, within thirty days after the date of election, certify the result to the county treasurer to which said school district belongs, who shall publish notice of the sale of such bonds, in at least one weekly newspaper published at the county seat, if there be one, for four consecutive issues, and publish such other notices as the board of directors may require. Said notices must give the amounts of bonds to be sold, the time to run, where payable, the option, if any, of the district to redeem, also naming the hour and day for considering bids, and asking bidders to name price and rates of interest at which they will purchase such bonds or any of them. Such bonds shall be issued in denominations of not less than one hundred nor more than one thousand dollars ($1,000) and shall contain upon their face the date and series of issue, rate of interest, where payable, time to run, option, if any, of district to redeem, and the printed or lithographed statement that said bond is issued under the provisions of this act, and that the whole indebtedness of said district does not exceed the constitutional limit. Each bond so issued must be registered by the county treasurer in a book to be kept for that purpose, which must show the number and such data as is necessary to secure a complete record of such bond, the series and amount of such bond, the person to whom the same is issued, the number of the district issuing, together with the names of directors signing the same; and the said bond shall be indorsed by the treasurer, with his name and a full statement of the name of the person to whom sold, and when issued, together with the number and series of said bond: Provided, that in the case of joint school districts the bond or bonds shall be registered by the treasurer of each county in which any part of such joint school district shall lie. [L. '09, p. 325, § 3. Cf. L. '90, p. 46, § 3; 1 H. C., § 2699; L. '97, p. 402, § 119; L. '05, p. 264, § 6; L. '07, p. 196, § 2.]

Former laws cited in 28 Wash. 341.

§ 4610. Sale of Bonds—Duty of County Treasurer.—At the time named in said notice it shall be the duty of said board of directors to meet with the county treasurer at his office, and with him open said bids, and sell said bonds or any portion thereof to the person or persons making the most advantageous offer: Provided, the bonds shall

never be sold below par, and the board of directors may reject any and all bids, and at any time within two years of the election at which authority was granted to issue and sell said bonds, the board of directors may proceed to readvertise the sale of such bonds or any portion thereof as often as may be necessary, until the whole thereof shall be sold; and such board may also require all persons bidding for such bonds, except the state of Washington, to deposit one per centum of the par value of the bonds bid for on depositing with the treasurer their bids, and if the bidder fails to take and pay for the bonds for which he bid in case of their sale to him, the amount so deposited shall be forfeited to the school district; otherwise to be returned to such bidder, and a resale of such bonds so refused to be taken may be made as if the bid for the same had been rejected. Upon the sale of the bonds, the board of directors shall, within ten days, or as soon thereafter as practicable, deliver the bonds, properly executed, to the county treasurer, taking his receipt therefor. The county treasurer shall, upon payment of the price agreed upon, deliver the same to the person or persons to whom sold, and place the moneys arising from such sale to the credit of the general school fund of the district: Provided, that where the bonds have been sold for the purchase of schoolhouse site or sites, building one or more schoolhouses and providing same with all necessary furniture, apparatus or equipment, or for any or all of these purposes, he shall place the money derived from such sale to the credit of the building fund of the district, and such fund is hereby created. Fees for advertising shall be deducted from the proceeds: Provided, that if the board of directors and the person or persons to whom the bonds are sold agree that the delivery of said bonds shall be in installments, the county treasurer shall hold said bonds, and deliver to purchasers only on written order of the board of directors to deliver at specified time the bonds designated by number and series. [L. '11, p. 390, § 1. Cf. L. '09, p. 326, § 4; L. '90, p. 47, § 4; 1 H. C., § 2700; L. '97, p. 403, § 120; L. '05, p. 265, § 7; L. '07, p. 614, § 9.]

Former laws cited in 4 Wash. 398; 28 Wash. 342.

§ 4611. May Exchange Warrants for Bonds.—If bonds issued under this chapter are not sold as herein provided, the holders of unpaid warrants drawn on the county treasurer by such district for an indebtedness existing at the date of the election may exchange said warrants at the face value thereof and accrued interest theron for coupon bonds issued under this chapter, at not less than par value and accrued interest of such bonds at the time of the exchange; such exchange to be made under such regulations as may be provided by the board of directors of such district. [L. '09, p. 327, § 5.]

§ 4612. Joint Districts.—For the purposes of this chapter a joint school district shall be deemed as belonging to the county in which the schoolhouse is located, if there be a schoolhouse, and if there be no schoolhouse, then it shall be deemed as belonging to the county in which the district owns a schoolhouse site that has been lawfully selected by the electors of the district. [L. '09, p. 327, § 6.]

§ 4613. Bond Interest Levy—Sinking and Redemption Fund.—The county commissioners must ascertain and levy annually, in addition to the school district tax, the tax necessary to pay the interest upon such bonds as it becomes due, and at the expiration of one-half of the time for which said bonds are to run, and annually thereafter, until full payment of said bonds is made, they shall levy, in addition to the tax required to pay the interest, such amount for sinking fund to meet the payments of said bonds at maturity, to be determined by dividing the amount of bonds outstanding by the remaining number of years to run, and the fund arising from such levy shall be kept as the bond redemption fund of said district, and each of said tax levies shall be a lien upon the property of said district, and must be collected in the same manner as the taxes for other school purposes: Provided, that the county treasurer, when authorized to do so by the board of directors of any school district, may invest any accumulated or other sinking fund of said district in school, county or state warrants of the state of Washington, and all profits accruing from such investment, and the funds so invested, shall revert to the sinking or other fund of said district, and the county treasurer shall be custodian of all warrants purchased by and with the said sinking fund, until the same are redeemed: And provided further, that the county treasurer, when authorized to do so by the board of directors of any school district, may purchase and redeem any of the outstanding bonds of said district, paying for said bonds out of the accumulated sinking fund of the district; all revenues provided for in this section shall constitute a separate fund, to be known as the bond redemption fund. [L. '11, p. 391, § 2. Cf. L. '09, p. 327, § 7; L. '90, p. 48, § 5; 1 H. C., § 2701; L. '97, p. 403, § 121; L. '99, p. 321, § 20; L. '07, p. 197, § 3; L. '07, p. 615, § 10.]

§ 4614. Levy in Joint Districts.—In case of a joint school district, the county commissioners of each and every county in which any part of such joint district shall lie, shall levy a tax as hereinbefore provided in section 4612 [4613], and the treasurer of each county in which the schoolhouse or schoolhouse site is not situated shall at least five days before the time at which said bonds or the interest thereon must be paid, according to the conditions of the issuance and sale thereof, transmit to the treasurer of the county in which the schoolhouse or schoolhouse site is situated (and to which

the joint school district is construed to belong), all moneys in his possession derived from the tax provided for in this chapter; and the county treasurer receiving such money shall receipt in duplicate to the treasurer or treasurers remitting such funds for such money; and he shall also place the amount or amounts so received to the credit of the special fund or funds of the joint school district to which it properly belongs. [L. '09, p. 328, § 8.]

§ 4615. Payment of Interest on Bonds.—The county treasurer must pay out of moneys belonging to the credit of the fund of the school district created by section 4613, the interest upon any bonds issued under this chapter by such school district when the same becomes due, at such place as may be designated in the coupons attached to said bonds, or upon the presentation at his office of said coupons, which must show the amount due and the number and series of the bond to which it belongs, and all coupons so paid must be immediately reported to the school directors. [L. '11, p. 392, § 3. Cf. L. '09, p. 329, § 9. Cf. '90, p. 48, § 6; 1 H. C., § 2702; L. '97, p. 404, § 122.]

Section 6 of this act, changed to § 4612, is evidently an error, and § 7 (§ 4613, supra) was probably intended.

§ 4616. Bonds Lithographed or Printed.—The school directors of any district must cause to be printed or lithographed, at the lowest rates, suitable bonds, with coupons attached, when the same become necessary, and pay therefor out of the moneys in the county treasury to the credit of the school district. [L. '09, p. 329, § 10. Cf. L. '90, p. 48, § 7; 1 H. C., § 2703; L. '97, p. 404, § 123.]

§ 4617. Refunding of Bonds.—Whenever any school district in this state shall have heretofore, under any of the acts of the territorial or state legislatures then in force, lawfully issued any bonds, and the amount of said bonds so issued and negotiated did not, at the time of their issue, exceed the sum of five per centum of the taxable property of the said school district, it shall be lawful for the said school district to issue and exchange its bonds at a rate of interest not greater than that borne by the original issue of bonds, par for par, without any further vote of the school district than that heretofore had or required by existing law at the time of their issue, and said bonds, shall, in all respects, conform to and be governed by the other provisions of this act. [L. '09, p. 329, § 11.]

§ 4618. Same.—Whenever any bonds lawfully issued by any school district under the provisions of this act shall reach maturity and shall remain unpaid, or may be paid under any option provided in the bonds, the board of directors thereof shall have the power to fund the same by issuing coupon bonds conformable to the requirements of this act and exchange the same, par for par, for the

outstanding bonds as aforesaid, without any further vote of the school district: Provided, that such bonds shall be issued in denominations of not less than one hundred dollars nor more than one thousand dollars, shall be redeemable within twenty years from date of issue, and shall draw a rate of interest not to exceed six per centum per annum. [L. '09, p. 329, § 12. Cf. L. '90, p. 48, § 8; 1 H. C., § 2704; L. '97, p. 404, § 124.]

§ 4619. Holders to Notify County Treasurer—Notice of Redemption.—Every holder of any of the bonds so issued as provided in this act shall within ten (10) days after he shall become the owner or holder thereof, notify the county treasurer of the county in which such bonds are issued of his ownership, together with his full name and postoffice address, and the county treasurer of said county shall, in addition to the published notice hereinafter provided for, deposit in the postoffice, properly stamped and addressed to each owner or holder of any such bonds subject to redemption or payment, a notice in like form, stating the time and place of the redemption of such bonds and the number of the bonds to be redeemed, and in case any owners of bonds shall fail to notify the treasurer of their ownership as aforesaid, then a notice mailed to the last holder of such bonds shall be deemed sufficient, and any and all such notices so mailed as aforesaid shall be deemed to be personal notice to the holders of such bonds, and at the expiration of the time therein named shall have the force to suspend the interest upon any such bonds. [L. '09, p. 330, § 13. Cf. L. '90, p. 49, § 9; 1 H. C., § 2705; L. '97, § 405, § 125.]

§ 4620. Incidental Costs.—At any time after the issuance of such bonds, and in the discharge of the duties imposed upon said county treasurer, should any incidental expense, costs or charges arise, the said county treasurer shall present his claim for the same to the board of directors of the school district issuing such bonds, and the same shall be audited and paid in the same manner as other services are paid under the provisions of law. [L. '09, p. 330, § 14. Cf. L. '90, p. 50, § 10; 1 H. C., § 2706; L. '97, p. 405, § 126.]

Former laws cited in 4 Wash. 398.

§ 4621. Notice of Bond Redemption—Cancellation.—Whenever the amount of any sinking fund created under the provisions of this act shall equal the amount, principal and interest of any bond then due, or subject under the pleasure or option of said school district to be paid or redeemed, it shall be the duty of the county treasurer of the county in which the school district issuing such bonds is located, to publish a notice in the official newspaper of the county, if such a one there be, and if not, then in a newspaper of general circulation, that the said county treasurer will within thirty (30) days from the date of such notice, redeem and pay any such bond then re-

deemable or payable, giving priority according to the date of issue numerically, and upon the presentation of any such bond or bonds the said treasurer shall pay the same; and in case that any holder of such bond or bonds shall fail or neglect to present the same at the time mentioned in said notice, or in the notice hereinbefore provided for, then the interest upon such bond or bonds shall cease and determine, and the treasurer of such county shall thereafter pay only the amount of such bond and the interest accrued thereon up to the day mentioned in said notice. When any bonds are so redeemed or paid, the county treasurer shall cause the same to be fully canceled, and write across the face of such bonds the words "redeemed," with the date of redemption, and shall file the same with the county auditor as vouchers for the sum so paid. When bonds are held by the state of Washington advertising as contemplated and prescribed in this section shall be deemed unnecessary. [L. '11, p. 393, § 4. Cf. L. '09, p. 330, § 15; L. '90, p. 50, § 11; 1 H. C., § 2707; L. '97, p. 405, § 127.]

CHAPTER XXIX.

Validation of Indebtedness and Bonds Therefor.

§ 4622. Electors may Validate Indebtedness.—Any school district may validate and ratify the indebtedness of such school district, incurred for strictly school purposes, when the same together with all then outstanding legal indebtedness does not exceed five per centum of the value of the taxable property in such school district. The value of taxable property in such school district shall be ascertained as provided in article VIII, section 6 of the constitution of the state of Washington. [L. '09, p. 331, § 1. Cf. L. '95, p. 26, § 1; L. '97, p. 406, § 128.]

Former laws cited in 19 Wash. 120; 39 Wash. 141.

§ 4623. Resolution of Board—Vote Necessary.—Whenever the board of directors of any school district shall deem it advisable to validate and ratify the indebtedness mentioned in the preceding section, they shall provide therefor by resolution, which shall be entered on the records of such school district, which resolution shall provide for the holding of an election for the purpose of submitting the question of validating and ratifying the indebtedness so incurred to the voters of such school district for approval or disapproval, and if at such election three-fifths of the voters in such school district voting at such election shall vote in favor of the validation and ratification of such indebtedness, then such indebtedness so validated and ratified and every part thereof existing at the time of the adoption of said resolution shall thereby become and is hereby declared to be validated and ratified and a binding obligation

upon such school district, when the only grounds of the previous invalidity of such indebtedness so ratified and invalidated is that at the time of the attempted incurring thereof, the same together with all other then existing indebtedness of such school district, exceeded one and one-half per centum of the taxable property in such school district, as provided in article VIII, section 6 of the constitution of the state of Washington, and that such indebtedness was so attempted to be incurred without the assent of three-fifths of the voters of such school district voting at an election held for that purpose, as required by said constitution. [L. '09, p. 331, § 2. Cf. L. '95, p. 27, § 2; L. '97, p. 406, § 129.]

§ 4624. Clerk to Give Notice of Election.—At the time of the adoption of the resolution provided for in the preceding section, the board of directors shall direct the clerk or secretary of the board to give public notice of the time, place or places, and purpose of such election, and specifying the amount and general character of the indebtedness proposed to be ratified. Such clerk or secretary shall thereupon cause written or printed notices to be posted in at least five places in such school district, at least twenty days before such election. Said notice shall also be published for the same length of time in a daily newspaper, printed and published in such district, and if there be no such daily newspaper, then in a weekly newspaper published in this state and of general circulation in the county where such school district is situated, in two regular issues of such weekly newspaper next preceding the day of such election. Said notices shall contain a copy of the resolution mentioned in the preceding section, the time of holding such election and location of polling place or places, a statement of the object of the election, and the form of the ballot adopted by the board to determine the question submitted to the voters. [L. '09, p. 332, § 3. Cf. L. '95, p. 29, § 4; L. '97, p. 408, § 131.]

§ 4625. Election, How Held, Ballots, etc.—Elections hereunder shall be by ballot, and conducted in the manner provided for conducting annual school elections. The ballot must contain the words, "Validating and ratifying indebtedness, yes," or the words, "Validating and ratifying indebtedness, no." Ballots containing the words "Validating and ratifying indebtedness, yes," shall be counted in favor of validating and ratifying such indebtedness, and ballots containing the words, "Validating and ratifying indebtedness, no," shall be counted against validating and ratifying such indebtedness. As soon as the polls are closed at such election, the judge at each polling place shall count the votes, ascertain the result and certify the same and make return thereof, within two days after such election, to the board of directors of such district, by depositing the same, together

with the ballots cast at such election, with the clerk or secretary of such board, and within five days after such election, or as soon as all the returns of election are deposited as herein provided, the board of directors of such district shall meet and canvass and declare the result, and shall cause to be entered a minute thereof on the records of such district. The qualifications of voters at such election shall be the same as prescribed for the election of school officers. [L. '09, p. 332, § 4. Cf. L. '95, p. 29, § 3; L. '97, p. 407, § 130.]

§ 4626. **Bonds—Issuance—Form—Seal—Proceeds.**—If the indebtedness of such school district is validated and ratified, as provided in this chapter, by three-fifths of the voters voting at such election, the board of directors of such school district, without any further vote, may borrow money and issue negotiable coupon bonds therefor. Bonds so issued shall bear a rate of interest not to exceed six per cent per annum, interest payable semi-annually, payable and redeemable at such time and place as designated in the bonds, but not exceeding twenty years from date of issue. The bonds and coupons shall be in such form as the board of directors shall prescribe, and payable at such place as may be designated therein. In all school districts of the second or third class, said bonds, with the coupons, must be signed by the board of directors and countersigned by the clerk of the school district. In school districts of the first class said bonds, with the coupons, must be signed in the corporate name of the district, by the president of the board of directors thereof, and attested by the secretary of the board, except that the said coupons may bear the lithograph signatures of the said president and secretary. The seal of such district, if such district has a seal, shall be affixed to each bond by the secretary thereof. The moneys arising from the sale of coupon bonds issued under this chapter shall be placed by the treasurer of the county in a special fund to the credit of such school district existing at the time of the adoption of the resolution mentioned in section 4623, not evidenced by negotiable bonds. [L. '09, p. 333, § 5. Cf. L. '95, p. 30, § 5; L. '97, p. 409, § 132.]

§ 4627. **Amount to be Issued—Advertisement of Sale, etc.**—When authorized to issue bonds, as provided in this chapter, the board of directors shall, at a meeting of such board, by resolution provide for the issuing of such bonds, prescribing their number, amount and term, and shall deliver a copy of said resolution to the county treasurer of the county in which such school district is situated or to which it belongs as provided in this act, who shall immediately advertise for sale of said bonds, and the law relating to other school bonds shall govern, control and apply to bonds issued or sold under this chapter, except that bonds issued under this chapter shall not bear a greater rate of interest than six per cent per annum, and

they may be sold in such amounts or blocks as the board of directors may direct, and such board may also require all persons bidding for said bonds, except the state of Washington, to deposit one per cent of the par value of the bonds bid for on depositing with the treasurer their bids, and if the bidder fails to take and pay for the bonds for which he bid, in case of their sale to him, the amount so deposited shall be forfeited to the school district, otherwise to be returned to such bidder and a resale of such bonds so refused to be taken may be made as if the bid for the same had been rejected, and the money arising from the sale of the bonds issued under this chapter shall be applied as provided in the preceding section. [L. '09, p. 334, § 6. Cf. L. '95, p. 30, § 6; L. '97, p. 410, § 133.]

§ 4628. Warrants Exchanged for Bonds.—If bonds issued under this chapter are not sold as herein provided, the holders of unpaid warrants drawn on the county treasurer by such district for an indebtedness existing at the time of the adoption of the resolution mentioned in section 4623, may exchange said warrants at the face value thereof and accrued interest thereon for coupon bonds issued under this chapter, at not less than par value and accrued interest of such bonds at the time of the exchange; such exchange to be made under such regulations as may be provided by the board of directors of such district. [L. '09, p. 334, § 7. Cf. L. '95, p. 31, § 7; L. '97, p. 411, § 134.]

§ 4629. County Treasurer Notified of Result—Money, How Applied Thereafter.—When the board of directors shall have canvassed and declared the result of the election as prescribed in section 4625, it shall, if the same shall have been in favor of validating and ratifying the indebtedness, immediately cause to be sent to the county treasurer of the county in which such district is situated, notice of the result of said election. The annual expense of such district shall not thereafter exceed the annual revenue thereof, and any officer of such district who shall knowingly aid in increasing the annual expenditure in excess of the annual revenue of such district, shall be deemed to be guilty of misdemeanor, and shall be punished by a fine not exceeding five hundred dollars. If the indebtedness of such school district, excluding the bonded indebtedness existing before the adoption of said resolution, is not extinguished by the exchange of warrants for bonds, or by the proceeds of the sale of bonds, as herein provided, then it shall be the duty of the board of directors, thirty days before the regular annual tax levy, to certify the amount of such indebtedness remaining unpaid to the board of county commissioners of the county in which such school district is situated, and said board of county commissioners, at the time of making the regular annual tax levy, shall annually levy a special tax on the taxable property of the

district not to exceed three mills on the dollar on the valuation of such taxable property, which shall be collected as other taxes are collected, and the proceeds of such tax shall be a special fund for the payment of the indebtedness of such district, not included in bonds, existing at the time of the adoption of the resolution mentioned in section 4623. [L. '09, p. 335, § 8. Cf. L. '95, p. 32, § 8; L. '97, p. 411, § 135.]

Former laws cited in 19 Wash. 120.

§ 4629½. **Indebtedness of District Merging—Election.**—In case any school district has heretofore incurred, or shall hereafter incur, indebtedness for strictly school purposes in excess of one and one-half per cent, and less than five per cent of the assessed valuation of property in such district, and has heretofore, or shall hereafter, become merged in a district of the first class, the directors and clerk of the last-named district may, after such merger, cause to be submitted to the voters within the limits of the district which incurred the obligations, the question of validating and ratifying such indebtedness. The vote shall be taken and the question determined in the manner prescribed in sections 4623, 4624 and 4625. The directors of the district of the first class shall make provisions for payment of the indebtedness so validated by certifying the amount thereof to the county commissioners for a special levy, in the manner prescribed in section 4629: Provided, such district of the first class may pay a part, or all, of such validating indebtedness from any funds available or by issuing bonds therefor, under the following conditions: When such district of the first class has taken over property of any district without an adjustment and apportionment of property and of indebtedness, as provided in sections 4437 and 4438, the directors of the enlarged district shall make such adjustment and apportionment, as of the time of merger, and may pay such validated indebtedness to the extent that the value of the property received shall be found to exceed the total indebtedness of the district annexed. [L. '13, p. 416, § 1.]

CHAPTER XXX.

Certification of Teachers.

§ 4630. **Validating Certificates.**—Nothing in this act shall be construed to invalidate the life diplomas granted under the laws of the territory of Washington, or to invalidate any certificate or diploma heretofore granted in accordance with the laws of the state of Washington, but the same shall continue in effect in accordance with the provisions of the laws under which they were granted: Provided, that any third grade certificate, second grade certificate, first grade primary certificate, or first grade certificate, or any renewal, or any

permanent certificate, in full force and effect at the time of the taking effect of this act shall, for the purpose of renewal, or for securing a certificate of higher grade, or for securing a permanent certificate, or for any other purpose whatsoever, be of the same force and effect, and shall entitle the holder thereof to the same rights and privileges as he would be entitled to were he the holder of a certificate of like designation authorized by this act. [L. '09, p. 336, § 1. Cf. L. '99, p. 382, § 4; 1 H. C., § 849; L. '97, p. 412, § 136; L. '03, p. 181, § 30.]

§ 4631. Certificates Issued by Superintendent of Public Instruction.—All certificates and diplomas, except temporary certificates, and special certificates, shall be issued or countersigned by the superintendent of public instruction. [L. '09, p. 336, § 2.]

§ 4632. Fees Paid into Institute Fund.—The fee for any teacher's certificate or any renewal thereof, or any life diploma, or other instrument issued by authority of the state of Washington, and authorizing the holder to teach in the public schools of the state shall be one dollar. The fee must accompany the application and cannot be refunded unless the application is withdrawn before it is finally considered. The county superintendent, or other officer authorized to receive such fee, shall within thirty days transmit the same to the treasurer of the county wherein such applicant is to teach or resides, to be by him placed to the credit of the institute fund of said city or county: Provided, that if any city collecting fees for the certification of teachers does not hold an institute separate from the county, then all such moneys shall be placed to the credit of the county institute fund. [L. '09, p. 336, § 3. Cf. L. '97, p. 415, § 142.]

§ 4633. Age of Applicant.—No person who is less than eighteen years of age shall receive a certificate to teach in the state of Washington nor take the examination for the same; nor shall any person less than nineteen years of age receive any certificate other than a temporary, a third grade, or a second grade. [L. '09, p. 337, § 4.]

§ 4634. Evidence of Moral Character.—Before registering any certificate, the county superintendent of the county in which application was made for certificate shall satisfy himself that the applicant is a person of good moral character and personal fitness. In the event of a refusal to register a certificate, the county superintendent shall immediately notify the superintendent of public instruction of his action and shall fully and clearly state his reasons therefor, and the person aggrieved shall have the right of appeal to the superintendent of public instruction, and shall have the further right of appeal to the state board of education. [L. '11, p. 50, § 1; L. '09, p. 337, § 5.]

§ 4635. Credits.—Any person who receives credits of ninety per cent or over in any subject or subjects at any regular teachers' ex-

amination in this state shall not be required to take an examination again in such subject or subjects in order to receive any certificate for which the applicant may be eligible to apply, so long as he is actively engaged in educational work. The holder of any common school certificate shall be entitled to write on one or more subjects at any examination for the purpose of securing credits: and when sufficient credits have been earned the proper certificate shall be issued. [L. '09, p. 337, § 6.]

§ 4636. Evidence of Successful Experience.—Whenever evidence of successful experience is a prerequisite to the issuance or renewal of a certificate, it shall be deemed sufficient for the applicant to file evidence, satisfactory to the officer authorized to issue or renew the certificate, of having taught the required number of months and of being a successful teacher. The aforesaid documentary evidence of successful teaching shall be kept on file in the office of the superintendent of public instruction. [L. '11, p. 51, § 2; L. '09, p. 337, § 7.]

§ 4637. Optional Subjects.—The state board of education shall prepare a list of optional subjects for each grade above the second, from which the applicants for certificates above the second grade may select as provided for in section 4644. [L. '09, p. 337, § 8.]

§ 4638. One Year's Study Renews Certificate.—Credits of ninety per cent or over on a valid certificate obtained by examination in any other state in which the examination questions are prepared and answer papers graded by the state department of education may be accepted subject for subject in accordance with the rules and regulations prescribed by the state board of education. [L. '11, p. 51, § 3; L. '09, p. 337, § 9.]

§ 4639. Subjects Indorsed on Certificate.—Every certificate issued by authority of the state of Washington shall have written or printed upon its face the subjects in which the holder has been examined, with standings in each, or the subjects or work upon which credits are given. [L. '09, p. 338, § 10.]

§ 4640. Registration of Certificates.—All certificates issued by the superintendent of public instruction shall be valid and entitle the holder thereof to teach in any county of the state upon being registered by the county superintendent thereof, which fact shall be evidenced by him on the certificate in the words, "Registered for use in —— county," together with the date of registry, and his official signature: Provided, that a copy of the original certificate or diploma duly certified by the superintendent of public instruction may be used for the purpose of registry and indorsement in lieu of the original. [L. '09, p. 338, § 11. Cf. L. '97, p. 416, § 147.]

§ 4641. Examinations—Where and When Held.—An examination for the certification of teachers of the state of Washington for third, second, first grade primary and first grade certificates shall be held at the county seat of each county by the county superintendent in accordance with the rules and regulations of the state board of education, on the first Thursday of August, November, and March and the Friday and Saturday next following; and for professional and life certificates on the above-named days of August and March only. [L. '15, p. 482, § 1; L. '09, p. 338, § 1; L. '07, p. 142, § 1.]

§ 4642. Papers Forwarded to State Superintendent.—The county superintendent shall within three days following the close of the examinations provided for in section 4641, transmit to the state superintendent of public instruction all papers written at such examination, together with such other reports as shall by him be required. The superintendent of public instruction shall keep all manuscripts on file for a period of at least sixty (60) days from the date of the examinations. [L. '15, p. 482, § 2; L. '09, p. 338, § 2. Cf. L. '97, p. 415, § 143.]

§ 4643. Common School Certificates and Diplomas Classified.—The certificates and diplomas granted by authority of the state of Washington, and authorizing the holders to teach in the public schools of this state shall be classified as follows:

First—common school certificates and diplomas: (a) third grade certificates; (b) second grade certificates; (c) first grade primary certificates; (d) first grade certificates; (e) professional certificates; (f) permanent certificates; (1) permanent first grade primary certificates; (2) permanent first grade certificates; (3) permanent professional certificates; (g) life certificates.

Second—city certificates: (a) city high school certificates; (b) city grammar school certificates; (c) city primary certificates.

Third—certificates and diplomas of the higher institutions of learning; (a) of the normal schools; (b) of the State College of Washington; (c) of the University of Washington.

Fourth—temporary certificates.

Fifth—special certificates.

[L. '09, p. 339, § 1 (art. iii). Cf. L. '90, p. 358, § 12; L. '91, p. 243, § 4; L. '90, p. 383, § 85; 1 H. C., §§ 777, 850; L. '97, p. 412, § 137; L. '05, p. 105, § 2; L. '07, p. 96, § 1; L. '07, p. 616, § 11.]

§ 4644. Certificates and Diplomas Described—Qualifications.—The common school certificates and diplomas issued by authority of the state of Washington, the period for which each shall be valid and the qualifications required of applicants for the same shall be as follows:

First. Third Grade Common School Certificates: Applicant shall pass an examination in reading, grammar, penmanship and punctuation, history of the United States, geography, arithmetic, physiology and hygiene, theory and art of teaching, orthography, and Washington State Manual. This certificate shall be valid for one year: Provided, that the holder of a third grade certificate who shall, after the granting of the same, attend any accredited institution of higher education in this state for one year, shall upon application be granted a second grade certificate.

Second. Second Grade Common School Certificates: Applicant shall have credits in the same subjects as for a third grade common school certificate and shall take an examination in music. This certificate shall be valid for two years, but may be renewed, if, during the life of the certificate, the holder has complied with any one of the following conditions, to wit, 1. An attendance of one semester at an accredited school of higher education, or of six weeks at an accredited summer school when satisfactory work was done in three subjects and certified to by the principal of such school. 2. Upon sixteen months of successful teaching.

Third. First Grade Primary Certificates: Applicant must have taught at least forty-five months in the primary grades, and shall have credits in the same subjects as for a second grade certificate, and must also pass an examination in nature study, drawing, literature and physical geography; but the state board of education may accept other subjects in lieu of two of the above subjects at the request of the applicant, as provided in section 4637, of this chapter. This certificate shall authorize the holder to teach in the primary grades only and shall be valid for five (5) years, and may be renewed for a like period if application is made not later than ninety (90) days after certificate expires, and if, during the life of the certificate, the holder has complied with any one of the following conditions, to wit: 1. An attendance of one year at an accredited institution of higher learning during the life of the certificate when satisfactory work was done in three subjects and certified to by the principal or president of such school: 2. Successful teaching for not less than twenty-four (24) months during the life of the certificate. Any renewal may be renewed in like manner.

Fourth. First Grade Certificates: Applicant must have taught at least nine (9) months and shall have credits in the same subjects as for a second grade certificate, and also in physics, English literature, algebra and physical geography. The state board of education may accept other subjects in lieu of two of these upon request of the applicant, as hereinbefore provided. Applicant must secure the same number of credits as for a first grade primary certificate. This cer-

tificate shall be valid for five (5) years and may be renewed in the same manner and under the same conditions as a first grade primary certificate.

Fifth. Professional Certificates: Applicant shall meet all the requirements for a first grade certificate, but must have taught successfully twenty-four (24) months, at least eight (8) months of which must have been in the state of Washington. He shall also pass an examination in plane geometry, geology, botany, zoology, and civil government: Provided, that the state board of education may accept other subjects in lieu of any or all of these upon the request of the applicant, as hereinbefore provided. This certificate shall be valid for five (5) years and may be renewed in the same manner and under the same conditions as a first grade certificate.

Sixth. Permanent Certificates: Applicant must be the holder of a first grade primary certificate, a first grade certificate, or a professional certificate, or a renewal of any one of them, in full force and effect, and must have taught successfully not less than seventy-two (72) months, nor less than thirty-six (36) months in the state of Washington, nor less than eighteen (18) months subsequent to the granting of the certificate upon which the application is made. Upon filing satisfactory evidence of having met these requirements, together with the written indorsement of the county superintendent, a permanent certificate shall be issued of the same grade as that held by the applicant, valid during the life of the holder unless revoked for cause.

Seventh. Life Certificates: Applicant must file with the superintendent of public instruction evidence of having taught successfully for forty-five (45) months, not less than twenty-seven (27) months of which shall have been in this state. He must have the credits required for professional certificates and in addition shall pass an examination in the following, to wit: Psychology, history of education, bookkeeping, composition, general history: Provided, that the state board of education may accept other subjects in lieu thereof upon request of the applicant. This certificate shall be valid during the life of the holder unless revoked for cause. [L. '11, p. 51, § 4. Cf. L. '09, p. 339, § 1 (art. iv). Cf. L. '97, p. 412, § 137; L. '03, p. 183, § 4; L. '05, p. 106, § 3; L. '07, p. 618, § 13.]

Section "9" in the third subdivision is evidently an error, "§ 8" probably being intended; and § 4638 [4637] is substituted accordingly.

§ 4645. City Certificates—Board of Examiners, Powers and Duties of.—In any city of this state in which one hundred or more teachers are employed in the city schools, if the board of directors in such city shall so determine, there shall be a board of examiners consisting of the city superintendent of schools and two other members hav-

ing practical experience as teachers, residents of said city, to be designated as associate examiners. The associate examiners shall be elected by the board of directors at their regular meeting in July annually, and shall hold office for one year, but no candidate for examination as a preliminary to teaching in the public schools shall be an associate examiner. The city superintendent of schools shall be chairman of the board of examiners. The board of examiners shall meet and hold examinations for the granting of teachers' certificates on such occasions only as may be authorized by the board of directors. Such board of examiners shall have power:

(1) To adopt rules and regulations, not inconsistent with the laws of this state or the rules of the state board of education, for its own government and for the examination of teachers and to fix standards of proficiency for the granting and renewing of certificates subject to the approval of the board of directors.

(2) To prepare questions on the various subjects prescribed by law and examine by written or oral examination all candidates for the following certificates: (a) A city high school certificate valid for one year only unless renewed and authorizing the holder to teach or serve as principal in any primary, grammar, or high school in such city. (b) A city grammar school certificate valid for one year only unless renewed and authorizing the holder to teach in any primary or grammar school, or serve as principal in any primary school in such city. (c) A city primary certificate, valid, for one year only, unless renewed, and authorizing the holder to teach in any primary school in the city. The board of examiners shall report the result of all examinations to the board of directors who, through the president and secretary thereof, shall issue to the successful candidates the certificates to which they are entitled; and the board of directors shall report a list of certificates issued to the state superintendent of public instruction and to the county superintendent of the county in which the city is located.

(3) To recommend to the board of directors renewal of the various renewable certificates, in accordance with such regulations as they may adopt, or as may be prescribed by the board of directors; whereupon said board of directors through its president and secretary, may renew such certificates from year to year. [L. '09, p. 342, § 1. Cf. L. '07, p. 601, § 1.]

§ 4646. Age—Moral Character, etc.—No certificate of permission to teach shall be issued to any person not eighteen years of age. No certificate shall be granted to any person whose moral character or habits are known by the board of examiners or board of directors to be bad, or who is afflicted with a serious infectious or hereditary disease. No certificate shall be granted by the board of directors or

upon its authority except to successful candidates in a regular or special examination conducted by the board of examiners in accordance with the provisions of the law. [L. '09, p. 343, § 2. Cf. L. '07, p. 602, § 2.]

§ 4647. Primary and Grammar Certificates—Requirements.—City primary and city grammar certificates shall be granted only to applicants who are found upon examination to have a practical knowledge of pedagogics, school management and the general system of the state of Washington, and to be proficient in and qualified to teach the following branches: reading, writing, spelling, English grammar, geography, arithmetic, physiology and hygiene, United States history, and such other English branches as the board of directors may prescribe: Provided, that the examination of applicants for such certificates shall be specially adapted to discover their fitness to teach all branches named to pupils of primary or grammar grades respectively. [L. '09, p. 344, § 3. Cf. L. '07, p. 603, § 3.]

§ 4648. High School Certificates.—City high school certificates shall be granted only to applicants who pass satisfactorily the examination required for grammar certificates and in addition thereto, sustain a satisfactory examination in civil government, physical geography, elementary physics, algebra, botany, and such other branches as the board of directors may prescribe. [L. '09, p. 344, § 4. Cf. L. '07, p. 603, § 44.]

§ 4649. Exemptions.—Holders of normal diplomas and holders of state diplomas or state certificates or any certificate authorized by the laws of the state of Washington shall be exempt from all further examinations during the terms of validity of such certificates as provided by law. Teachers engaged in the exclusive teaching of music, foreign languages, drawing, penmanship, kindergarten, manual training, domestic science and physical culture shall be exempt from all examinations except such as pertain to the special departments over which they preside. [L. '09, p. 344, § 5. Cf. L. '07, p. 603, § 5.]

§ 4650. Special Certificates.—Special certificates shall be granted only to applicants who pass satisfactorily the examination in a special or departmental subject (such as music, foreign language, drawing, penmanship, kindergarten, manual training, domestic science, physical culture, etc.), and such other subjects as are calculated to discover applicants' fitness to teach in public schools. [L. '09, p. 344, § 6. Cf. L. '07, p. 603, § 6.]

§ 4651. Certificates and Diplomas of Higher Institutions.—Certificates and diplomas of the normal schools, of the State College of Washington, and of the University of Washington shall be granted as provided by law. [L. '09, p. 345, § 1 (art. vi.]

§ 4651-1. Certificates — Graduates of Accredited Schools. — The state board of education shall investigate the character of the work required to be performed as a condition of entrance to and graduation from normal schools, colleges, universities and other institutions of higher education and to prepare an accredited list of those higher institutions of learning of this and other states whose graduates may be awarded teachers' certificates by the superintendent of public instruction without examination except upon the state manual of Washington: Provided, that graduates of accredited colleges and universities must present evidence that they have completed satisfactorily twelve semester hours in professional study in an accredited institution or else pass examination in such professional subjects as the state board of education may direct: And provided further, that the entrance and graduation requirements of all colleges and universities whose diplomas are accredited must be equal to those of the University of Washington; and the requirements for normal schools shall be equal to the advanced courses of the state normal schools of this state. [L. '15, p. 481, § 1.]

§ 4652. Temporary Certificates.—Temporary certificates shall be issued in accordance with the rules and regulations of the state board of education. [L. '11, p. 54, § 5. Cf. L. '09, p. 345, § 1 (art. vii); L. '97, p. 416, § 146.[

Former laws cited in 48 Wash. 487.

§ 4653. Special Certificates, to Whom Issued.—Special certificates shall be issued by the county superintendent, or city superintendent if in a city, to applicants who show by examination or otherwise satisfactory evidence of fitness to teach special subjects, such as music, foreign languages, art, manual training, penmanship, kindergarten, domestic science, typewriting, stenography, physical culture, etc. Special certificates shall be valid so long as the holder continues to teach in the city or county where granted, unless revoked. [L. '09, p. 345, § 1 (art. viii).]

§ 4654. Cause for Revocation of Certificate.—Any certificate to teach named in this act may be revoked by the authority authorized to grant same upon complaint of any superintendent for immorality, violation of written contract, intemperance, crime against the law of the state, or any unprofessional conduct, after the defendant has been given an opportunity to be heard. [L. '09, p. 345, § 1 (art. ix). Cf. L. '97, p. 417, § 148.]

Former laws cited in 21 Wash. 150.

§ 4655. Penalty.—In case any certificate is revoked, the holder shall not be eligible to receive another teacher's certificate for a

period of twelve months after the date of revocation. [L. '09, p. 346, § 2.]

§ 4656. Appeal.—Any teacher whose certificate to teach has been revoked, as provided in the preceding sections, and feeling aggrieved at such revocation, shall have the following right of appeal:

First. To the superintendent of public instruction whenever the certificate has been revoked by the county superintendent.

Second. To the state board of education when the certificate has been revoked by the superintendent of public instruction.

Third. To the state board of education when the certificate has been revoked by the faculty of the State University, the State College or the normal schools.

Fourth. An appeal under the provisions of this act to the state superintendent shall operate as a stay of proceedings for a period of thirty (30) days, and an appeal to the state board of education shall operate as a stay of proceedings till the next regular or special meeting of said board. [L. '09, p. 346, § 3.]

CHAPTER XXXI.

General Elections.

§ 4657. When and Where Held.—The election of school district directors shall, except as otherwise provided by law, be held on the first Saturday in March of each year, at the district schoolhouse, if there be one, or if there be none, or more than one, then at a place to be designated by the board of directors; Provided, that if a petition signed by not less than twenty-five per cent of the legal voters in any district asking that the date of the next annual election therein be changed, shall be filed with the county superintendent of schools not less than twenty days before such election, said superintendent shall fix a date within the first seven days of March, other than a Saturday, for the holding of such election and forthwith notify the clerk thereof and such election shall then be held upon the date so fixed in the manner and upon the notice that other like elections are held. Special school elections shall be called and conducted in the manner provided for calling and conducting annual elections. [L. '15, p. 338, § 1; L. '13, p. 348, § 1; L. '09, p. 346, § 1; L. '90, p. 375, § 54; L. '91, p. 255, § 18; 1 H. C., § 821; L. '93, p. 268, § 6; L. '97, p. 417, § 149; L. '01, p. 47, § 4; L. '03, p. 184, § 36.]

Cited in 4 Wash. 302, 663; 13 Wash. 702; 40 Wash. 456, 458.

§ 4658. Election, Notice of, etc.—The district clerk must give at least ten days' notice of such school election, by posting or causing to be posted, written or printed notices thereof in at least three public places in the district, one of which must be the place of hold-

ing the election. Said notice must designate the place of holding the election, day of holding the election, hours between which the polls are to be kept open, names and offices for which persons are to be elected, and terms of office, with a statement of any other questions which the board of directors may desire to submit to the electors of said district. Notices must be signed by the district clerk "By order of the board of directors." Unless otherwise designated in the notice of election, the polls shall be open at 1 o'clock in the afternoon and close at 8 o'clock in the afternoon, but the board of directors may, in districts of the second or the third class, previous to giving notice of election, determine on an hour before 8 o'clock for closing, but they must not be closed earlier than 4 o'clock in the afternoon. In no case shall the polls be opened before the hour named in the notice, nor kept open after the hour fixed for closing the polls, but if there is not a sufficient number of electors present at the hour named for opening the polls to constitute a board of election, it shall be lawful to open the polls as soon thereafter as a sufficient number of electors is present. [L. '09, p. 346, § 2. Cf. L. '90, p. 375, § 55; 1 H. C., § 822; L. '97, p. 417, § 150.]

Cited in 4 Wash. 302, 662; 31 Wash. 4.

§ 4659. Election, How Conducted.—At the hour fixed for opening the polls the electors present shall select two electors to act as judges of the election and one elector to act as clerk of the election, and the three selected shall constitute the election board; and no election shall be held unless an election board is so constituted and qualified. The judges and clerk aforesaid shall, before entering upon the duties of their office, severally take and subscribe an oath or affirmation faithfully to discharge the duties as such officers of election, said oath of affirmation to be administered by any school officer or any other person authorized to administer oaths. The judges shall, before they commence receiving ballots, cause to be proclaimed aloud at the place of voting that the polls are now open. [L. '09, p. 347, § 3. Cf. L. '90, p. 376, § 56; 1 H. C., § 823; L. '97, p. 418, § 151.]

§ 4660. Form and Reception of Ballot.—The voting shall be by ballot. The ballots shall be of white paper of uniform size and quality containing the names of the persons for whom the electors intend to vote, and designating the office to which such person so named is intended by him to be chosen. Whenever any person offers to vote, one of the judges shall pronounce his name in an audible voice, and if there be no objection to the qualifications of such person as an elector, he shall receive the ballot in the presence of the election board and deposit the same without being opened or examined in the ballot-box, and the clerk shall immediately enter the

name upon the list headed "Names of voters." [L. '09, p. 347, § 4. Cf. L. '90, p. 376, § 57; 1 H. C., § 824; L. '97, p. 418, § 152.]

§ 4661. Qualifications, Registration, and Challenges, of Voters.— Every person, male or female, over the age of twenty-one years, who shall have resided in the school district for thirty days immediately preceding any school election, and in the state one year, and is otherwise, except as to sex, qualified to vote at any general election, shall be a legal voter at any school election, and no other person shall be allowed to vote: Provided, that registration for purposes of school election shall not be required except in school districts of the first class. Persons offering to vote may be challenged by any legally qualified school elector of the district, and one of the judges of election shall thereupon, before receiving his vote, administer to the person challenged an oath in substance as follows: "You do swear (or affirm), that you are a citizen of the United States, that you are twenty-one years of age, according to your information and belief, and that you have resided in this district thirty days next preceding this election, and in the state one year, and that you have not voted before on this day." If he shall refuse to take the oath, his vote will be rejected. Any person guilty of illegal voting shall be punished as provided in the general election laws of the state. [L. '09, p. 348, § 5. Cf. L. '90, p. 377, § 58; 1 H. C., § 825; L. '97, p. 418, § 153; L. '99, p. 323, § 23.]

Former laws cited in 4 Wash. 304; 13 Wash. 707.

§ 4662. Counting and Canvass of Returns. — When the polls are closed proclamation thereof shall be made at the place of voting, and no vote shall be afterward received. As soon as the polls are closed the judges shall open the ballot-box and commence counting the votes, and in no case shall the ballot-box be removed from the room in which the election is held until all the votes are counted. The counting shall be in public. The ballots shall be taken out one by one, by one of the judges, who shall open them and read aloud the name of each person contained therein, and the office for which such person was voted for. The clerk shall write down each office to be filled and the name of such person voted for such office, and shall keep the number of votes by tallies as they are read aloud by one of the judges. The counting of the votes shall continue without adjournment until all the votes are counted. No ticket shall be rejected on account of form or mistake in the initials, or spelling of names, if the judges can determine to their satisfaction the person voted for and the office intended. After the result of the election is duly canvassed and officially declared, the clerk of the election shall forward the poll sheet thereof to the county superintendent,

who shall preserve the same on file in his office. [L. '09, p. 348, § 6. Cf. L. '90, p. 377, § 59; 1 H. C., § 826; L. '97, p. 419, § 154.]

§ 4663. Certificates of Election—Tie Votes.—Persons having the highest number of votes given for each office shall be declared duly elected, and the clerk of election shall immediately make out and deliver to each person so elected a certificate of election. The clerk of election shall also make out a certificate showing the persons elected to each office at such election, with oaths of office of persons elected attached, and mail such certificates and oaths to the superintendent of schools of the county in which the election is held. If two persons have an equal and highest number of votes for one and the same office, they shall, within ten days after the election, appear before the clerk of election of said district and publicly decide by lot which of the persons so having an equal number of votes shall be declared elected, and the clerk of election shall make out and deliver to the person thus declared elected a certificate of his election, and notify the county superintendent of the county as before provided. If the persons above named do not, within ten days after election, thus decide, the office shall be declared vacant by the clerk of election, and the county superintendent shall, when notified of the vacancy, fill the same by appointment. [L. '09, p. 349, § 7. Cf. L. '90, p. 378, § 60; 1 H. C., § 827; L. '97, p. 420, § 155.]

CHAPTER XXXII.

Special Meetings.

§ 4664. When and for What Purpose Called.—Any board of directors may, at its discretion and shall, upon a petition of a majority of the legal voters of their district, call a special meeting of the voters of the district, to determine the length of time in excess of the minimum length of time prescribed by law that such school shall be maintained in the district during the year; to determine whether or not the district shall purchase any schoolhouse site or sites, and to determine the location thereof; or to determine whether or not the district shall build one or more schoolhouses; or to determine whether or not the district shall maintain one or more free kindergartens; or to determine whether or not the district shall sell any real or personal property belonging to the district, borrow money or establish and maintain a school district library. [L. '09, p. 319, § 1. Cf. L. '97, p. 420, § 156; L. '01, p. 382, § 18.]

Former laws cited in 44 Wash. 523, 524; 69 Wash. 191.

§ 4665. Where Held, Notice of, etc.—All such special meetings shall be held at the schoolhouse, if there be one, or if there be none, or more than one, then at such schoolhouse or place as the board of

directors may determine. The voting shall be by ballot, the ballots to be of white paper of uniform size and quality. · At least ten days' notice of such special meeting shall be given by the district clerk, in the manner that notice is required to be given of the annual election, which notice shall state the object or objects for which the meeting is to be held, and no other business shall be transacted at such meeting than such as is specified in the notice. The district clerk shall be clerk of the meeting, and the chairman of the board of directors, or, in his absence, the senior director present, shall be chairman of the meeting: Provided, that in the absence of one or all of said officers, the qualified electors present may elect a chairman or clerk, or both chairman and clerk, of said meeting as occasion may require, from among their number. The clerk of the meeting shall make a record of the proceedings of the meeting, and when the clerk of such meeting has been elected by the qualified voters present, he shall within ten days thereafter, file the record of the proceedings, duly certified, with the clerk of the district, and said records shall become a part of the records of the district, and be preserved as other records. [L. '09, p. 350, § 2. Cf. L. '97, p. 421, § 157.]

§ 4666. Board to Carry Out Directions of Meeting.—It shall be the duty of every board of directors to carry out the directions of the electors of their districts as expressed at any such meeting. [L. '09, p. 350, § 3. Cf. L. '97, 421, § 158.]

CHAPTER XXXIII.

Elections in Districts of the First Class.

§ 4667. When Held — Notice. — The regular district election in each district of the first class shall be held upon the first Saturday of December in each year. The board of directors shall cause written or printed notices to be posted, specifying the day and place of such election, and the time during which the ballot-box will be kept open. Said notices shall be posted in at least one place in each ward in the district at least twenty days previous to the time of election. Said notices shall also be published three times in two daily papers published in the district, and if there be no daily or dailies, then in the weekly paper or papers in three regular issues next preceding the day of such election. If the board of directors fail to give notice at such time, as herein provided, then any five legal voters residing in the district may give such notice over their own title for such election. [L. '09, p. 351, § 1.]

§ 4668. Time of Opening Polls—Ballots.—All elections shall be by official ballot and the polls shall be opened at 1 o'clock P. M. and be closed at 8 o'clock P. M. The official ballot shall be printed and

furnished by the board of directors, and shall contain the names of all candidates whose names have been presented by petitions filed with the secretary of the board not less than ten days before the day of election. The names of no other candidates shall appear upon said official ballots, and no other ballots shall be received or counted. [L. '09, p. 351, § 2.]

§ 4669. Voting Places.—It shall be the duty of the board of directors to provide one or more voting places in each district: Provided, there shall not be more voting places in any district than the number of schoolhouses located in such district. The board shall also appoint two judges and one clerk for each voting precinct. Both judges and clerk shall be qualified electors in the precinct for which they are appointed. Should any judge or clerk be absent at the time for opening the polls, the electors present shall appoint a legal voter to fill such vacancy. [L. '11, p. 503, § 1; L. '09, p. 351, § 3.]

§ 4670. Qualification of Voters. — Only those persons, male and female, who have complied with the laws governing registration in districts of the first class, shall be permitted to vote, and no person shall be entitled to vote at said election except in the ward in which he or she resides: Provided, that any elector of said district who had duly registered as a voter at any general election in said district shall be allowed to vote at the next succeeding school election held the same year without registration. [L. '09, p. 351, § 4.]

§ 4671. Registration Books, City Clerk must Furnish.—The city clerk or other municipal officer in whose custody the registration books of the general election are kept shall furnish to the secretary of the board, on the morning of the day of any school election, the registration books of said city or a copy thereof, which said registration books shall be returned within two days after said election. [L. '09, p. 352, § 5.]

§ 4672. Canvass of Vote—Certificate of Election.—The board of directors shall, upon closing the polls, receive the returns at the time and the place it shall direct, and shall, within five (5) days from said election, meet as a canvassing board, and in the presence of any duly qualified justice of the peace in and for said county, canvass the returns and ascertain the result. The result of said election shall be certified by the board of directors to the county school superintendent, who shall preserve said certificate, entering upon his records the receipt of said certificate and the names of the person or persons elected as members of such board of directors for said district, together with the term for which elected. [L. '09, p. 352, § 6.]

§ 4673. Voters must Register.—Every person residing in any portion of a school district of the first class, which lies without the

limits of any incorporated city, who is not required to register to vote at a general election held therein shall not be entitled to vote at any school election, either general or special, to be held in any such district of the first class unless he or she shall have previously complied with the requirements as to registration as in this act provided. [L. '11, p. 501, § 1. Cf. L. '09, p. 352, § 1. Cf. L. '97, p. 40, § 1; L. '01, p. 382, § 18.]

§ 4674. Secretary of Board Shall Register Voters.—The secretary of the board of directors in each district subject to the provisions of this act shall keep the books of registration herein provided for, and shall register therein the names of all duly qualified voters in his district, on application, in the manner and at the times here specified. [L. '09, p. 352, § 2. Cf. L. '97, p. 41, § 2.]

§ 4675. Board to Furnish Blanks, and Pay Expenses.—The board of directors of each district subject to the provisions of this act, shall furnish the secretary of such board, at the expense of the district, all blanks and books of registration and shall furnish, at the expense of their respective districts, all funds necessary for carrying out the provisions of this act. [L. '09, p. 352, § 3. Cf. L. '97, p. 41, § 3.]

§ 4676. Registration Books Open, When — Notice of Closing.—The books of registration shall be opened for the purpose of registration, at the office of the secretary of the board of the district, on each day between the hours of 9 o'clock A. M. and 4 o'clock P. M., except on legal holidays, and they shall be closed and no names shall be registered therein during the five days preceding any special or general election held in such district. The secretary of the board shall give notice of the closing of the books of registration in his district by notice published in a newspaper of general circulation, published in his district, at least ten days before the day for closing said books. [L. '09, p. 353, § 4. Cf. L. '92, p. 41, § 4.]

§ 4677. Places of Registration.—For a period of thirty days preceding the closing of registration books for any election, the books may be opened at a convenient place in the district for the registration of voters, which places must be designated by the board of directors, and during a period of ten days immediately preceding the closing of such books they shall be kept open until 7 o'clock each evening, and they may be kept open until a later hour by order of the board of directors. [L. '09, p. 353, § 5.]

§ 4678. Registration Required Annually — Qualifications for.—Registration shall not be required more than once in each year. All persons who are duly qualified electors under the provisions of this act, who reside in any portion of a school district of the first class

outside of the limits of any incorporated city and who are not required to register to vote at a general election shall be entitled to registration on application to the secretary of the board of directors of the district in which they reside: Provided, such elector shall have been a resident of the state for one year, of the county ninety days, and of the voting precinct thirty days prior to the next general or special election to be held in such district. No person shall vote at any such election except in the precinct where he or she has resided for the length of time above specified. [L. '11, p. 501, § 2.]

§ 4679. Registration Book for Each Precinct. — Wherever the whole or any portion of such district of the first class shall lie without the limits of any incorporated city the board of directors of such district shall subdivide such outlying territory into voting precincts so that each precinct shall contain, as near as may be, five hundred inhabitants, and after the boundaries of such precincts shall have been established, said territory shall not be redistricted oftener than once in three years, and not then unless one or more of the precincts thereof shall have attained a population of more than five hundred inhabitants. There shall be provided by the board of directors in each district and kept by the secretary of such board a book of registration for each voting precinct in such district established by the board of directors as above provided. [L. '11, p. 502, § 3. Cf. L. '09, p. 353, § 7; L. '97, p. 42, § 6.]

§ 4680. Form of Registration Record.—The books of registration aforesaid shall be so arranged as to admit the alphabetical classification of the names of the voters, and ruled in parallel columns with appropriate heads, as follows: Date of registration, name, age, occupation, place of residence, place of birth, time of residence in the state, county or precinct, and if of foreign birth, name and place of court and date of declaration of intention to become a citizen of the United States, or date of naturalization, and with one column for signature and one for remarks, and one column for checking the name of voter at the time of voting. Under head of place of residence shall be noted the number of lot and block, or number and street where applicant resides, or some other definite description sufficient to locate the residence, and the voter so registering as provided in this section shall sign his or her name on the registry opposite the entries above required, in the column headed "Signature," and in case any voter shall not be capable of writing his or her name he or she shall, on the left-hand margin of said column, make his or her mark by a cross or such other mark as is usual in indicating his or her signature, and some person who is personally known to said voter, and is personally known to the registering officer, and who is capable

of writing his or her name, shall sign in said column immediately opposite said mark as an identifying witness thereto. [L. '09, 354, § 8. Cf. L. '97, p. 212, § 7.]

§ 4681. Elector must Register in Person—Oath.—No person shall be registered unless he or she appears in person before the secretary or the board of directors in the district in which such elector resides, during the hours the books are opened for registration, and answers truly the questions that may be put to him or her touching his or her qualifications to vote in such district, and shall also make and subscribe the following oath:

State of Washington, } ss.
County of ——, }

I, ——, do solemnly swear (or affirm) that I am a legally qualified school elector, under the laws of the state of Washington, and that I have been an actual permanent resident of said state for eleven months and twenty days last past, and of the county for eighty days last past, and the —— precinct twenty days last past, and that I have not lost my civil rights by reason of being convicted of any infamous crime.

Subscribed and sworn to before me this —— day of ——.

Said affidavit shall be filed and preserved by the secretary of the board for at least two years. [L. '09, p. 355, § 9. Cf. L. '97, p. 43, § 8.]

§ 4682. Secretaries Empowered to Administer Oath.—The secretaries of the boards of directors are hereby empowered to administer all necessary oaths in examining applicants for registration, or any witness that may be offered in behalf of any applicant. The said secretary shall examine carefully any applicant whose right to register he may doubt, or who may be challenged, and if the applicant shall be entitled to vote at the next election he or she shall be registered, otherwise not. [L. '09, p. 355, § 10. Cf. L. '97, p. 43, § 9.]

§ 4683. Change of Residence of Registered Voter.—If any elector shall during the year for which he or she may be registered change his or her place of residence from the precinct in which he or she is registered to any other precinct in said district, outside the corporate limits of such city, he or she shall apply to the secretary of the board to have said removal noted. The secretary shall run a red ink line across the name in the precinct book in which said applicant shall be registered, and likewise note said removal in the column headed, "Remarks," in said book and thereupon the secretary shall enter the name and register the elector in the registration book of the precinct to which he or she has removed. [L. '11, p. 502, § 4. Cf. L. '09, p. 356, § 11; L. '97, p. 44, § 11.]

§ 4684. Challenge, and Method of Procedure Under.—Registration under the provisions of this act shall be prima facie evidence of the right of the elector to vote at any general or special school election held within the district during the year for which said elector is registered. If any person duly registered is challenged, it shall be the duty of the judges of election to examine the challenger and any witnesses that may be produced on oath, touching the right of such elector to vote; the judges shall then, unless they dismiss said challenge, examine the proposed elector on oath, and if it appears that said elector is entitled to vote at said election, his or her vote shall be received, otherwise rejected. Any person swearing falsely before any judge of election, on the hearing of any such challenge, shall be deemed guilty of perjury, and shall be subjected to the pains and penalties of perjury. [L. '09, p. 356, § 12. Cf. L. '97, p. 44, § 12.]

§ 4685. Registration Books Delivered to Clerk of Election.—On the morning of any general or special school election the secretary of the board shall deliver to the clerk of each voting precinct within his district the original book of registration of the precinct for which such clerk was appointed. Each clerk of election shall return the book of registration intrusted to him to the secretary of the board at the time of the delivery of the ballots cast in the precinct at such election, and it shall be unlawful for any clerk or any judge of election, to cause or allow any marks or alterations to be made in said book while the same is in their possession, other than a proper check mark when a ballot is cast, to indicate the party voting. [L. '09, p. 356, § 13. Cf. L. '97, p. 45, § 14.]

CHAPTER XXXIV.

Penalties.

§ 4686. Disclosing Examination Questions.—Any member of the state board of education, any employee of the state of Washington, any county superintendent or any employee of his office, who shall directly or indirectly disclose any question or questions prepared for the examination of teachers of eighth grade pupils, or any teacher or other person connected with the instruction of or the examination of eighth grade pupils, who shall, before the time appointed for the use of the questions in the examination of such pupils, disclose the questions, or make known their character, or who shall directly or indirectly assist any such eighth grade pupil to answer any question submitted, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred nor more than five hundred dollars. Said fine shall be turned over to the county treasurer of the county in which it is collected, and shall be by him transmitted to the state treasurer, who

shall place the same to the credit of the current school fund of the state. [L. '09, p. 357, § 1. Cf. L. '97, p. 421, § 159; L. '03, p. 325, § 1.]

Cited in 84 Wash. 87.

§ 4687. Failure of County Superintendent to Make Report. — If any county superintendent fails to make a full and correct report to the superintendent of public instruction of all statements required by him or if he shall fail to file with the superintendent of public instruction a full and correct annual report within ten days after the time prescribed by law for filing said report, he shall forfeit the sum of fifty dollars from his salary, and the board of county commissioners are hereby authorized and required to deduct therefrom the sum aforesaid upon information from the superintendent of public instruction that such reports have not been made. [L. '09, p. 357, § 2. Cf. L. '90, p. 360, § 15; 1 H. C., § 780; L. '97, p. 421, § 160.]

§ 4688. Failure to Pay Over Funds.—Any officer or person collecting or receiving any fines, forfeitures or other moneys belonging to the schools of the state of Washington, or belonging to the school fund of any county or school district in this state, and refusing or failing to pay over the same, as required by law, shall forfeit double the amount so withheld, and interest thereon at the rate of five per cent per month during the time of so withholding the same; and it shall be a special duty of the county superintendent of schools to supervise and see that the provisions of this section are fully complied with, and report thereon to the county commissioners semi-annually or oftener. Such fines and penalties, when collected shall be turned over to the county treasurer and by him transmitted to the state treasurer, who shall place the same to the credit of the current school fund of the state. [L. '09, p. 357, § 3. Cf. L. '90, p. 383, § 89; 1 H. C., § 820; L. '97, p. 422, § 161; L. '03, p. 326, § 3.]

§ 4689. Failure of Directors to Enforce Teaching of Hygiene.—Upon complaint in writing being made to any county superintendent by any district clerk, or by any head of a family, that the board of directors of the district of which said clerk shall hold his office, or said head of family shall reside, have failed to make provisions for the teaching of hygiene or have failed to require it to be taught, with special reference to the effects of alcoholic drink, stimulants and narcotics upon the human system, as provided by law, in the common schools of such district, it shall be the duty of such county superintendent to investigate at once the matter of such complaints, and if found to be true, he shall immediately notify the county treasurer of the county in which such school district is located, and after the receipt of such notice, it shall be the duty of such county treasurer to refuse to pay any warrants drawn upon him by the

board of directors of such district subsequent to the date of such notice and until he shall be notified to do so by such county superintendent. Whenever it shall be made to appear to the said county superintendent, and he shall be satisfied that the board of directors of such district are complying with the provisions of law in this matter, and are causing physiology and hygiene to be taught in the public schools of such district as hereinbefore provided, he shall notify said county treasurer, and said treasurer shall thereupon honor the warrants of said board of directors. [L. '09, p. 358, § 4. Cf. L. '90, p. 383, § 89; 1 H. C., § 820; L. '97, p. 422, § 161; L. '03, p. 326, § 4.]

§ 4690. Failure of County Superintendent to Enforce Teaching of Hygiene.—Any county superintendent of common schools who shall fail or refuse to comply with the provisions of the preceding section shall be liable to a penalty of one hundred dollars, to be recovered in civil action in the name of the state in any court of competent jurisdiction, and the sum recovered shall go into the state current school fund; and it shall be the duty of the prosecuting attorneys of the several counties of the state to see that the provisions of this section are enforced. [L. '09, p. 358, § 5. Cf. L. '90, p. 385, § 91; 1 H. C., § 855; L. '97, p. 422, § 163; L. '03, p. 327, § 5.]

§ 4691. Failure of Clerk to Make Report.—In case the district clerk fails to make the reports as by law provided, at the proper time and in the proper manner, he shall forfeit and pay to the district the sum of twenty-five dollars for each and every such failure. He shall also be liable, if, through such neglect, the district fails to receive its just apportionment of school moneys, for the full amount so lost. Each and all of said forfeitures shall be recovered in a suit brought by the county superintendent or by any citizen of such district, in the name of and for the benefit of such district, and all moneys so collected shall be paid over to the county treasurer and shall be by him placed to the credit of the general fund of the district to which it belongs. [L. '09, p. 359, § 6. Cf. L. '90, p. 369, § 36; 1 H. C., § 801; L. '97, p. 423, § 164; L. '03, p. 327, § 6.]

§ 4692. Failure to Deliver Property—Employment of Teachers.—Any school officer who shall refuse or fail to deliver to his qualified successor all books, papers, records and moneys pertaining to his office, or who shall willfully mutilate or destroy any such property, or any part thereof, or shall misapply moneys intrusted to him by virtue of his office, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine not to exceed one hundred dollars; said fine, when collected, to be turned over to the county treasurer and by him transmitted to the state treasurer, who shall place the same to the credit of the current school

fund of the state; and any director who shall aid in, or give his consent to the employment of a teacher who is not the holder of a valid certificate authorizing him or her to teach in the public schools of this state, shall be personally liable to his district for any loss which it may sustain by reason of the employment of such person not lawfully qualified to teach. [L. '09, p. 359, § 7. Cf. L. '97, p. 423, § 165; L. '03, p. 327, § 7; L. '07, p. 621, § 16.]

§ 4693. Failure to Enforce Course of Study. — Any teacher who willfully refuses or neglects to enforce the course of study or the rules and regulations required by the state board of education, or by any other lawful authority, shall not be allowed by the directors any warrant for salary due until said teacher shall have complied with said requirements. [L. '09, p. 360, § 8. Cf. L. '97, p. 423, § 166; L. '03, p. 327, § 8.]

§ 4694. Abuse of Pupils.—Any teacher who shall mal'reat or abuse any pupil by administering any unjust punishment, or who shall inflict punishment on the head or face of a pupil, shall be deemed guilty of a misdemeanor, and upon conviction thereof before any court of competent jurisdiction shall be fined in any sum not exceeding one hundred dollars. Said fine, when collected, shall be turned over to the county treasurer and by him transmitted to the state treasurer, who shall place the same to the credit of the current school fund of the state. [L. '09, p. 360, § 9. Cf. L. '90, p. 371, § 43; 1 H. C., § 808; L. '97, p. 423, § 167; L. '03, p. 328, § 9.]

§ 4695. Failure to Attend Institute.—In addition to other causes for the revocation of teachers' certificates as provided by law, any teacher failing to attend the annual institute held in the county in which he is employed, or the annual joint institute held by the county in which he is employed and another county or other counties, unless for good and sufficient reasons satisfactory to the superintendent of public instruction, may upon complaint of the superintendent of the county in which he is employed to teach have any certificate he may hold forfeited by order of the superintendent of public instruction: Provided, that such forfeiture shall be duly published after the said teacher shall have been given opportunity to present his reasons for such nonattendance, and after final action thereon. [L. '09, p. 360, § 10. Cf. L. '90, p. 381, § 77; 1 H. C., § 842; L. '97, p. 423, § 168; L. '03, p. 328, § 10.]

§ 4696. Insulting or Abusing Teacher.—Any parent, guardian or other person who shall insult or abuse a teacher in the presence of his school, or anywhere on the school grounds or premises, shall be deemed guilty of a misdemeanor and be liable to a fine of not less than ten dollars nor more than one hundred dollars, and said fine

shall be turned over to the county treasurer, and by him remitted to the state treasurer, who shall place the same to the credit of the current school fund of the state. [L. '09, p. 369, § 11. Cf. L. '90, p. 383, § 86; 1 H. C., § 851; L. '97, p. 424, § 169; L. '03, p. 323, § 11.]

§ 4697. **Disturbing School.**—Any person who shall willfully disturb any school or school meeting shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not more than fifty dollars. Said fine, when collected, shall be turned over to the county treasurer and by him transmitted to the state treasurer, who shall place the same to the credit of the current school fund of the state. [L. '09, p. 361, § 12. Cf. L. '90, p. 383, § 87; 1 H. C., § 852; L. '97, p. 424, § 170; L. '03, p. 328, § 12.]

§ 4698. **Making False Report of Attendance.**—Any teacher, principal or superintendent who shall knowingly report, cause to be reported, or permit to be reported, the presence of any pupil or pupils at school, when such pupil or pupils were absent, or when school is not in session, shall forfeit his certificate or subject it to revocation and the same shall not be restored or a new one granted within one year after such forfeiture or revocation: Provided, that pupils who are excused from attendance at examinations for promotion, having completed their work in accordance with the rules of the board of directors, shall be accredited with attendance during said days of examination. [L. '09, p. 361, § 13. Cf. L. '03, p. 329, § 13.]

§ 4699. **Mutilating Property.**—Any pupil who shall cut, deface or otherwise injure any schoolhouse, furniture, fence or outbuilding thereof, or any book or books belonging to the district library, shall be liable to suspension and punishment, and the parent or guardian of such pupil shall be liable for damages, on complaint of the teacher or of any director or other person residing in the district; and when such damages shall have been collected they shall be turned over to the county treasurer and by him placed to the credit of the school district sustaining such damages. [L. '09, p. 361, § 14. Cf. L. '90, p. 372, § 48; 1 H. C., § 813; L. '97, p. 424, § 172; L. '03, p. 329, § 14.]

§ 4700. **Failure to Use Adopted Text-book.**—Any district using text-books other than those prescribed by lawful authority, or any district failing to comply with the course of study prescribed by the state board of education or by other lawful authority, or any district in which warrants are issued to a teacher not legally qualified to teach in the common school of the said district, shall forfeit twenty-five per cent of their school fund for that or the subsequent year, and it is hereby made the duty of the county superintendent to deduct said amount from the apportionment to be made to any district failing in either or all of the above requirements, and the amounts

thus deducted shall revert to the general school funds of the state, and the county treasurer shall return the same to the state treasurer for reapportionment. [L. '09, p. 361, § 15. Cf. L. '97, p. 424, § 174; L. '03, p. 329, § 16.]

§ 4701. Failure of New District to Keep School.—Any new district formed by the division of an old one and which new district shall have maintained at least one month's school during the preceding school year, as shown by the last annual report of the county superintendent, on file in the office of the superintendent of public instruction, shall be entitled to its just share of school moneys when the time that school was maintained in the old district before division, and in the new one after division, shall be equal to at least the minimum time required by law in the old district: Provided, that if any school district has heretofore failed to receive apportionment of state school funds because of a failure to hold school the time required by law, and there are unpaid warrants drawn on the general funds of said district for maintenance of school prior to said failure, a special tax shall be levied by the board of county commissioners on the property of the district, the proceeds of which shall be applied to the payment of the indebtedness. [L. '09, p. 362, § 16. Cf. L. '90, p. 363, § 24; L. '91, p. 248, § 9; 1 H. C., § 789; L. '97, p. 425, § 175; L. '99, p. 324, § 24; L. '03, p. 330, § 17; L. '05, p. 107, § 5.]

§ 4702. False Oath.—If any person shall falsely swear or affirm in taking the oath or making the affirmation herein prescribed when being registered for voting in a school district of the first class, or shall falsely personate another and procure the person so personated to be registered, or if any person shall represent his name to the secretary or officer of registration to be different from what it actually is, and cause such name to be registered, or if any person shall cause any name to be placed upon the register list otherwise than in the manner provided in this act, he or she shall be guilty of a felony, and upon conviction be punished by confinement in the penitentiary not more than five nor less than one year. [L. '09, p. 362, § 17. Cf. L. '97, p. 44, § 107.]

Cited in 83 Wash. 422.

§ 4703. Vivisection Forbidden.—No teacher or other person employed in any school in the state of Washington, except a medical or dental school or the medical or dental department of any school, shall practice vivisection upon any vertebrate animal in the presence of any pupil in said school, or any child or minor there present; nor in such presence shall exhibit any vertebrate animal upon which vivisection has been practiced. [L. '97, p. 16, § 1; L. '97, p. 426, § 178.]

See § 4705, penalty.

§ 4701. Dissection Permitted, When.—Dissection of dead animals, or any portion thereof, in the schools of the state of Washington shall, in no instance, be for the purpose of exhibition, but in every case shall be confined to the class-room and the presence of those pupils engaged in the study to be illustrated by such dissection. [L. '97, p. 17, § 2; L. '97, p. 426, § 179.]

See § 4705, penalty.

§ 4705. Violating Vivisection Law.—Any person violating the provisions of the last two sections, shall upon conviction thereof, be deemed guilty of a misdemeanor, and be fined in any sum of not less than fifty nor more than one hundred dollars. Said fine, when collected, shall be turned over to the county treasurer, and by him transmitted to the state treasurer, who shall place the same to the credit of the current school fund of the state. [L. '97, p. 424, § 173; L. '97, p. 16, § 3; L. '03, p. 329, § 15.]

CHAPTER XXXV.

Appeals.

§ 4706. Appeal from Decisions—Time for Taking.—Any person, or persons, either severally or collectively, aggrieved by any decision or order of any school officer or school board may, within thirty days after the rendition of such decision or order, or of the failure to act upon the same when properly presented, appeal the same to the proper officer or board as hereinafter provided. [L. '09, p. 362, § 1. Cf. L. '90, p. 360, § 16; L. '91, p. 245, § 6; 1 H. C., § 781; L. '97, p. 372, § 36.]

See notes to § 4481, supra.

§ 4707. Appeals—To Whom Taken.—Appeals from the decision or order, or from the failure to decide or order, by a board of school directors shall be taken to the county superintendent of schools in and for the county. Appeals from the decision or order, or the failure to decide or order, of a county superintendent of schools shall, when relating to the territory or boundaries, or to the adjustment of the assets or liability of school districts, be taken to the board of county commissioners wherein the territory lies, but when relating to the operation or management of schools, or the property of the school district or to the relations with teachers such appeal shall be taken to the superintendent of public instruction: Provided, that in matters involving the construction of contracts the appeal shall be taken to the court of the proper resort. [L. '09, p. 363, § 2.]

See references to last section.

§ 4708. Basis of Appeal.—The basis of appeal shall be an affidavit or affidavits of the party aggrieved, filed within the time for

the taking of such appeal, setting forth in a clear and concise manner the errors complained of. [L. '09, p. 363, § 3. Cf. L. '90, p. 366, § 32; 1 H. C., § 797; L. '97, p. 376, § 47.]

§ 4709. Notice of Appeal—Transcript—Notice of Hearing.—Having received the basis of appeal, as set forth in the preceding section, the officer to whom the appeal is taken shall within ten days, and the board of county commissioners shall at their next regular session, notify in writing the party from whose action the appeal is taken of the taking of such appeal and of its nature and scope. Within twenty days after such notice the said party shall file a complete transcript, properly certified to be correct, of the record and papers and proceedings relating to the decision complained of. Upon the filing of such transcript notice shall be duly given to all parties interested of the time and place where the matter of the appeal shall be heard and determined. [L. '09, p. 363, § 4. See references to last section.]

§ 4710. Hearing.—At the hearing of an appeal, properly presented in accordance with this chapter, the county superintendent or the board of county commissioners, as the case may be, shall hear testimony of all parties interested, and for the purpose may administer oaths if necessary, may summon witnesses or demand records or certified copies of the same: Provided, that in the case of a hearing before the board of county commissioners the board may hear the case de novo, and in the case of a hearing on appeal by the superintendent of public instruction no new evidence may be admitted. [L. '09, p. 363, § 5.]

§ 4711. Decision Final Unless Disturbed by Court.—In decisions of appeal by the superintendent of public instruction and by the board of county commissioners the decision or order shall be final unless set aside by a court of competent jurisdiction in an action brought therein to review such order or decision. [L. '09, p. 364, § 6.]

§ 4712. Notice and Record of Decisions.—Decisions of appeal shall be made a matter of record in full, and certified copies of the same shall be made if asked for by the parties interested within ten days of such decision. Notice of such decision of appeal shall be made in writing to parties interested within five days of their rendition. [L. '09, p. 364, § 7.]

§ 4713. Decision Changing Boundaries to be Reported to County Assessor.—In cases of appeal resulting in the change of any school district boundaries the decision shall within five days thereafter be also certified by the proper officer to the county assessor of the county, or to the county assessors of the counties, wherein the territory may lie. [L. '09, p. 364, § 8.]

CHAPTER XXXVI.

Compulsory Education.

Truant schools, see infra, § 8606 et seq.
State training school: See supra, § 4303 et seq., and infra, § 8596 et seq.
State school for girls, see supra, § 4386–1.

§ 4714. Attendance—Age—When Excused.—All parents, guardians and other persons in this state having or who may hereafter have immediate custody of any child between eight and fifteen years of age (being between the eighth and fifteenth birthdays), or of any child between fifteen and sixteen years of age (being between the fifteenth and sixteenth birthdays) not regularly and lawfully engaged in some useful and remunerative occupation, shall cause such child to attend the public school of the district, in which the child resides, for the full time when such school may be in session or to attend a private school for the same time, unless the superintendent of the schools of the district in which the child resides, if there be such a superintendent, and in all other cases the county superintendents of common schools, shall have excused such child from such attendance because the child is physically or mentally unable to attend school or has already attained a reasonable proficiency in the branches required by law to be taught in the first eight grades of the public schools of this state as provided by the course of study of such school, or for some other sufficient reason. Proof of absence from public schools or approved private school shall be prima facie evidence of a violation of this section. [L. '09, p. 364, § 1. Cf. L. '97, p. 385, § 71; L. '99, p. 280, et seq.; L. '01, p. 379, § 11; L. '03, p. 55, § 1; L. '05, p. 316, § 1; L. '07, p. 569, § 1; L. '07, p. 613, § 7.]

Former laws cited in 25 Wash. 124; 69 Wash. 362; 71 Wash. 216; 79 Wash. 289.

§ 4715. Employment of Children Under Certain Age—When Permitted.—No child under the age of fifteen years shall be employed for any purpose by any corporation, person or association of persons in this state during the hours when the public schools of the district in which such child resides are in session, unless the said child shall present a certificate from a school superintendent as provided for in section 4714, excusing the said child from attendance in the public schools and setting forth the reason for such excuse, the residence and age of the child, and the time for which such excuse is given. Every owner, superintendent, or overseer of any establishment, corporation, company or person employing any such child shall keep such certificate on file so long as such child is employed by him, her or it. The form of said certificate shall be furnished by the superintendent of public instruction. Proof that any child under fifteen

years of age is employed during any part of the period in which public schools of the district are in session, shall be deemed prima facie evidence of a violation of this section. [L. '09, p. 365, § 2. Cf. L. '03, p. 56, § 2; L. '05, p. 316, § 2; L. '07, p. 569, § 2.]

See supra, § 2447, certain employment prohibited without consent of judge.

§ 4716. Penalty.—Any person violating any of the provisions of either of the two preceding sections shall be fined not more than twenty-five dollars. Attendance officers shall make complaint for violation of the provisions of this act, to a justice of the peace or to a judge of the superior court. [L. '09, p. 365, § 3. Cf. L. '05, p. 317, § 3; L. '07, p. 570, § 3.]

§ 4717. Attendance Officers, Duty of.—To aid in the enforcement of this act, attendance officers shall be appointed and employed as follows: In incorporated city districts the board of directors shall annually appoint one or more attendance officers. Any attendance officer may be a sheriff, constable, a city marshal, or a regularly appointed policeman. In all other districts the county superintendent shall act as attendance officer, and he shall also have authority to appoint one or more assistant attendance officers to aid him in the performance of his duties as attendance officer. The compensation of attendance officer in such city districts shall be fixed and paid by the board appointing him. The attendance officer shall be vested with police powers, the authority to make arrests and serve all legal processes contemplated by this act, and shall have authority to enter all stores, mills, shops, or other places in which children may be employed, for the purpose of making such investigations as may be necessary for the enforcement of this act. The attendance officer is authorized to take into custody the person of any child between eight and fifteen years of age, who may be a truant from school, and to conduct such child to his parents, for investigation and explanation, or to the school which he should properly attend. The attendance officer shall institute proceedings against any officer, parent, guardian, person, company or corporation violating any provisions of this act, and shall otherwise discharge the duties prescribed in this act, and shall perform such other services as the superintendent of schools or the board of directors may deem necessary. The attendance officer shall keep a record of his transactions, for the inspection and information of the board of directors and the city and county superintendent, and shall make a detailed report to the superintendent of the city or of the county, as often as the same may be required. [L. '09, p. 365, § 4. Cf. L. '05, p. 317, § 4; L. '07, p. 570, § 4.]

§ 4718. May Arrest Truants Without Warrants.—Any attendance officer, sheriff, deputy sheriff, marshal, policeman, or any other officer authorized to make arrests in the city or district, shall arrest without a warrant a child who, under the provisions of this act is required to attend school, such child then being a truant from instruction at the school which he or she is lawfully required to attend, shall forthwith deliver a child so arrested either to the custody of a person in parental relation to the child or to the teacher from whom the child is then a truant, or, in the case of habitual or incorrigible truants, shall bring him or her before a justice of the peace. The justice of the peace shall, if he be convinced that the child so arrested is a habitual truant or that the child is guilty of willful and continued disobedience to the school rules and regulations or laws, or that the conduct of the child is pernicious and injurious to the school, bind the child over to the superior court with a view of his commitment to the state reform school or other school for incorrigibles. [L. '09, p. 366, § 5. Cf. L. '05, p. 317, § 5; L. '07, p. 571, § 5.]

See infra, §§ 8609–8611, commitment to truant schools.

§ 4719. Teacher to have Copy of Census—Must Report Truancy. It shall be the duty of the district clerk or secretary, at the beginning of each school year, to provide the teacher with a copy of the last census of school children taken in his school district: Provided, that if there be a principal or city superintendent in such district, the clerk or secretary shall make such census report to him, and it shall be the duty of every teacher to report to the proper truant officer, all cases of truancy or incorrigibility in his or her school, immediately after the offense or offenses shall have been committed: Provided further, that if there be a principal the report shall be made to him and by him transmitted to the truant officer: And provided further, that if there be a city superintendent, the principal shall transmit such report to said city superintendent, who shall transmit such report to the proper truant officer of his district. [L. '09, p. 367, § 6. Cf. L. '03, p. 56, §§ 2–4; L. '05, p. 318, § 6; L. '07, p. 571, § 6.]

§ 4720. Courts have Concurrent Jurisdiction.—In cases arising under this act all justices' courts, municipal courts and superior courts in the state of Washington shall have concurrent jurisdiction. [L. '09, p. 367, § 7. Cf. L. '05, p. 318, § 7; L. '07, p. 572, § 7.]

§ 4721. County Attorney to Prosecute.—The county attorney shall act as attorney for the complainant in all court proceedings relating to compulsory attendance of children as required by this act. [L. '09, p. 367, § 8. Cf. L. '90, p. 382, § 83; L. '97, p. 425, § 177; L. '99, p. 324, § 25; L. '01, p. 382, § 190; L. '03, p. 58, § 8; L. '05, p. 318, § 8; L. '07, p. 572, § 8.]

§ 4722. Officer's Report of Enforcement of Law.—The county superintendent shall on or before the fifteenth day of August of each year, by printed circular or otherwise, call the attention of all school district officers to the provisions of this act, and to the penalties prescribed for the violation of its provisions, and he or she shall require the clerk of every school district to make a report annually hereafter, to him or her, verified by affidavit, stating whether or not the provisions of this act have been faithfully complied with in his district. Such reports shall be made upon blanks to be furnished by the superintendent of public instruction and shall be transmitted to the county superintendent at the time the district clerk is required to make his annual report to the county superintendent. Any district clerk who shall knowingly or willfully make a false report relating to the enforcement of the provisions of this act or fail to report as herein provided shall be deemed guilty of a misdemeanor, and upon conviction in a court of competent jurisdiction shall be fined not less than twenty-five dollars nor more than one hundred dollars; and any district clerk who shall refuse or neglect to make the report required in this section, shall be personally liable to his district for any loss which it may sustain because of such neglect or refusal to report. [L. '09, p. 367, § 9. Cf. L. '07, p. 572, § 9.]

§ 4723. Penalty for Nonperformance of Duty—Disposition of Fines.—Any superintendent, teacher or attendance officer, who shall fail or refuse to perform the duties prescribed by this act shall be deemed guilty of a misdemeanor and, upon conviction thereof, be fined not less than twenty nor more than one hundred dollars: Provided, that in case of a district officer, such fine shall be paid to the county treasurer and by him placed to the credit of the school district in which said officer resides, and in case of other officers such fine shall be paid to the county treasurer and by him placed to the credit of the general school fund of the county. [L. '09, p. 368, § 10. Cf. L. '03, p. 57, § 7; L. '05, p. 318, § 10; L. '07, p. 572, § 10.]

§ 4724. Fines Applied to Support of Schools.—All fines except as otherwise provided in this act shall inure and be applied to the support of the public schools in the district where such offense was committed. [L. '09, p. 368, § 11. Cf. L. '05, p. 319, § 11; L. '07, p. 573, § 12.]

§ 4725. Officer not Liable for Costs When Performing Duty.—No officer performing any duty under any of the provisions of this act, or under the provisions of any rules that may be passed in pursuance hereof, shall in any wise become liable for any costs that may accrue in the performance of any duty prescribed by this act. [L. '09, p. 368, § 12. Cf. L. '05, p. 319, § 12; L. '07, p. 573, § 13.]

§ 4726. Compulsory Attendance at Free Government Schools.—Whenever the government of the United States or the state of Washington shall erect, or cause to be erected and maintained, a school for general educational purposes within the state of Washington, and the expense of the tuition, lodging, food and clothing of the pupils therein is borne by the United States or the state of Washington, it shall be compulsory on the part of every parent, guardian or other person in the state of Washington having control of a child or children between the ages of five and eighteen years, eligible to attend said school, to send such child or children to said school for a period of nine months each year, or during school for a period of nine months each year, or during the annual term, unless such child or children is or are excused from such attendance by the principal or superintendent of said school, upon it being shown to the satisfaction of said principal or superintendent that the bodily or mental condition of such child or children has been and is such as to prevent his, her or their attendance at school, or application at study for the period required, or that such child or children is or are taught in the public schools, private schools, or other schools, or at home in such branches are are usually taught in the public schools: Provided, that in case the government of the United States or the state of Washington does not make provision for the free transportation of said child or children to and from their homes to said school, then he, she or they shall not be liable to the provisions of this act, unless they reside less than ten miles from said school. [L. '03, p. 107, § 1.]

"Act" refers to §§ 4726–4730.

§ 4727. Demand for Attendance.—It shall be the duty of all principals or superintendents of the school or schools mentioned in this act, before attempting to enforce the provisions of this act hereinafter mentioned to serve, or cause to be served, a demand for the attendance of certain children, naming them, and also designating the school to which their attendance is required, upon the parent, guardian or other person having charge of said child or children as may be eligible to attend said school over which he has charge, and a copy of this act; and such parent, guardian or other person having charge of said child or children shall have ten days to either deliver said child or children at said school, or to the principal or superintendent thereof, or furnish satisfactory proof that the bodily or mental condition of said child or children does not admit of attendance. [L. '03, p. 108, § 2.]

"Act" refers to §§ 4726–4730.

§ 4728. Failure of Parents, etc., to Comply.—If at the expiration of ten days after such notice or demand the parents, guardian or other persons having charge of said child or children shall have failed

or refused to comply with this act, the principal or superintendent shall cause a demand to be made upon such parent, guardian or other person for the amount of the penalty hereinafter provided; and if such parent, guardian or person shall neglect or refuse to pay the same within five days after making said demand, the superintendent or principal shall commence proceedings in the name of the state for the recovery of the fine hereinafter provided before any court having jurisdiction: Provided, that nothing in this act shall apply to any child or children who is or are actually and necessarily compelled to labor for the support of such parent. [L. '03, p. 108, § 3.]

"Act" refers to §§ 4726–4730.

§ 4729. Penalty.—Any parent, guardian or other person having control or charge of any child or children, failing to comply with the provisions of this act shall be liable to a fine of not less than five dollars nor more than twenty-five dollars, for the first offense, nor less than ten dollars nor more than fifty dollars for the second and each subsequent offense, besides the cost of collection. [L. '03, p. 108, § 4.]

"Act" refers to §§ 4726–4730.

§ 4730. Disposition of Fines.—All fines collected under the provisions of this act shall be paid into the county treasury, the same to be placed to the credit of the general school fund. [L. '03, p. 108, § 5.]

"Act" refers to §§ 4726–4730.

CHAPTER XXXVII.

Grammar School Examinations.

§ 4731. Promotion to High School—Questions.—It shall be the duty of the superintendent of public instruction at such times as he may deem it advisable, but not oftener than three times each year, to forward questions prepared by the state board of education for use in the examination of pupils having completed the grammar school course of study, to fix the date for such examination, and to grant certificates of promotion to pupils successfully passing such examination according to the standard prescribed by the state board of education: Provided, that such certificate shall entitle the holder thereof to entrance into any high school of the state without further examination: Provided further, that nothing in this act shall be construed as compelling boards of directors to admit nonresident pupils without tuition charge. [L. '09, p. 368, § 1. Cf. L. '01, p. 69, §§ 1–3; L. '03, p. 312, § 1.]

§ 4732. County Board to Examine Papers—Assistant Examiners. It shall be the duty of the county board of education to examine and grade the manuscripts of the pupils who take the examinations mentioned in the preceding section. The county superintendent may appoint assistant examiners who shall conduct such examinations of pupils according to the rules and regulations of the state board of education, and within three days transmit the manuscripts to the county superintendent. Assistant examiners shall receive three dollars per day to be paid in the same manner as the regular board. [L. '09, p. 369, § 2. Cf. L. '03, p. 312, § 2.]

§ 4733. Papers Examined at County Seat—Questions—Special Course.—It shall be the duty of the county board of education to meet at the county seat at the call of the county superintendent for the purpose of examining and grading the manuscripts of pupils taking such examinations under the direction of any assistant examiner or of the county superintendent. No questions shall be used in such examination except those prepared by the state board of education as provided in section 4731: Provided, that the state board of education may prescribe a special course of reading to be done by pupils in the last year of the grammar school course, as a requisite to their receiving certificates of graduation. [L. '09, p. 369, § 3. Cf. L. '03, p. 313, § 3.]

§ 4734. Report of Result to State Superintendent.—It shall be the duty of the county superintendent to report to the superintendent of public instruction, within ten days after any meeting of the county board of education, the names of all pupils successfully passing any examination, as herein provided, together with their respective standings or grades in the several prescribed subjects and such other facts relating to said pupils or said examination as the superintendent of public instruction may require. [L. '09, p. 369, § 4. Cf. L. '03, p. 313, § 4.]

CHAPTER XXXVIII.

High School Extension Examinations.

§ 4735. Course Outlined by State Board—Examination.—The state board of education shall outline a course of reading and study similar to a course of study required in a full four year high school course, and shall provide for the examination and certification of those taking or completing such course. Examinations for this purpose shall be held at the same time and place of holding examinations for teachers' certificates, and in such form to fully test the students' knowledge of the subject or subjects examined in. Any one or more subjects may be taken at any such examination and a student failing in any subject may again be examined in such subject at any

subsequent examination: Provided, each year's work of a lower grade must be completed before a student shall be permitted to complete the work of a higher year. Such examination shall be intended only for those not taking a full course in the same subject in a regular high school, and no person shall be admitted to any such examination unless he shall have given to the county superintendent notice of his intention to take such examination and the subjects in which he desires to be examined at least thirty days before the examination, and obtain permission from such superintendent to take such examination. [L. '09, p. 370, § 1.]

§ 4736. Questions—Examination of Papers.—The questions for such examination shall be prepared by the state board of education, and shall be furnished to the state superintendent of public instruction, who shall cause the same to be printed and distributed to the several county superintendents upon request therefor the same as the questions for teachers' examinations are printed and distributed. The manuscripts containing the answers of applicants shall be returned to the superintendent of public instruction to be marked and graded by him and who shall issue certificates to those who have the required percentage in the various branches which shall be fixed by the state board of education. [L. '09, p. 370, § 2.]

§ 4737. Certificates.—Upon the completion of the full course as outlined by the state board of education a state high school certificate shall be issued to the applicant by the said board and such certificate shall entitle the holder thereof to enter the freshman class of the State University or to enter any other class in the other state educational institutions as may be specified by the state board of education. [L. '09, p. 371, § 3.]

CHAPTER XXXIX.

Kindergartens.

§ 4738. Election to Authorize Establishment.—The board of directors of any school district of the first and second classes shall have power to establish and maintain free kindergartens in connection with the common schools of said district for the instruction of children between the ages of four and six years, residing in said district, and shall establish such courses of training, study and discipline and such rules and regulations governing such kindergartens as said board may deem best. [L. '11, p. 382, § 1. Cf. L. '09, p. 371, § 1; L. '97, p. 426, § 181.]

See supra, § 4509, subd. 4, kindergartens in districts of first class.

§ 4739. Part of Public School System.—Kindergartens established under this act shall be a part of the public school system and under

the control and supervision of the regular officers who have charge of the public schools of the state: Provided, that nothing in this act shall be construed to change the law relating to the taking of the census of the school population or the apportionment of state and county funds. [L. '09, p. 371, § 2.]

§ 4740. Cost of Establishment and Maintenance.—The cost of establishing and maintaining such kindergartens shall be paid from the general fund of the district. [L. '11, p. 382, § 1.]

§ 4741. Qualification of Teachers.—Kindergarten teachers and supervisors shall have diplomas or certificates from some accredited kindergarten training school, from the kindergarten department of a state normal school of this state or of a normal school whose kindergarten department is accredited by the state board of education. [L. '09, p. 371, § 4.]

For pages 372 to 375, §§ 1 to 15, which was but an attempted re-enactment of the act of 1903, concerning eminent domain proceedings by school districts, see supra, §§ 906–920.

CHAPTER XL.

Prohibiting Sale of Intoxicating Liquors.

§ 4742. Unlawful to Sell Intoxicating Liquors on University Grounds.—It shall be unlawful to sell any intoxicating liquors, with or without a license, on the grounds of the University of Washington, or within two miles thereof, excepting south half of section twenty-two, township twenty-five, range four east, and any license granted for the sale of such intoxicating liquors within said area shall be void. Said grounds of the University of Washington are otherwise known and described as follows: Fractional section sixteen, township twenty-five north, range four east of Willamette meridian. [L. '95, p. 134, § 1.]

§ 4743. Penalty.—Any person or persons violating the provisions of the last preceding section shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction shall be punished by a fine of not less than one hundred nor more than one thousand dollars, or by imprisonment in the county jail for a term not less than six months nor more than one year, or by both such fine and imprisonment. [L. '95, p. 134, § 2.]

§ 4744. Within Two Thousand Feet of Certain Institutions.—It shall be unlawful to sell or in any way dispose of any vinous, spirituous, malt or other intoxicating liquors, with or without a license, within two thousand (2,000) feet of any normal school, agricultural college, reform school, or state school for defective youth, now established or which may hereafter be legally established within the

state of Washington: Provided, that nothing in this section shall be construed to affect in any way the provisions of the last two preceding sections. [L. '03, p. 151, § 1; L. '09, p. 376, § 1.]

Cited in 68 Wash. 389.

§ 4745. Penalty.—Any person or persons violating the provisions of [the preceding section] this act shall be deemed guilty of a misdemeanor and upon conviction thereof in any court of competent jurisdiction shall be punished by a fine of not less than two hundred (200) dollars, nor more than one thousand (1,000) dollars, or by both such fine and imprisonment. [L. '03, p. 151, § 2; L. '09, p. 376, § 2.]

"Act" in the Laws of '93 (copied in 1909), refers to the preceding section.

CHAPTER XLI.

Designation and Intent of Act.

§ 4746. Designation.—This act shall be known and cited as the code of public instruction of the state of Washington. [L. '09, p. 376, § 1.]

"Act" refers to chapter 97 of the Laws of 1909.

§ 4747. Intent.—This act is intended to be and is amendatory of, and a recodification as amended of, all laws relating to the public school system of the state of Washington. [L. '09, p. 376, § 2.]

CHAPTER XLII.

Fire Drills in Schools.

§ 4748. Semi-monthly Fire Drills.—It shall be the duty of the principal or other person in charge of every public or private school or educational institution within the state, to instruct and train the pupils by means of drills, so that they may in a sudden emergency be able to leave the school building in the shortest possible time and without confusion or panic. Such drills or rapid dismissals shall be held at least twice in each month. [L. '09, p. 386, § 1.]

§ 4749. Penalty.—Neglect by any principal or other person in charge of any public or private school or educational institution to comply with the provisions of this chapter shall be a misdemeanor, punishable at the discretion of the court by a fine not exceeding fifty ($50) dollars. Such fine to be paid to the county treasurer for the benefit of said school district. [L. '09, p. 386, § 2.]

§ 4750. Publication of Act.—It shall be the duty of the board of directors or other body having control of the schools in any town or city to cause a copy of this chapter to be printed in the manual or handbook prepared for the guidance of teachers, where such

manual or handbook is in use or may hereafter come into use. It shall be the duty of the superintendent of public instruction to cause a copy of this chapter to be published in the Washington state manual. [L. '09, p. 386, § 3.]

§ 4751. Colleges and Universities Exempt.—The provisions of this chapter shall not apply to colleges or universities. [L. '09, p. 386, § 4.]

Educational Associations: See "Corporations," § 3731.

TITLE XXIX.

ELECTIONS.

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CHAPTER I.

Qualifications of Electors.

§ 4752. Who are Qualified Electors.—All male persons over the age of twenty-one years, possessing the following qualifications shall be entitled to vote at all elections: All persons who at the time of the taking effect of this act are qualified electors of this state; all other male persons who are over the age of twenty-one years, citizens of the United States who have lived in the state one year and in the county ninety days and in the city, town, ward or precinct thirty days immediately preceding the election at which they offer to vote, and who shall be able to read and speak the English language: Provided, that Indians not taxed shall never be allowed the elective franchise. [L. '01, p. 284, § 1.]

Cited in 51 Wash. 588.

§ 4753. Residents, Who are.—For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, nor while engaged in the navigation of the waters of this state, or of the United States, or of the high seas; nor while a

student of any seminary of learning, nor while kept at any almshouse or other asylum, nor while confined in any public prison, excepting when serving out a sentence in the penitentiary for an infamous crime. [L. '66, p. 25, § 2; Cd. '81, § 3051.]

Cited in 51 Wash. 588.
Const., Art. VI, § 4.

§ 4754. Absence on Business as Affecting Residence.—Absence from state on business shall not affect the question of residence of any person: Provided, the right to vote has not been claimed or exercised elsewhere. [L. '66, p. 25, § 4; L. '67, p. 8, § 11; Cd. '81, § 3053; 1 H. C., § 346.]

Cited in 51 Wash. 588.

§ 4755. Who Disqualified.—No idiot, or insane person, or persons convicted of an infamous crime, shall be entitled to the privilege of an elector. [L. '66, p. 25, § 3; Cd. '81, § 3052.]

Cited in 39 Wash. 2; 51 Wash. 588; 69 Wash. 270.
See Const., Art. VI, § 3.

§ 4756. Infamous Crime, What is.—A crime shall be deemed infamous which is punishable by death or imprisonment in the penitentiary. [L. '66, p. 25, § 5; Cd. '81, § 3054; 1 H. C., § 345.]

Cited in 6 Wash. 570.

CHAPTER II.

Registration of Voters.

§ 4756–1. "Precinct" Defined.—The word "precinct" as used in this act, shall, unless the same be inconsistent with the context, be construed to mean a subdivision for voting or polling purposes, within or without the limits of an incorporated city, or town, and whether established by the county commissioners, or by the city council or legislative body of such cities as are entitled under the law to fix the boundaries of voting or polling districts. [L. '15, p. 33, § 1.]

§ 4757. Registration of Voters.—There shall be in 1916, and quadrennially thereafter, to continue for four years, except as hereinafter provided, in each precinct of the state, a new and complete registration of the legal voters therein. Such registration shall begin on the first Monday of January of such year, and the registration books shall be open for the registration of voters at all times except during the twenty days immediately preceding any general state or county, or general municipal election, and during the ten days immediately preceding any primary election of any nature, or any special municipal election. [L. '15, p. 34, § 2. Cf. L. '90, p. 414, § 1; 1 H. C., § 447; L. '01, p. 284, § 2.]

Cited in 55 Wash. 515.
See supra, § 4661, in school districts.

§ 4758. Registration in Precincts Overlapping Corporate Boundaries.—In precincts where an incorporated city or town forms a part of a voting precinct, and where any portion of a city or town forms a part of a precinct extending beyond the corporate limits, there shall be a registration of voters: Provided, the board of county commissioners may appoint the clerk of a city or town in such a precinct the officer of registration for that portion of such a precinct without the city or town, but the voters within the city or town and those without shall be registered in separate poll-books of registration. [L. '91, p. 198, § 1; 1 H. C., § 488.]

§ 4759. Voters of Such Precincts—By Whom Registered.—The voters of any such precinct resident within the corporate limits of an incorporated city or town shall be registered by the clerk of said city or town, and those voters resident within the precinct, but without the corporate limits of a city or town, shall be registered by an officer of registration to be appointed by the board of county commissioners. [L. '91, p. 198, § 2; 1 H. C., § 449.]

§ 4760. Time and Manner of Registration.—The time and manner of registration under this chapter shall be the same as that prescribed by law. [L. '91, p. 198, § 3; 1 H. C., § 450.]

"Chapter" substituted for "act," which embraces §§ 4758–4761.

§ 4761. Expense of Registration — How Paid. — The expense of registration in all cities and towns shall be paid by such cities or towns, and the expense of registration in precincts outside of cities and towns shall be paid by the county in which such precincts are situated. [L. '91, p. 198, § 4; 1 H. C., § 451.]

§ 4762. Mayor to Open Books of Registration.—It shall be the duty of the controller or clerk of any incorporated city or town to procure and open for the registration of voters, duplicate poll-books on the first Monday of January, 1916, for each precinct of such city or town; and on the first Monday of January of each quadrennial year thereafter to procure and open like books of registration for each of said precincts; and it shall be the duty of the board of county commissioners of each county, on the first Monday of January, 1916, and quadrennially thereafter, in like manner to procure and open duplicate poll-books for the registration of voters in each precinct of such county outside of incorporated cities and towns, and to designate a legal voter in each of said precincts, to be the registration officer in such precinct, whose duties shall be the same as those devolving upon the city or town clerk of incorporated cities or towns under the provision of this act. [L. '15, p. 34, § 3. Cf. L. '90, p. 414, § 2; 1 H. C., § 452; L. '05, p. 346, § 1.]

"This act" embraces § 4757 and §§ 4762–4776, both inclusive.

§ 4763. Poll-books, Where Kept—Registration Officer—Duties.—Such poll-books shall at all times, except as herein otherwise provided, be kept in the office of such city or town clerk or precinct registration officer of such city, town or precinct; and the city or town clerk, and the person designated by the board of county commissioners as herein provided, shall be the registration officer of such city, town or precinct, and it shall be his duty to register all legal voters of such city, town or precinct on such poll-books, as hereinafter provided: Provided, that in all cities of the first class, the city council may, by ordinance or resolution, direct that in all or certain of the precincts of such city, designated in such ordinance or resolution, the poll-books of such precincts shall be kept open in such precincts for the registration of voters thereof, at and during such time as shall be designated in such ordinance or resolution, and shall in the month of December, 1915, and quadrennially thereafter, by ordinance or resolution, designate a place in all or certain of the precincts of such city where said poll-books shall be kept open in said precincts for the registration of voters thereof during the week beginning on the first Monday in January following. It shall be the duty of the city clerk, in cities of the first class, to designate by the notice required by section 4765 the time and place where the registration poll-books for each precinct so designated by ordinance or resolution will be open in such precinct for the registration of voters of such precincts, and the city clerk shall provide for the precinct-book in charge of an officer of registration to be kept at the place and kept open for the registration of voters qualified to register, between the hours of 9 A. M. and 9:30 P. M. on the days designated in said published notice. [L. '15, p. 34, § 4. Cf. L. '09, p. 628, § 1; L. '90, p. 414, § 3; 1 H. C., § 453; L. '03, p. 80, § 1; L. '05, p. 347, § 2; L. '07, p. 216, § 1.]

§ 4764. Effect of Registration as Evidence of Right to Vote.—It shall be the duty of all citizens of such city, town, or voting precinct, after the opening of the books as herein provided, to apply to the city or town clerk or officer or [of] registration, and be registered therein, at such time or times as said books shall be open for that purpose, as provided in this act; and such registration, when made as in this chapter provided, shall entitle such citizens to vote in their respective wards and precincts. If such citizens are otherwise legally qualified voters at such election, and have so caused themselves to be registered, such registration shall be prima facie evidence of the right of such citizens to vote at any election held in such city, town, or precinct subsequent to such registration, and preceding the first Monday of January next thereafter. [L. '90, p. 415, § 4; 1 H. C., § 454.]

§ 4765. Officer of Registration must Publish Notice.—It shall be the duty of the city or town clerk of each incorporated city or town and of the county auditor of each county, beginning the first week in January, 1916, and quadrennially thereafter, to cause to be published in a newspaper of general circulation in such city, town or county for two successive weeks, a notice that the legal voters of said city, town or county can register at the office of the said city or town clerk, or at the residence of the registration officers of the precincts of said county outside of incorporated cities and towns; and if in a city of the first class, in each precinct, at a place which has been designated by the city council, during the time designated in such notice: Provided, that the notices to be given by the county auditor shall refer only to precincts outside of incorporated cities or towns and shall in addition give the name of the registration officer of each precinct outside of such incorporated cities or towns, together with his place of residence, as near as may be. [L. '15, p. 35, § 5. Cf. L. '07, p. 217, § 2; L. '90, p. 415, § 5; 1 H. C., § 455; L. '03, p. 80, § 2.]

Cited in 70 Wash. 308.

§ 4766. Poll-books Open When—Notice of Closing.—The registration books in this chapter provided for, shall be open at all times during the quadrennium, for the registration of voters, except they shall be closed against original registrations in all general state, county or municipal elections, twenty days preceding any such election to be held in said city, town or precinct; and excepting that they shall be closed in like manner for the ten days immediately preceding any primaries, and all special city, town or precinct elections: Provided, that the said books shall be open except on a day of any election, for transfers from one precinct within an incorporated city or town to another, within such city or town, as hereinafter provided. The city or town clerk, or the county auditor when the election concerns precincts outside of incorporated cities or towns, shall give notice of the closing of said books, by notice to be published at least ten days prior thereto, in a newspaper of general circulation in such city, town or county, and by posting written or printed notices in three of the most public places in such city, town or county, at least ten days preceding the day of such closing, and such notice of publication shall have at least two insertions in such newspaper; in all special city, town or precinct elections such notice shall be given by the posting aforesaid only at least five days before such closing. [L. '15, p. 36, § 6. Cf. L. '01, p. 287, § 5; L. '90, p. 415, § 6; 1 H. C., § 456; L. '93, p. 72, § 1.]

Cited in 66 Wash. 142.

§ 4767. Poll-books, How Arranged—Identification.—The registration books aforesaid shall be so arranged as to admit the alphabetical classification of the names of the voters, and ruled in parallel columns, with appropriate heads, as follows: Date of registration; voted; names; ages; occupation; place of residence; place of birth; time of residence in the state, county, ward and precinct; if of foreign birth, name and place of court and date of declaration of intention to become a citizen of the United States, or date of naturalization; column headed "signature" for a signature of voter at time of registering, and another and similar column immediately following headed "identification" for the signature of the voter in case he be challenged when he offers to vote, and a column for "remarks." If the voter registering is of foreign birth, he shall at the time of registering be questioned by the registration officer, and shall produce satisfactory evidence to the registration officer that he was at the time of the adoption of the constitution of the state of Washington, a qualified elector of this state, or that he is a naturalized citizen of the United States, or if a woman of foreign birth that she has married a citizen of the United States. Under the head of place and residence shall be noted the number of lot and block, or number and street where the applicant resides, or some other definite description sufficient to locate and establish the residence with reasonable certainty; and the voter so registered as provided in this act shall sign his name in each of the duplicate poll-books on the registry opposite the entry above required, in the column headed "signature," unless he is a qualified elector at the time of the taking effect of this act, and shall not be capable of writing his name, or in the case of physical infirmity he be unable to write his name, in either of which cases he shall on the left-hand margin of said column make his mark or cross and such other mark as is usual in indicating his signature, and some person who personally knows said voter, and who is personally known to the registration officer and who is capable of writing his name, shall sign in said column immediately opposite said mark, as an identifying witness thereto. [L. '15, p. 37, § 7; L. '05, p. 347, § 3. Cf., L. '90, p. 415, § 7; 1 H. C., § 457; L. '93, p. 73, § 2; L. '01, p. 285, § 3.]

Cited in 55 Wash. 515, 517; 66 Wash. 141, 142.

§ 4768. Registration—Application for—Affidavit.—No person shall be registered unless he appears in person, before the city or town clerk, or officer of registration at the place where the registration books are kept during office hours, and apply to be registered, and give his name, age, occupation, number and place of residence, place of birth, time of residence in the state, and county, and ward, and precinct, and furnish satisfactory evidence to said registration officer

that he is capable of reading and speaking the English language so as to comprehend the meaning of ordinary English prose, unless he is incapacitated through physical infirmities, in which case he shall furnish satisfactory evidence that he was before such infirmity capable of reading and speaking the English language, unless such person so offering was a qualified elector at the time of the taking effect of this act, in which case the provisions with reference to reading and speaking the English language shall not apply; and shall furnish to said officer all the facts required by this act to be stated, and in addition thereto shall make and subscribe to the following oath or affirmation:

State of Washington, } ss.
County of ——, }

I, ——, do solemnly swear (or affirm) that I am a person over twenty (20) years eleven (11) months and ten (10) days of age, that I am a native born or naturalized citizen of the United States, or was a legal elector of the territory of Washington at the time of the adoption of the constitution of the state of Washington; that I have been an actual, permanent resident of the state of Washington for eleven (11) months and ten (10) days last past, of the county of —— for seventy (70) days last past and of the —— precinct ten (10) days last past; that I have not lost any civil rights by being convicted of an infamous crime; that I was either a qualified elector on the 1st day of July, 1901, or that I can read or speak the English language; that I have read, or heard read, the statements preceding my name herein, as set down by the officer of registration, know the contents thereof, and believe the same to be true.

—— ——.

Subscribed and sworn to before me this —— day of ——, 19—.

—— ——,

(Official character.)

The said affidavit shall be bound in book form and preserved with the other records of the city, town or precinct.

And every registration officer when required so to do by a writ of mandate of a court of competent jurisdiction, shall register the voter as directed by said writ. [L. '15, p. 38, § 8. Cf. L. '01, p. 286, § 4; L. '90, p. 416, § 8; 1 H. C., § 458; L. '93, p. 73, § 3.]

Cited in 66 Wash. 140, 143; 67 Wash. 620; 69 Wash. 270.

§ 4769. Voter must be Registered.—No person shall be entitled to vote at any election in any such city, town, or precinct who is not registered according to the provisions of this act. The registration shall not be conclusive evidence of the right of any registered person to vote, but said person may be challenged and required to establish

his right at the polls in the manner as may be required by law. [L. '90, p. 416, § 9; 1 H. C., § 459.]

Cited in 21 Wash. 249.

§ 4770. Examination of Applicant—Oath.—The city or town clerk, or officer of registration, is hereby empowered to administer all necessary oaths in examining an applicant for registration, or any witness he may offer in his behalf, in order to ascertain his right to be registered under the provisions of this act; and the said clerk, or registration officer, shall closely examine any applicant for registration whose right to registration he may doubt, or who may be challenged, and shall explain to him the necessary qualifications of a voter, and if the applicant for registration be entitled to vote at the next election he shall be registered, otherwise he shall not. [L. '90, p. 417, § 11; 1 H. C., § 461; L. '93, p. 74, § 4.]

§ 4771. Change of Residence must be Noted on Poll-books.—The registration books of any city or incorporated town shall be open at all times, except on primary and election days of whatever nature, for the transfer of registration. If any qualified voter residing within the corporate limits of any city or town, having duly registered in a precinct thereof, shall, during the quadrennium for which he has been registered, change his residence from the said precinct to another precinct in the same city or town, he shall apply to the city or town clerk to have said removal noted on said registration books. The clerk or officer of registration shall register said person in the precinct to which he has removed, and run a red-ink line across his name in the precinct book of his former residence, and likewise note the transfer in the column for "remarks" in said poll-book. In all other cases of removal from one precinct to another, during the quadrennium the elector shall register in the precinct to which he has removed and such registration shall be deemed an original registration, and in all cases of registration during any quadrennium the registration officer shall inquire whether the voter has previously registered in any other precinct in the state during the quadrennium, and shall ascertain the name or number of the precinct, and the city, town and county, and shall forthwith notify the registration officer of such precinct of the new registration, and upon receiving such notice the registration officer of the precinct of former registration shall cancel the same on the books in his office. [L. '15, p. 39, § 9. Cf. L. '90, p. 417, § 12; 1 H. C., § 462.]

Cited in 1 Wash. 8; 1 Wash. 9.

§ 4771-1. Certification of Convictions and Deaths.—It shall be the duty of the county clerk of each county, to certify to the auditor thereof, on the first day of October of each year, the name and ad-

dress of each person convicted in the courts of said county the preceding year of an infamous crime, and whose conviction is not on appeal or reversed. It shall further be the duty of the officers of any county, city, town or precinct, charged with the registry of deaths, to certify on October 1st of each year to the county auditor, the deaths occurring within the year, of all persons over twenty-one years of age, giving their respective names and addresses. The county auditor shall thereupon and before October 15th, certify to each city or town clerk, or precinct officer of registration, the names and addresses of the several persons whose names have been certified as above, residing within his respective city, town or precinct, and such officer shall thereupon strike said name or names from the registration books as in other cases of cancellation, giving a brief reason therefor in the column for "remarks." [L. '15, p. 40, § 10.]

§ 4771–2. Striking Name for Failure to Vote.—If any registered voter shall fail to vote at any general state, county or municipal election, held in the precinct in which he is registered, during any quadrennium, his registration shall become void, and his name shall be stricken from the registration books by the registration officer, by running two red-ink lines through the name, and by noting the fact and reason in the column for "remarks." Before said voter shall again be allowed to vote, he shall re-register in his proper precinct, as required in cases of original registration. [L. '15, p. 40, § 11.]

§ 4771–3. Listing Nonvoters—Return of List.—It shall be the duty of the county auditor, in all general elections, and of the city or town clerk in all general municipal elections, to prepare and furnish to the inspector of elections in each precinct, duplicate books, suitably arranged for alphabetical classification, in which the board of election of said precinct shall enter the names, ages, occupations, and addresses of those registered voters who did not vote at such election. The inspector, judges and clerk shall sign the following statement attached to said books:

We, and each of us do declare upon honor, that the foregoing list is a full, true, accurate, and complete list of the electors registered in —— precinct who did not vote at the —— election held in said precinct on the —— day of ——, 19—.

——— ———,
Inspector.
——— ———,
Judge.
——— ———,
Judge.
——— ———,
Clerk.

The said duplicate books shall be delivered to the county auditor, or the city or town clerk, as the case may be, along with the other election returns. The county auditor shall within fifteen days after such election, deliver to the registration officer of each precinct, one of the said duplicate books of unvoted electors for his precinct, retaining the other during the quadrennium. The officer of registration shall thereupon strike the said names from the registration books, noting the reason therefor in the column for "remarks," and retaining the said duplicate unvoted list during the quadrennium. In the case of general or municipal elections, the city or town clerk shall strike the names in the same manner. [L. '15, p. 41, § 12.]

§ 4772. Copies of Poll-books for Use at Polls to be Prepared.—It shall be the duty of the clerk, or officer of registration, immediately upon the close of registration books preceding any election to be held in said city, town or precinct, to certify to the authenticity of said duplicate registration books; and, in time for the opening of polls, as provided by law, to have one of said duplicate registration books at each of the polling places, and deliver the same to the inspector or one of the judges of said election, and take his receipt therefor: Provided, that in case of any general state or county election, the county auditor may in his discretion, require the delivery of the said registration books to himself, to be by said auditor delivered to the officers of election. The other of said duplicate books shall remain in the custody of said clerk, or officer of registration. The fees and expenses of the registration officer of precincts lying without the corporate limits of a city or town, for the delivery of the registration books to election officers or the county auditor as in this section provided, shall be fixed and paid as election expenses by the county commissioners, but mileage in no case shall exceed ten cents per mile for each mile necessarily traveled. [L. '15, p. 42, § 13. Cf. L. '90, p. 417, § 13; 1 H. C., § 463; L. '05, p. 348, § 4.]

§ 4772–1. Fees of Registration Officers.—The fees of the registration officers of precincts outside of the corporate limits of any city or town, in addition to those hereinbefore provided for, shall be as follows:

(a) For each person registered five cents per name.

(b) For each cancellation, five cents per name.

(c) For checking any recall, initiative or referendum petition, and certifying to the same, five cents per name.

(d) For certifying to any state officer the names of the electors registered or voted, as may be required by law, five cents per name.

Said fees shall be paid by warrant drawn upon the county treasurer by order of the county commissioners upon proper vouchers being presented therefor. [L. '15, p. 42, § 14.]

§ 4772-2. Penalty.—Every officer who shall willfully violate or fail to comply with the provisions of this act, and every person who shall willfully violate any of the provisions of this act shall be guilty of a felony. [L. '15, p. 43, § 15.]

§ 4773. Checking of Votes and Return of Poll-list. — At every election one of the judges of election shall, as each person registered votes, enter on the said poll-book in the check line opposite the name of such person the word "voted," said poll-book to be returned to the city or town clerk or officer of registration after said election, and by him preserved. [L. '90, p. 418, § 14; 1 H. C., § 464; L. '05, p. 349, § 5.]

§ 4774. Neglect or Refusal of Officers to Perform Duty—Penalty. If any officer shall neglect or refuse to perform any duty required by this act, or in the manner required by this act, or shall neglect or refuse to enter upon the performance of any such duty, or shall enter, or cause or permit to be entered, on the registry books the name of any person in any other manner or at any other time than as prescribed by this act, or shall enter, or cause or permit to be entered, on such lists the name of any person not entitled to be registered thereon according to the provisions of this act, or shall destroy, secrete, mutilate, alter, or change any such registry books, he shall, upon conviction, be punished by confinement and hard labor in the penitentiary not more than five nor less than one year, and shall forfeit any office he may then hold. [L. '90, p. 418, § 15; 1 H. C., § 465.]

See note to § 4762.

§ 4775. False and Fraudulent Registration, How Punished.—If any person shall falsely swear, or affirm, in taking the oath or making the affirmation prescribed in section 4768, or shall falsely personate another, and procure the person so personated to be registered, or if any person shall represent his name to the city or town clerk, or officer of registration to be different from what it actually is, and cause such name to be registered, or if any person shall cause any name to be placed upon the registry list otherwise than in the manner provided in this act, he shall be deemed guilty of a felony, and upon conviction be punished by confinement and hard labor in the penitentiary not more than five years nor less than one year. [L. '90, p. 418, § 16; 1 H. C., § 466; L. '93, p. 74, § 5.]

Cited in 66 Wash. 139, 143; 67 Wash. 619, 620.

§ 4776. Application of Preceding Sections.—The provisions of this act shall apply to all elections for national, state, congressional, district, county or municipal officers, and all general or special elections held within any such cities, towns or precincts, except road

elections, and the wards or voting precincts established by the authorities of any county, city or town shall be the same for all county, district, state, congressional, national or other elections. [L. '90, p. 418, § 17; 1 H. C., § 467; L. '95, p. 340, § 1.]

Cited in 4 Wash. 303; 6 Wash. 151; 13 Wash. 144; 55 Wash. 515.

CHAPTER III.

Time and Manner of Holding Elections.

In school districts, see § 4657.
In cities, see "Municipal Corporations."
Local option, see § 6292.

§ 4777. Election of Presidential Electors.—On the Tuesday next after the first Monday of November in the year eighteen hundred and ninety-two, and on the same day of every fourth year thereafter, there shall be elected by the qualified electors of the state of Washington as many electors of President and Vice-President of the United States as this state may be entitled to elect of senators and representatives in congress. [L. '91, p. 364, § 1; 1 H. C., § 347.]

§ 4778. Votes, How Received, Returned, Canvassed, etc.—Lists of Electors.—The votes for the electors shall be given, received, returned, and canvassed as the same are given, returned, and canvassed for members of congress. The secretary of state shall prepare three lists of the names of the electors elected, and affix the seal of the state to the same. Such lists shall be signed by the governor and secretary of state, and by the latter delivered to the college of electors at the hour of their meeting, prescribed in the next succeeding section. [L. '91, p. 364, § 2; 1 H. C., § 348.]

§ 4779. Meeting of Electors—Vacancies—College of, How Constituted.—The electors of the President and Vice-President shall convene at the seat of government on the day fixed by federal statute, at the hour of 12 of the clock at noon of that day, and if there shall be any vacancy in the office of an elector occasioned by death, refusal to act, neglect to attend, or otherwise the electors present shall immediately proceed to fill, by viva voce and plurality of votes, such vacancy; and when all of the electors shall appear, or the vacancies, if any, shall have been filled as above provided, such shall constitute the college of electors of the state of Washington, and shall proceed to perform the duties required of them by the constitution and laws of the United States. [L. '91, p. 365, § 3; 1 H. C., § 349; L. '09, p. 30, § 1.]

§ 4780. Compensation of Electors.—Every such elector who shall attend at the time and place appointed, and give his vote for President and Vice-President, shall be entitled to receive from this state

five dollars for each day's attendance at such meeting of the college of electors, and ten cents per mile for travel in going to and returning from the place where the electors shall meet, on the usually traveled route. [L. '91, p. 365, § 4; 1 H. C., § 350.]

§ 4781. Biennial Elections to be Held—Day of.—The election of legislative, district, county, and precinct officers, in this state, shall be held on the Tuesday following the first Monday of November, Anno Domini 1882, and thereafter biennially, on the Tuesday next following the first Monday in November; and all elective, state, legislative, district, county, and precinct officers shall hereafter be elected at the times herein specified. [Cf. L. '54, p. 65, § 3; L. '66, p. 27, § 1; L. '67, p. 6, §§ 1, 5; L. '71, p. 35, §§ 1–3; Cd. '81, § 3055; 1 H. C., § 351.]

See Const., Art. VI, § 8.

§ 4782. Special Elections Defined.—Special elections are such as are held to supply vacancies in any office, whether the same be filled by the vote of the qualified electors of the state, or any district, county, or township, and may be held at such times as may be designated by the proper officer. [L. '66, p. 27, § 2; Cd. '81, § 3056; 1 H. C., § 352.]

Vacancies in office are now filled by appointment, except in cases provided by Article II, § 15, of the constitution.

See references to § 8344, infra, vacancies, etc.

§ 4783. Governor to Issue Proclamation.—It shall be the duty of the governor, at least sixty days before any general election, to issue his proclamation, designating the offices to be filled by the state at large at such election, and to transmit a copy thereof to the county auditor of each county. [L. '66, p. 27, § 4; Cd. '81, § 3058; 1 H. C., § 353.]

§ 4784. Election Notice, Form of.—It shall be the duty of each county auditor to give at least thirty days' notice of any general election, and at least fifteen days previous to any special election, by posting or causing to be posted up, at each place of holding election in the county, a written or printed notice thereof; said notice to be as circumstances will admit, as follows:

Notice is hereby given that on the —— day of —— next, at ——, in the —— district or precinct of ——, in the county of ——, an election will be held for state, county, town, or district officers (naming the offices to be filled, as the case may be), which election will be opened at nine o'clock in the morning, and will continue until six [seven] o'clock in the afternoon of the same day.

Dated this —— day of ——, A. D., 18—.

A B, County Auditor.

[L. '66, p. 27, § 6; Cd. '81, § 3060; 1 H. C., § 354.]

Cited in 33 Wash. 278.
See infra, § 4911, time of opening and closing polls.

§ 4785. Creation of Election Officers.—It shall be the duty of the county commissioners, at their regular session held previous to the day of holding the general election, to appoint for each precinct, from the qualified electors of said precinct, one inspector and two judges, who shall constitute a board of judges of election. In case said board be not appointed for any precinct by the board of county commissioners, as specified in this section, or those appointed in accordance with this section shall not be present at the place designated by the county commissioners in a precinct for holding the polls, at the hour to open the polls, the electors present may appoint a board of judges for such precinct. [L. '66, p. 30, § 2; Cd. '81, § 3068; 1 H. C., § 355.]

§ 4786. Clerks of Election to be Appointed—Challengers.—The inspector and judges for each precinct having more than one hundred voters shall, before the time of opening the polls, appoint two suitable persons to act as clerks, who shall be qualified electors: Provided, that in precincts having less than one hundred voters the said judges shall keep a tally of the voters voting at said election, and shall perform all of the duties pertaining to and required to be performed by clerks of elections: And provided further, that each of the recognized political parties may have one challenger at the polls of each voting precinct. [Cf. L. '66, p. 31, § 2; Cd. '81, § 3069; 1 H. C., § 356; L. '95, p. 386, § 1.]

Cited in 66 Wash. 142.

§ 4787. Oath of Election Officers—How to be Administered.—The inspector, judges, and clerks aforesaid shall, before entering upon the duties of their offices, severally take and subscribe the oath or affirmation hereinafter directed, which shall be administered to them by any person authorized to administer oaths; but if no such person be present, the inspector shall administer the same to the judges and clerks, and one of the judges shall administer the oath to the inspector. [L. '66, p. 31, § 4; Cd. '81, § 3070; 1 H. C., § 357.]

§ 4788. Oath of Inspectors, Form of.—The following shall be the form of the oath or affirmation to be taken by each inspector:

I, A B, do swear (or affirm) that I will duly attend to the ensuing election, during the continuance thereof, as an inspector, and that I will not receive any ticket or vote from any person other than such as I shall firmly believe to be, according to the provisions of the laws of this state, entitled to vote at such election, without requiring such evidence of the right to vote as is directed by law; nor will I vexatiously delay, or refuse to receive, any vote from any person whom I shall believe to be entitled to vote as aforesaid; but that I

will in all things truly, impartially, and faithfully perform my duty therein to the best of my judgment and abilities; and that I am not, directly nor indirectly, interested in any bet or wager on the result of this election. [L. '66, p. 31, § 5; Cd. '81, § 3071; 1 H. C., § 358.]

§ 4789. Oath of Judges, Form of.—The following shall be the oath or affirmation of each judge:

We, A B, do —— that we will as judges duly attend the ensuing election, during the continuance thereof, and faithfully assist the inspector in carrying on the same; that we will not give our consent that any vote or ticket shall be received from any person, other than such as we firmly believe to be, according to the law of the state, entitled to vote at such election; and that we will make a true and perfect return of the said election, and will in all things truly, impartially and faithfully perform our duty respecting the same to the best of our judgment and abilities; and that we are not, directly or indirectly, interested in any bet or wager on the result of this election. [L. '66, p. 31, § 6; Cd. '81, § 3072; 1 H. C., § 359.]

§ 4790. Oath of Clerks, Form of.—The following shall be the form of oath to be taken by the clerks, viz:—

We, and each of us, A B, do —— that we will impartially and truly write down the name of each elector who shall vote at the ensuing election, and also the name of the county and precinct wherein such elector resides; and carefully and truly write down the number of votes that shall be given for each candidate at the election as often as his name shall be read to us by the inspector thereof and in all things truly and faithfully perform our duty respecting the same to the best of our judgment and abilities; and that we are not, directly or indirectly, interested in any bet or wager on the result of this election. [L. '66, p. 32, § 7; Cd. '81, § 3073; 1 H. C., § 360.]

§ 4791. Oaths to be Certified and Returned.—It shall be the duty of the county auditor to make out two copies of each of the said oaths or affirmations for each election precinct, which shall be severally subscribed by the inspector and judges and clerks in the precincts where clerks are employed, and the said oaths or affirmations shall be certified under the hands of the person by whom they shall be administered, and one of the said oaths or affirmations shall be placed with the election returns to be returned to the county auditor. [Cf. L. '66, p. 32, § 8; Cd. '81, § 3074; 1 H. C., § 361; L. '95, p. 386, § 2.]

§ 4792. Inspector to be Chairman—May Administer Oaths and Fill Vacancies.—The inspector shall be chairman of the board and after its organization shall have power to administer all necessary oaths which may be required in the progress of the election. He

shall also have power to fill any vacancy that may occur in the board of judges, or by absence or refusal to serve of either of the clerks after the polls shall have been opened. [L. '66, p. 32, § 9; Cd. '81, p. 3075; 1 H. C., § 362.]

§ 4793. Fees of Election Officers.—The fees of officers of election shall be as follows: To the inspectors, judges and clerks of an election, three dollars per day; the person carrying the returns to the county auditor shall be entitled to ten cents per mile for each mile traveled. [Cf. L. '66, p. 52, § 12; L. '67, p. 8, § 9; Cd. '81, § 3151; 1 H. C., § 446; L. '95, p. 26, § 1.]

CHAPTER IV.

Nominations and Primary Elections.

§ 4794. Nomination of Candidates—Convention for.—Any convention, primary meeting, or primary election, as hereinafter defined, held for the purpose of making nominations for public office, and also electors to the number hereinafter specified, may nominate candidates for public office, to be filled by election within the state. A convention, or primary meeting, within the meaning of this chapter, is an organized assemblage of electors or delegates, representing a political party or principle, and a primary election is a legally conducted election for the nomination of candidates for public office. [L. '90, p. 400, § 2; 1 H. C., § 364.]

Cited in 5 Wash. 85; 23 Wash. 119; 70 Wash. 666.
Superseded as to primary elections by § 4804 et seq.

§ 4795. Nominations, How Certified.—All nominations made by such convention, primary meeting, or primary election shall be certified as follows: The certificate of nomination, which shall be in writing, shall contain the name of each person nominated, his residence, his business, his address, and the office for which he is named, and shall designate, in not more than five words, the party or principle which such convention, primary meeting, or primary election represents, and it shall be signed by the presiding officer and secretary of such convention or primary meeting, or, in case of a primary election, by one of the judges and the clerk thereof, who shall add to their signatures their respective place of residence, their business, and addresses. Such certificate, made out as herein required, shall be delivered by the secretary or president of such convention or primary meeting, clerk, or judge of the primary election, to the secretary of state, or the clerk of the board of county commissioners, as hereinafter required. [L. '90, p. 400, § 3; 1 H. C., § 365.]

Cited in 23 Wash. 119; 50 Wash. 525; 70 Wash. 666.

§ 4796. Certificates of Nomination, How Filed.—Certificates of nomination of candidates for offices to be filled by the electors of the entire state, or of any division or district greater than a county, shall be filed with the secretary of state. Certificates of nomination for county and precinct offices shall be filed with the clerks of the boards of county commissioners of the respective counties wherein the officers are to be elected. Certificates of nomination for municipal offices shall be filed with the clerks of the respective municipal corporations wherein the officers are to be elected. The certificate of a nomination for an office in a district composed of more than one county shall be filed in the offices of the clerks of the boards of county commissioners of all the counties to be represented by such joint officer or member. [L. '90, p. 401, § 4; 1 H. C., § 366.]

§ 4797. Certificate to Contain but One Name—Restriction on Nominations.—No certificate of nomination shall contain the name of more than one candidate for each office to be filled. No person shall join in the nomination of more than one person for each office to be filled, and no person shall accept a nomination to more than one office. [L. '90, p. 402, § 6; 1 H. C., § 368.]

Cited in 5 Wash. 85; 17 Wash. 22.

§ 4798. Duty of Secretary of State and County Auditor—Election Precincts.—The secretary of state and the clerks of boards of county commissioners of the several counties, and of the several municipal corporations, shall cause to be preserved in their respective offices for six months all certificates of nomination filed in their respective offices under the provisions of this act. All such certificates shall be open to public inspection under proper regulations, to be made by the officers with whom the same are filed. The board of county commissioners of each county in the state shall, at their first session after the taking effect of this act divide their respective counties into election precincts, and establish the boundaries of the same. Such board of county commissioners shall designate one voting place in each precinct and each precinct shall contain two hundred and fifty electors or less, based on the number of votes cast at the last general election; but no precinct shall contain more than four hundred electors. If at any election hereafter four hundred or more votes shall be cast at any voting place, it shall be the duty of the inspector in such precinct to report the same to the board of county commissioners, who shall, at a regular meeting, between general election day and December 31st of the same year, divide such precinct as nearly as possible so that the new precincts formed thereof shall each contain two hundred and fifty electors, as nearly as practicable: Provided, that in cities of the first class, the duties herein conferred upon the county commissioners shall be performed

by the city council or commissioners of such city and reports of inspectors herein provided for shall be made to such city council or commissioners. In establishing precincts it shall be the duty of the county commissioners and city councils and commissioners to fix the boundaries thereof so that each precinct shall be wholly in one senatorial or representative district, and one county commissioner's district. [L. '15, p. 26, § 1. Cf. L. '07, p. 241, § 1; L. '66, p. 30, § 1; Cd. '81, § 3067; L. '90, p. 402, § 7; 1 H. C., § 369.]

Cited in 61 Wash. 387; 69 Wash. 424; 70 Wash. 307.

"Act" refers to §§ 4794–4803.

See infra, § 4897, division of precincts when to be made.

§ 4799. Certificates of Nomination, When Filed.—Certificates of nominations to be filed with the secretary of state shall be filed not more than sixty days and not less than thirty days before the day fixed by law for the election of the persons in nomination. Certificates of nomination herein directed to be filed with the clerk of the board of county commissioners shall be filed not more than sixty days and not less than twenty days before the election. Certificates for the nomination of candidates for municipal offices shall be filed with the clerks of the respective municipal corporations not more than thirty days and not less than three days previous to the day of election: Provided, that the provisions of this section shall not be held to apply to nominations for special elections to fill vacancies caused by death, resignation, or otherwise. [L. '90, p. 403, § 8; 1 H. C., § 370.]

§ 4800. Secretary of State to Certify Name, etc., of Nominees.—Not less than twenty nor more than thirty days before an election to fill any state or district office, the secretary of state shall certify to the clerk of the board of county commissioners of each county within which any of the electors may by law vote for candidates for such office, the name and place of residence of each person nominated for such office, as specified in the certificates of nomination filed with the secretary of state. [L. '90, p. 403, § 9; 1 H. C., § 371.]

§ 4801. Nominations, How and When Published.—At least ten days before an election to fill any public office other than a municipal office, the clerk of the board of county commissioners of each county shall cause to be published in one or more newspapers within the county the nominations to office certified to him under the provisions of this chapter. The clerk of the board of county commissioners shall make such publications daily, until the elections, in counties where daily newspapers are published; but if there be no daily newspaper published within the county, two publications in each newspaper will be sufficient; and if there be no paper published

in any county, written or printed notices shall be posted in not less than three conspicuous places in such precinct. One of such publications in each newspaper shall be upon the last day upon which such newspaper is issued before election. In the case of municipal elections, such publications shall be made in one or more newspapers devoted to the dissemination of general news, and published within the municipal corporation in which the election is to be held, at least three days before the election, the publication to be daily, until election, where there are daily newspapers; but if there be no daily newspaper published within the municipal corporation, one publication in each newspaper shall be sufficient, and if there be no newspaper, the notices shall be posted as above provided. [L. '90, p. 403, § 10; 1 H. C., § 372.]

§ 4802. Nomination Becomes Void When Declined in Writing.—Whenever any person nominated for public office, as in this chapter provided, shall, at least twenty days before election, except in the case of municipal elections, in a writing signed by him, notifying the officer with whom the certificate nominating him is by this chapter required to be filed that he declines such nomination, such nomination shall be void. In municipal elections such declination must be made at least two days before the election. [L. '90, p. 404, § 11; 1 H. C., § 373.]

Cited in 70 Wash. 670; 82 Wash. 145.

§ 4803. Vacancies, Manner of Filling—Nominations for.—Should any person so nominated die before the printing of the tickets, or decline the nomination as in this chapter provided, or should any certificate of nomination be or become insufficient or inoperative from any cause, the vacancy or vacancies thus occasioned may be filled in the manner required for original nominations. If the original nomination was made by a party convention which had delegated to a committee the power to fill vacancies, or by primary election, the committee of the political party he represents may, upon the occurring of such vacancy, proceed to fill the same. The chairman and secretary of such committee shall thereupon make and file with the proper officer a certificate setting forth the cause of the vacancy, the name of the person nominated, the office for which he was nominated, the name of the person for whom the new nominee is to be substituted, the fact that the committee was authorized to fill vacancies, and such further information as is required to be given in an original certificate of nomination. The certificate so made shall be executed in the manner prescribed for the original certificate of nomination, and shall have the same force and effect as an original certificate of nomination. When such certificate shall be filed with the secretary of state, he shall, in certifying the nomina-

tions to the various county clerks [auditors], insert the name of the person who has thus been nominated to fill a vacancy in place of that of the original nominee. And in the event that he has already sent forth his certificate, he shall forthwith certify to the clerks of the boards of county commissioners of the proper counties the name and place of residence of the person so nominated to fill a vacancy, the office he is nominated for, the party or political principle he represents, and the name of the person for whom such nominee is substituted. [L. '90, p. 404, § 12; 1 H. C., § 374.]

§ 4804. Construction of Terms.—The words and phrases in this act shall, unless the same be inconsistent with the context, be construed as follows:

(a) The word "primary," the primary election provided for in this act.

(b) The words "May caucus," the caucus held in May of 1916, and every even-numbered year thereafter, to elect delegates, by political parties to the various county conventions of such political parties.

(c) The words "September primary," the primary election held in September to nominate candidates to be voted for at the ensuing election.

(d) The word "election," a general or city election, as distinguished from a primary election. [L. '15, p. 174, § 1. Cf. L. '07, p. 457, § 1.]

Cited in 55 Wash. 515; 69 Wash. 174.

"Act" refers to this and the following sections of this chapter.

§ 4805. Application of Act—Special and Other Elections not Included.—Hereafter, all candidates for elective offices in this state, either state, county, municipal, precinct or congressional, shall be nominated at a direct primary election held in pursuance of this act: Provided, that this act shall not be held to refer to special elections for filling the vacancies of unexpired terms, or to election to offices of any city or town of the fourth class or for any school, dike, irrigation or metropolitan park district or other local improvement elections, or for presidential electors: Provided, further, that the provisions of this act shall not apply to nomination of candidates for municipal elective offices in cities of the first class which have adopted or may hereafter adopt charters under section 10, article XI of the state constitution, where such charters have provided or may hereafter provide a nonpartisan method or methods of nominating candidates for municipal elective officers; and all such cities shall have the right and power to provide in their charters for any method or methods of nonpartisan nomination of candidates for their elective offices as they may desire. [L. '11, p. 490, § 2. Cf. L. '07, p. 457, § 2; L. '09, p. 169, § 1.]

Cited in 59 Wash. 636, 638; 69 Wash. 218.
See supra, § 3874, nominations for county commissioners.

§ 4806. Time for Holding Primaries.—A primary election held to nominate candidates to be voted for at the general election in November, 1908, shall be held at the regular polling places in each precinct on the second Tuesday of September, 1908, and biennially thereafter, for the nomination of all candidates to be voted for at the succeeding general election. Except as hereinafter provided, any primary other than the September primary shall be held four weeks before the election for which candidates are to be nominated at such primary: Provided, that primaries for the nomination of candidates to be voted upon at municipal elections held during 1907 shall be held two weeks prior to the date of said elections. [L. '07, p. 457, § 3.]

§ 4807. Declaration of Candidacy—Form—Judges Nonpartisan.—The name of no candidate shall be printed upon the official ballot used at the September primary election, unless authorized by some other law of the state, unless at least thirty (30) days and no more than sixty (60) days prior to such primary, a declaration of candidacy shall be filed by him, as provided in this act, in the following form:

State of Washington,
County of ——, } ss.

I, ——, being first duly sworn, say: That I reside at No. —— (city or town), county of ——, state of Washington, and am a qualified voter therein, and eligible to the office for which I am a candidate; that I affiliate with and am a member of the —— party, and believe in its principles; that I am a candidate for nomination to the office of —— to be made at the primary election, to be held on the —— day of September, 19—, and hereby request that my name be printed upon the official ballot as provided by law as a candidate of the —— party, and accompany herewith the sum of $——, the fee required by law of me for becoming such candidate.

I further declare that, if nominated for said office I will accept said nomination and not withdraw, unless so authorized by my party committee, and I will qualify as such officer if nominated and elected. I further declare that I hereby accept and indorse generally the platform as heretofore adopted by the said —— party at its last state convention. If elected, I hereby agree to support generally the same, and endeavor to have enacted into law the principles therein enunciated.

—— ——

Subscribed and sworn to before me this —— day of ——, 19—.

—— ——

(Certificate of official.)

Provided, that no person who desires to become a candidate for office of supreme or superior court judge, shall certify his party affiliation, nor shall any other candidate who runs upon any nonpartisan ticket in any city or other municipality where the charter or enabling act provides that the office is nonpartisan. [L. '15, p. 174, § 2. Cf. L. '07, p. 458, § 4.]

Superseded as to judges of the supreme court by § 4842, infra.

§ 4808. Filing of Declaration—Fees—Division.—At least thirty (30) days before the primary election any person who shall be eligible, who shall desire to become a candidate for nomination for any office, subject to this act, shall file in the proper office a declaration of candidacy accompanied by the fee provided for in this act, which fee shall be as follows: For any office with a salary or compensation attached, of one thousand dollars or less per annum, ten ($10) dollars; when such salary or compensation exceeds one thousand dollars per annum, an additional sum equal to one per cent on such excess; and in case of any precinct office without salary, the filing fee shall be one ($1) dollar. Said fees shall be paid to the following officers: When the candidacy is for a state, congressional or district office, embracing more than one county, the fee shall be paid to the secretary of state, to be paid by him to the state treasurer, and when for district offices for more than one county, the same shall be divided equally between the counties composing such district and paid to the respective treasurers thereof and the secretary of state shall issue all necessary warrants for such payments on the state treasurer. When such fees are for county offices and offices for districts within counties, such fee shall be paid to the county auditors and by them to the respective county treasurers, and when for city or municipal offices, shall be paid to the respective clerks of such cities or municipalities and by them to the respective treasurers of the same. [L. '07, p. 458, § 5; L. '09, p. 170, § 2.]

Cited in 59 Wash. 636; 69 Wash. 218.

§ 4809. Political Parties—Separate Tickets.—Any political organization which at the general election last preceding the primary was represented on the official ballot by regular party candidates may upon complying with the provisions of this act have a separate primary election ticket as a political party: Provided, that any of its candidates received ten per cent of the total vote cast at such last preceding general election in this state, or subdivision thereof in which the candidate seeks the nomination: Provided further, that such political party shall have held on or before the tenth day of June preceding said primary, a state convention in said state, at which convention said party shall have declared its political principles and its legislative program: And provided further, that a copy

of such declaration of political principles and legislative program shall have been certified by the officers of such convention and filed with the secretary of state within ten days after the adjournment of such convention. [L. '15, p. 176, § 3. Cf. L. '07, p. 459, § 6.]

§ 4809–1. Convention Dates—Delegates—Call—Proceedings. (a) Hereafter, each political party of this state, entitled under the existing laws to participate in the September primaries, shall hold county and state conventions in May and June respectively of 1916, and each biennial year thereafter. The county conventions shall be held by each of said political parties upon the second Saturday after the second Tuesday of May, 1916, and biennially thereafter.

(b) Each county party committee at a meeting duly called and held not more than thirty (30) nor less than twenty (20) days before the holding of the May caucus, shall determine the hour and place of holding the county convention, determine the total number of delegates to be elected thereto, fix the basis of representation in each precinct, which basis shall be the same for each voting precinct in said county, and determine the number of delegates from each voting precinct: Provided, that each voting precinct shall be entitled to at least one delegate. The said list, matters, and things herein provided for, shall thereupon be filed in the office of the county auditor, without charge, duly certified by the chairman and secretary of each party within two days after the holding of said meeting. Due notice of the time and place of holding the county convention shall be given through the press of the county by the county executive officers of each party and in addition thereto, the said notice shall be mailed to each delegate selected at the May caucus at least five (5) days before the holding of said convention.

(c) It shall be the duty of the state organizations of each of the political parties entitled to hold conventions under this act, to issue a call for their state conventions, specifying the time and place of holding the conventions, and which said call shall be issued not less than thirty (30) days before the holding of the May caucus by giving due notice thereof through the press, and by mailing a copy of said call to each state committeeman, and to the executive officer of each of the county organizations of that party, and to the county auditor of each county. The state committee, in its call, shall determine upon the total number of delegates to attend the state convention, and shall fix the basis of representation for, and the number of delegates from each county: Provided, however, that the basis of representation for each county shall be the same. The state conventions herein provided for shall be held on or before the tenth day of June, 1916, and biennially thereafter.

(d) In addition to the usual powers heretofore exercised by county conventions, each county convention shall select the number of delegates to the state convention provided for in the call of the state committee, and shall select one member of a state advisory platform committee.

(e) It shall be the duty of the members of the advisory committee herein provided for, to meet at the place of holding the state convention at 10 A. M. on the Monday preceding the holding of said state convention and shall hold public hearings and submit to the state convention an advisory platform.

(f) It shall be the duty of the state conventions of each of the parties required to hold conventions as herein provided, to adopt a platform, and to make a clear and concise statement of its principles and its general legislative program. In addition thereto the said state conventions, shall have the powers and perform the duties heretofore and usually held and performed by state conventions; and shall elect the delegates to the national conventions in 1916, and each presidential year thereafter as provided for in the call of the national committee of said party; and shall have the power to nominate the presidential electors, to which the said state shall be entitled and the names of which said electors shall be printed under the party designation on the ballot to be used in the succeeding general election.

(g) The delegates to the various county conventions herein provided for shall be selected at a caucus held by each political party, on the second Tuesday of May, 1916, and biennially thereafter, in accordance with the provisions and method now provided by sections 4844, 4845, 4846, 4847, 4848, 4849, 4850, 4851, 4852, 4853, 4854, 4855, 4856, 4857, 4858, 4859, 4860, 4861, 4862, 4863, 4864, 4865, 4866, 4867 and 4868 of Remington & Ballinger's Annotated Codes and Statutes of Washington.

(h) No proxies shall be allowed in any conventions provided for in this act. [L. '15, p. 176, § 4.]

§ 4810. Declarations, Where Filed.—All declarations of candidacy shall be filed as follows:

First: For state officers, United States senators, representatives in congress, and those members of the state legislature and judges of the superior court, whose district comprises more than one county,—in the office of the secretary of state.

Second: For officers to be voted for wholly in one county, in the office of the county auditor of such county.

Third: For precinct committeemen of the various parties, in the office of the county auditor of such county.

Fourth: For city officers, in the office of the city clerk. [L. '15, p. 178, § 5. Cf. L. '07, p. 459, § 7.]

Cited in 50 Wash. 519; 59 Wash. 636.

§ 4811. List of Candidates—Publication of Notice.—First: At least twenty (20) days before any September primary the secretary of state shall transmit to each county auditor a certified list containing the name, postoffice address and party designation of each person entitled to be voted for at such primary, and the office for which he is candidate, as appears by the nomination papers filed in his office.

Second: Each county auditor shall at least fifteen (15) days before the September primary, publish once under the proper party designation and title of each office, the names and addresses of all persons for whom nominations have been filed, in so far as the same shall affect the electors of his county, giving the date of the primary, the hours during which the polls will be open, and that the primary will be held in the regular polling place in each precinct; and shall cause to be posted, copies of such notice in at least three public places in each precinct in his county: Provided, that the names of all candidates for the office of supreme and superior court judges shall be published and posted in a separate list without party designation: And provided, that the names and addresses of the persons who have filed for precinct committeemen in the various precincts need not be published, but shall, however, be included in the lists herein provided to be posted. [L. '15, p. 179, § 6. Cf. L. '07, p. 459, § 8.]

Cited in 59 Wash. 635.

Superseded as to judges of the supreme court by § 4842, infra.

§ 4812. Publication in Two Papers.—Any publication required in this act shall be made in two newspapers in each county, or city, of general circulation, representing the two political parties that cast the largest vote in such county or city at the last preceding general election.

In any case where the publication of a notice cannot be made as hereinbefore required, it may be made in any newspaper having a general circulation in the county or city in which the notice is required to be published. [L. '07, p. 460, § 9.]

Cited in 50 Wash. 519.

§ 4813. Method of Voting — Ballots — City Elections — Second Choice.—The method of voting at such primary election shall be by ballot, and all ballots voted shall be printed as herein provided. On the fifteenth day before the primary election the county auditor shall group all the candidates for each party by themselves, and shall prepare at once in writing, a separate sample ballot for each party for public inspection, which he shall post in a conspicuous place in his office. He shall proceed to have printed a separate primary election ballot for each political party which has qualified as hereinbefore provided. These ballots to be prepared in the following manner: Every ticket shall be absolutely uniform in color and size,

shall be white and printed in black ink. Across the head of each ballot shall be printed in plain, black type, first, the name of the political party, on each ticket, following the words, "Primary election ballot." On the next line shall be printed the name of the political party, and below that the county in which the ballot is to be used. Then shall follow the words "To vote for a person mark a cross in the first square at the right of the name of the person for whom you desire to vote." Beginning at the top of the left-hand column, at the left of the line, in black type, shall appear the position for which the names following are candidates, and to the extreme right of the same line the words "Vote for," then the words "One," "Two," or a spelled number designating how many persons under that head are to be voted for. Following this shall come the name of each candidate for that position, inclosed in a light-faced rule, with a square to the right of said name, said square being separated by heavy black-face rule, the parallel rules containing the names and squares to be one-sixth of an inch apart. Each position with the name running for that office, shall be separated from the following one by a black-face rule to separate each position clearly. The position shall be arranged as follows, provided nominees for such positions are to be selected in said county under the provisions of this act hereinafter provided: First, congressional; next, state; next, preference for United States senators; next, legislative; next, county officers; next, precinct officers; in all cases following under each heading here given, the rotation used in the make-up of the various ballots at the general election. In city elections it shall be the duty of the city clerk to prepare the ballots and arrange the position of the candidates on such ballots, commencing with the office of mayor and following with the offices for which candidates are to be selected, using his reasonable discretion as to such arrangement. The duties provided for in this act to be performed by the county auditor with reference to candidates for county and district offices or either of them shall in like manner be performed by the city clerk in each city with reference to the preparation of ballots and primary elections for candidates for city offices. When there shall be four or more candidates for any state or congressional office, there shall be printed immediately under the designation of office, the following: "Vote for both first and second choice for this office." On the next line shall be printed the words "To vote for a person for first choice, mark a cross (×) in the first square at right of the name of the person for whom you desire to vote." "To vote for a person for second choice, mark a cross (×) in the second square after the name of the person for whom you desire to vote." The form of ballot shall be substantially as follows:

[FORM OF BALLOT]

PRIMARY ELECTION BALLOT

_____ PARTY

Designation of Party.

To vote for a person, make a cross (X) in the square at the RIGHT of the name of the person for whom you desire to vote. _____ County

CONGRESSIONAL	First Choice	Second Choice
Representative in Congress Vote for both first and second choice for this office.	Vote for ———	Vote for ———
JOHN DOE		
JOHN DOE		
JOHN DOE		

STATE	First Choice	Second Choice
Governor Vote for both first and second choice for this office	Vote for One	Vote for One
JOHN DOE		
JOHN DOE		
JOHN DOE		
JOHN DOE		
Lieutenant Governor Vote for both first and second choice for this office	Vote for One	Vote for One
JOHN DOE		
JOHN DOE		
JOHN DOE		
JOHN DOE		
Secretary of State Vote for both first and second choice for this office	Vote for One	Vote for One
JOHN DOE		
JOHN DOE		
JOHN DOE		
JOHN DOE		
State Auditor Vote for both first and second choice for this office.	Vote for One	Vote for One
JOHN DOE		
JOHN DOE		
JOHN DOE		
JOHN DOE		
State Treasurer Vote for both first and second choice for this office.	Vote for One	Vote for One
JOHN DOE		
JOHN DOE		
JOHN DOE		
JOHN DOE		
Attorney General Vote for both first and second choice for this office.	Vote for One	Vote for One
JOHN DOE		
JOHN DOE		
JOHN DOE		
JOHN DOE		
Commissioner of Public Lands Vote for both first and second choice for this office.	Vote for One	Vote for One
JOHN DOE		
JOHN DOE		
JOHN DOE		
JOHN DOE		
State Superintendent of Public Instruction Vote for both first and second choice for this office.	Vote for One	Vote for One
JOHN DOE		
JOHN DOE		
JOHN DOE		
JOHN DOE		

Vote for one choice only

United States Senator	Vote for One
JOHN DOE	
JOHN DOE	
JOHN DOE	
JOHN DOE	

LEGISLATIVE

State Senator, . . District	Vote for One
JOHN DOE	
JOHN DOE	
JOHN DOE	

Member of House of Representatives, .. District Vote for...	
JOHN DOE	
JOHN DOE	
JOHN DOE	

COUNTY

County Clerk	Vote for One
JOHN DOE	
JOHN DOE	
JOHN DOE	

Treasurer	Vote for One
JOHN DOE	
JOHN DOE	
JOHN DOE	

Sheriff	Vote for One
JOHN DOE	
JOHN DOE	
JOHN DOE	

Coroner	Vote for One
JOHN DOE	
JOHN DOE	
JOHN DOE	

Prosecuting Attorney	Vote for One
JOHN DOE	
JOHN DOE	
JOAN DOE	

County Auditor	Vote for One
JOHN DOE	
JOHN DOE	
JOHN DOE	

Surveyor	Vote for One
JOHN DOE	
JOHN DOE	
JOHN DOE	

Superintendent of Schools	Vote for One
JOHN DOE	
JOHN DOE	
JOHN DOE	

County Commissioners	Vote for
JOHN DOE	
JOHN DOE	
JOHN DOE	

Justice of the Peace	Vote for
JOHN DOE	
JOHN DOE	
JOHN DOE	

Constable	Vote for
JOHN DOE	
JOHN DOE	
JOHN DOE	

Precinct committeeman (write one name)

[L. '07, p. 460, § 10; L. '09, p. 170, § 3.]

Cited in 59 Wash. 636, 638, 639.

§ 4814. Separate Party Ballots—Time and Manner of Holding Election.—The primary election ballots for the several political parties shall be separate ballots, and the primary election of all parties shall be held at the same time and place and under the same officers and in all respects as a general election, under the laws of the state of Washington, except as otherwise changed by this act. [L. '07, p. 464, § 11.]

§ 4815. Party Ballots — Designation of Choice — Challenges — Method of Voting.—Every qualified person, properly registered as a voter in the election precinct enabling him to vote at the ensuing election where registration is required, and every qualified person in precincts where registration is not required, shall be entitled to participate in the primary election. When he desires to vote at said primary each elector shall have the right to receive the ballot only of the party for which he registered if living in a precinct in which registration is required, or if living in a precinct in which no registration is required the ballot of the party for which he asks; and in the latter event, he shall, if challenged, be required to make oath or affirmation that he intends to affiliate with said party at the ensuing election and intends to support its candidates generally. Thereupon he shall retire to one of the booths and without undue delay mark the ballot received by him and fold it so that its face shall be concealed. He shall thereafter deliver said ballot received by him to the election officers. In the event said voter shall soil or deface the ballot he desires to vote he shall at once return the ballot received by him and get a new ballot and the election officers shall destroy or render unfit for use the ballot so returned. The elector shall designate his choice on his ballot by making a cross in each of the small squares nearest the names of the candidates for whom he desires to vote and shall not vote for more candidates for an office than are to be elected thereto at the election to follow the primary election as indicated on the ballot at the right of each office for which candidates are to be selected.

Where under the provisions of this act a voter is required to designate his first and second choice the voter shall designate his first choice by marking a cross (×) in each of the small squares nearest to the names of the candidates for whom he desires to vote for first choice, and shall designate his second choice by marking a cross (×) in the second square opposite to and parallel to the names of the candidates for whom he desires to vote as a second choice. [L. '07, p. 464, § 12; L. '09, p. 174, § 4.]

Cited in 55 Wash. 514, 515, 516.

§ 4816. Ballots, Arrangement of Names on — Numbered. — The names of candidates for each office upon the ballot and under the

heading designating each official position upon the ballots to be used in voting, shall be first arranged in the order in which their declarations of candidacy shall have been filed. In printing each set of ballots for the several counties, the positions of the names of candidates shall be changed in each office division as many times as there are candidates in the office division in which there are the most names. As nearly as possible an equal number of ballots shall be printed after each change. In making the changes of position, the printer shall take the line of type at the head of each office division and place it at the bottom of the division, and shove up the column so that the name that before was second, shall be first, after the change. After the ballots are printed they shall be kept in separate piles, one pile for each change of position, and shall then be gathered by taking one from each pile; the intention being that every other ballot in such pile shall have the names in a different position. There shall be no printing upon the back of the ballots or any marks to distinguish them. After the ballots have been gathered as above provided they shall be numbered consecutively, said numbering to be perforated and torn off by the election officers on the voting of the ballot. Sample ballots shall be substantially in the same form as the official ballot, but upon colored paper, and the names thereon need not be alternated. [L. '07, p. 465, § 13; L. '09, p. 175, § 5.]

Cited in 69 Wash. 218.

§ 4818. General Election Laws to Govern.—Except as herein otherwise provided, all primary elections shall be conducted as required for general elections under the general election laws of the state of Washington, as far as the provisions thereof are applicable, and the election officers for such primary elections shall have the same powers as those for general elections. [L. '07, p. 465, § 14.]

§ 4819. Inspectors and Judges of Election—Fees.—Inspectors and judges of election shall be appointed and designated in the manner provided by said general election law at least ten (10) days prior to the primary election day: Provided, that one of the judges may act and perform the duties of the clerk of election; And provided, further, that the members of each political party, in any precinct entitled to participate in any primary election, may in any appointed meeting held at least fifteen (15) days before such primary election, select three (3) members of that party who are duly qualified electors and certify the names of the persons so selected, to the board of county commissioners or the city council, whose duty it is to appoint the election officers, and one of said persons shall be appointed and designated as a judge or inspector for that precinct. The same fees shall be allowed and paid from the public funds for the service of

anyone so serving as a judge, inspector or clerk as for general elections. [L. '07, p. 465, § 15.]

§ 4820. Secretary of State to Provide Copies of Law.—The secretary of state shall provide copies of this law in conjunction with the general election law of the state, and transmit the same to the county auditor of each county, at least twenty (20) days before any such primary election, and the same shall be in lieu of any such copies of said general election law required to be transmitted to county auditors by the secretary of state for use in such counties. [L. '07, p. 465, § 16.]

§ 4821. Opening of Polls—No Adjournment.—The polls in the several election precincts on the primary election day shall be kept open from 11 o'clock in the morning until 8 o'clock in the evening of said day. If at the hour of closing there are any electors in the polling place desiring to vote, and who are qualified to participate therein, and who have not been able to do so since appearing at the polling place, said polls shall be kept open reasonably long enough after the hour of closing to allow those so present at that hour to vote. No one not present at the hour of closing shall be entitled to vote because the polls may not be actually closed when he arrives. No adjournment or intermission whatever shall take place until the polls shall be closed, and until all the votes cast at such poll have been counted and the result publicly announced. [L. '07, p. 466, § 17.]

§ 4822. Second Choice, Failure to Designate.—In all cases where there are four or more candidates of any political party for one state or congressional position, every elector voting at a primary election held under the terms of this act shall be required to designate one first choice and one second choice for each such position. No voter shall vote for the same person for first choice and second choice, and no voter shall, where there are four or more candidates for such nomination, vote for one person only, either as first or second choice, and no ballot so voted for one person only, for either first or second choice, or for the same person for both first and second choice, shall be considered a complete ballot, but any ballot under said conditions, failing to show both first and second choice of different persons, shall not be considered or counted, for that office. [L. '07, p. 466, § 18.]

Cited in 59 Wash. 635, 638.

§ 4823. Counting Votes—Tally-sheets—Sealed Returns.—As soon as the polls are finally closed, the inspector and judges of election shall immediately open the ballot-boxes at each polling place and proceed to take therefrom the ballots. Said officers shall count the number of ballots cast by each party, at the same time bunching the tickets cast for each party together in separate piles, and shall then

fasten each pile together. As soon as the inspectors and judges shall have assorted and fastened together the ballots of each separate party, they shall take the tally-sheets provided by the county auditor or city clerk, and shall count all the ballots for each party separately, until the count is completed, and shall certify to the number of votes cast for each candidate, and as to candidates where first and second choice votes are cast shall certify to the number of votes cast for each candidate as first choice and for each candidate as second choice and the total votes cast for each candidate for each office. The tally-sheets shall be so kept that such sheets shall show the number of votes received, and shall also show the number of first and second choice votes received and the total number of votes received by each candidate. They shall then place the counted ballots in the box, but in no case shall they intermingle party votes. After all have been counted and certified to by the clerks and judges, they shall seal the returns for all parties in one envelope, to be returned to the county auditor or city clerk. [L. '07, p. 466, § 19.]

§ 4824. Tally-sheets, Form—Order of Candidates.—Two sets of tally-sheets for each political party having candidates to be voted for at said primary election shall be furnished for each election precinct by the county auditor or city clerk, at the same time and in the same manner that the ballots are furnished, and shall be as follows:

Each tally-sheet, or the first sheet of each tally-book to be furnished, shall be headed, "Tally-sheet for —— (name of political party) —— (name of city or village) —— (county) —— (ward) —— (election precinct), for a primary election held —— (date)."

The names of candidates shall be placed on the tally-sheets in the order in which they appear on the official ballots, and in each case have the proper party designation at the head thereof. [L. '07, p. 467, § 20.]

§ 4825. Returns—Same, General Elections—Must Show Second Choice and Totals.—In making out the returns of the primary election in the several precincts, the same shall be done and all matter pertaining thereto conducted in accordance with the provisions of the general election laws for the returns of general elections, except that the first choice votes, second choice votes and total votes received by each candidate for each office shall be shown. [L. '07, p. 467, § 21.]

§ 4826. Election of Committeemen—Party Powers.—(a) The precinct committeemen of each party entitled to participate in the September primaries, shall be elected at the September primary. Any elector duly qualified to vote in his precinct may file without charge with the auditor, a declaration of candidacy for precinct committeemen with the party only with which he is affiliated, and for the election precinct in which he resides. Said filing shall be in all respects

and follow the form provided in section 4807 and be governed by its provisions. The names of each candidate for precinct committeemen shall be printed upon the ballot provided for in section 4813, provided he has fully complied with this act with reference to the filing: Provided, that nothing herein contained shall prevent any voter from writing in on the ticket the name of one qualified elector of the precinct for member of the party county committee. The one having the highest number of votes, shall be such committeeman of such party for such precinct: Provided, that if any elector is elected on more than one ticket, he must file his declination of candidacy from all except one ticket with the auditor of his said county within five (5) days after the canvassing of the primary vote, otherwise the office will be deemed vacant: And provided further, that the auditor shall determine cases of ties as are provided by the primary election laws of this state. The county auditor shall certify to each party committee the names of the duly elected committeemen of that party.

(b) The party committee of each county shall consist of the precinct committeemen from the several precincts of each county. The state committee shall consist of one committeeman from each county, elected by the county committee. The county committee shall meet for the purpose of electing the state committeeman, and for the purpose of organization, at the courthouse at the county seat of each county at 2 o'clock P. M. on the second Saturday after such primary election, unless some other time and place of such meeting shall be designated by the regular call of properly authorized officers of the retiring committee. The county auditor of the various counties shall issue certificates of election to the said committeemen as is provided in the case of primary nominations.

(c) Each political organization shall have the power to make its own rules and regulations, call conventions, elect delegates to conventions, state and national, fill all vacancies on the ticket, provide for the nomination of presidential electors, delegate the whole or any part of its functions to duly authorized and elected committees, and perform all other functions inherent to such organizations, the same as if this act had not been passed: Provided, however, that no convention held under the provisions of this act shall have the power to recommend, indorse or declare a preference for any candidate for any office. [L. '15, p. 179, § 7. Cf. L. '07, p. 468, § 22; L. '09, p. 175, § 6.]

Cited in 70 Wash. 600.

"Section 4807," substituted for "section 2 of this act," to conform to the evident intention.

§ 4827. Nomination—Number of Votes Required.—Candidates for party offices who receive a plurality of the votes cast for such

candidates shall be the party nominees of such party, except as to offices where first and second choice votes are cast, and as to such offices, if no candidate shall have received more than forty per cent of the first choice votes cast, then, and in that event a canvass shall be made of the second choice votes received by candidates for said office at said primary election, and said second choice votes shall be counted with and added to the first choice votes received by each and every candidate for such office at the primary election; and the candidate receiving the highest number of first and second choice votes shall be the nominee for such office of the political party represented by him.

In the event that any candidate for an office shall have received forty per cent or more of the first choice votes of his political party cast at said primary election, the candidate receiving the highest number of first choice votes shall be declared the nominee of his party to such position, without reference to the second choice votes.

In the event that there are more than one position of the same kind to be filled and more candidates of any political party receive majorities of the votes of such party cast at such election than there are positions to be filled, then in that event the number of candidates equal to the number of positions to be filled receiving the highest number of votes shall be the nominees of such political party for such positions. [L. '07, p. 468, § 23.]

§ 4828. Canvass of Returns—Report of Canvass—Contents—Tie Votes—Notice of Nomination—Vacancies.—The canvassing of the vote and the returns of reports of the primary elections, as to candidates for state offices, United States senators and representatives in congress, and any other candidate whose district extends beyond the limits of a single county, shall be done by a canvassing board consisting of the secretary of state, state treasurer and state auditor. Said state canvassing board shall meet at the office of the secretary of state on the third Tuesday at 10 o'clock A. M. next after the September primary. As soon as said board has canvassed said vote it shall file a certificate with the secretary of state which certificate shall show the vote of each candidate of each political party for each office. A copy of such certificate shall be published once in some newspaper published at the state capital, which publication shall be made by the secretary of state immediately after the same is filed in his office. The vote for all county, city and municipal officers shall be canvassed and the returns made by the same officers and in the same manner as returns of the votes cast at general elections are by law now required to be made. Such canvassing board and other officers canvassing votes cast at such primary elections shall file with the proper officer a statement and report of such can-

vass which statement and report of said primary election shall contain:

First.—A statement duly certified to containing the names of all candidates voted for at the primary election with the number of votes received, and also the number of first choice votes received by each and the number of second choice votes received by each and the total number of votes received by each and for what office, said statement to be made as to each political party separately.

Second.—A statement of the names of the persons or candidates, of each political party who are nominated as hereinbefore provided. Where there is more than one person to be elected to a given office at the ensuing election, there shall be included in said statement of nominations the names of so many candidates for said office, nominated under the provisions of this act, as there are persons to be elected to said office at the ensuing election. Said statement shall, in like manner, be made separately as to each political party.

Third.—A statement of the whole number of electors registered and the number of ballots cast at said primary election. If two or more of the candidates of the same political party are "tied" for the same office, the "tie" shall be determined by a lot to be cast then and there by and as the canvassing board may determine. It shall be the duty of the county auditor upon the completion of its canvass by the canvassing board to immediately mail, or deliver, in person to each candidate so nominated, a notice of such fact and that his name will be placed upon the official ballot at the ensuing election. The persons whose names are so placed in said statement of nomination shall be and constitute the nominees of the said political parties of which they are candidates, and such names shall be printed upon the official ballot prepared for the ensuing election. No names of candidates of any political party which is required to make nominations under this act shall be placed upon the official election ballot, unless such candidate shall have been chosen in accordance with this act, except in cases of a vacancy occasioned by the death, removal or resignation of any candidate so chosen, or arising otherwise, and in such a case the campaign or party committee of the political party on whose ticket the same occurs, or if there be no such committee, then a convention of such party may fill such vacancy. The name of such new candidate shall be certified under oath to the county auditor, or the city clerk, as the case may be, by the chairman and secretary of said committee or convention. [L. '07, p. 469, § 24.]

Cited in 50 Wash. 519; 70 Wash. 432, 433.

§ 4829. Errors in Printing Ballots.—Whenever it shall appear by affidavit to any judge of the supreme court or superior court of the

county that any error or omission has occurred or is about to occur in the printing in the name of any candidate on official ballots, or that any error has been or is about to be committed in printing the ballots, or that the name of any person has been or is about to be wrongfully placed upon such ballots, or that any wrongful act has been performed or is about to be performed by any judge or clerk of the primary election, the county auditor, canvassing board or member thereof, or by any person charged with a duty under this act, or that any neglect of duty by any of the persons aforesaid has occurred, or is about to occur, such judge shall, by order, require the officer or person or persons charged with the error, wrongful act or neglect, to forthwith correct the error, desist from the wrongful act, or perform the duty, and to do as the court shall order, or to show cause forthwith why such error should not be corrected, wrongful act desisted from, or such duty or order not performed. Failing to obey the order of such court shall be contempt. Any candidate at such primary election who may desire to contest the nomination of any candidate for the same office at said primary election may proceed by such affidavit so presented: Provided, that such affidavit may be presented within five days after the completion of the canvass by said canvassing board, and not later, and the candidate whose nomination is so contested shall, by order of such judge, duly served, be required to appear and abide by the orders of the court to be made therein. [L. '07, p. 471, § 25.]

Cited in 50 Wash. 517; 59 Wash. 635; 60 Wash. 422; 70 Wash. 469; 82 Wash. 135, 145.

§ 4830. Minority Parties—Nominations by Convention—Fee.—Any political party which at the last preceding election cast less than ten per cent of the votes, may nominate candidates in the manner provided by existing laws for conventions: Provided, however, that all such conventions must be held upon the same day as the primary elections are held: And provided further, that no candidate's name shall be printed upon the election ballot until he shall have paid the fee provided by law to be paid by candidates to be nominated at primary elections for like offices. Persons nominated as provided in this section shall be subject to the provisions and penalties of sections 4832, 4833, 4834 and 4835. [L. '07, p. 471, § 26.]

Cited in 50 Wash. 530; 70 Wash. 666; 82 Wash. 145.

§ 4831. Forms Prepared by Secretary of State and Attorney General.—It shall be the duty of the secretary of state and attorney general, on or before July 1, 1907, to prepare all forms necessary to carry out the provisions of this act, which forms shall be substantially followed in all primaries held in pursuance hereof. Such

forms shall be printed with copies of this act for public use and distribution. [L. '07, p. 472, § 27.]

Cited in 50 Wash. 581–590; 59 Wash. 635.

§ 4832. Use of Money Prohibited—What Expenditures Allowed—Advertisements—Violations Disqualify.—No person shall, in order to aid or promote his own nomination to a public office under the provisions of this act, or any amendment thereto, directly or indirectly, himself or through another person, give, pay, expend or contribute, or promise to give, pay, expend or contribute any money or other valuable thing, except for personal expenses. The words "personal expenses," as used in this act, shall include only expenses directly incurred and paid by a candidate for traveling and for purposes properly incidental to traveling, and for writing, printing, and preparing for transmission any letter, circular or other publication not issued at regular intervals, whereby he states his position or views upon public or other questions; for advertising in one or more newspapers a simple announcement of candidacy to contain only his name, address and the office for which he is a candidate and the party of which he seeks nomination, and to be paid for at no more than the regular advertising rates of such paper or papers; for stationery and postage, for telegraph, telephone and public messenger service; and for other similar expenses, and for the necessary expense of hiring halls or other rooms for the purpose of holding meetings to address the voters and others upon public questions and matters relating to his candidacy.

No person shall be competent to qualify for any public office, who shall have, prior to the holding of any primary election, paid or promised or agreed to pay, either directly or through another or in any manner whatsoever, to the owner, publisher, manager or representative of any newspaper, any sum of money or other thing of value, for any article or published statement in a newspaper, wherein the electors are advised or counseled to vote for such candidate, or his fitness or qualifications for office are set forth, or his photograph or biography is published. [L. '07, p. 472, § 28; L. '09, p. 176, § 7.]

§ 4833. Newspapers not to Receive Consideration for Their Support—"Paid Advertisements."—It shall be unlawful for any owner, proprietor, editor, manager, officer, clerk, agent, reporter or employee of any newspaper, magazine, or periodical printed or published in this state, to take, accept or receive, or agree to take, accept or receive, for himself or any other person or persons, firm or corporation either by himself or any other person, persons, firm, or corporation, any money, gratuity or other valuable consideration or article of value for or on account of or as a consideration for such newspaper, magazine or other periodical supporting or advocat-

ing the election or defeat of any candidate or candidates at any primary election. Any such owner, proprietor, editor, manager, officer, clerk, agent, reporter or employee of any newspaper, magazine or other periodical violating the provisions of this act shall be deemed guilty of a misdemeanor and shall be fined in any sum not less than twenty-five dollars and not more than five hundred dollars, or confined in the county jail not less than ten days nor more than six months, or be punished by both such fine and imprisonment: Provided, however, that nothing herein shall prevent any person or persons, firm or corporation engaged in the publication of any newspaper, magazine or periodical from receiving from any person other than a candidate, for publication, and publishing, any matter, article or articles advocating the election or defeat of any candidate or candidates, and receiving from such person not a candidate, a consideration therefor, if such article so published or printed have placed at the beginning thereof in plain type in black face Roman capitals, in a conspicuous place, the statement "Paid advertisement, paid for by" (here insert name of person, persons, firm or corporation making such payment and if such person, persons, firm or corporation is agent for another, then must follow a statement as to whom such person, persons, firm or corporation is or are agent for). But this section shall not be construed as permitting the payment for such publication, either directly or indirectly, by a candidate, or for any publication prohibited by section 4832 of this act. [L. '07, p. 473, § 29; L. '09, p. 177, § 8.]

§ 4834. Sworn Statement of Expenses to be Filed by Candidates. Every candidate for nomination under the terms of this act, or any amendment thereto shall, within ten days after the day of holding the primary election at which he is a candidate, file an itemized statement in writing, duly sworn to as to its correctness, with the officer with whom his declaration of candidacy or other nomination paper is filed, setting forth each sum of money and thing of value, or any consideration whatever, contributed, paid or promised by him, or anyone for him, with his knowledge or acquiescence, for the purpose of securing or influencing, or in any way affecting, his nomination, to said office. Said statement to set forth the sums paid as personal expenses and stating fully the nature, kind and character of the expense for which the sums were expended separately, and the party or parties to whom the sums were paid and the purposes for which such payments were made; and in this statement all sums or other considerations promised and not paid shall be included. Such statement, when so filed shall immediately be subject to the inspection and examination of any elector and shall be and become a part of the public records. [L. '07, p. 473, § 30; L. '09, p. 178, § 9.]

§ 4835. Same—Penalty.—Any candidate for nomination for any office under the terms of this act who shall fail, neglect or refuse to file with the proper officer the statement provided for in section 4834 within the time provided therein, or who shall fail to fully set out and detail any and all sums of money or other thing of value or consideration expended, paid, contributed or promised, as in section 4832 provided, shall be guilty of a misdemeanor, and on conviction fined not less than twenty-five ($25) dollars and not more than five hundred ($500) dollars or be imprisoned in the county jail not less than ten (10) days and not more than six (6) months. [L. '07, p. 474, § 31.]

Cited in 50 Wash, 519; 83 Wash. 423.

§ 4836. Corrupt Solicitation Prohibited.—Any person who shall solicit, request or demand, directly or indirectly, any money, intoxicating liquor, or anything of value, or promise thereof, either to influence his vote or to be used, or under the pretense of being used to procure the vote of any other person or persons, or to be used at any poll or other place prior to or on the day of any election under this act, for or against any candidate for office or for or against any measure or question to be voted upon at such election, shall be guilty of a misdemeanor, and upon trial and conviction thereof, be punished by a fine of not less than ten dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than six months, or by both such fine and imprisonment. [L. '07, p. 474, § 32.]

§ 4837. General Election Laws Apply.—The provisions of the statute in relation to the holding of elections, the solicitation of voters at the polls, the challenging of voters, the manner of conducting elections, of counting the ballots and making returns thereof, and all other kindred subjects, including the sale of intoxicating liquors during the hours the polls are open, shall apply to all primaries in so far as they are consistent with this act. [L. '07, p. 475, § 33; L. '09, p. 179, § 10.]

Cited in 69 Wash. 174.

§ 4838. Perjury, to Swear Falsely When Challenged.—If any person whose vote is challenged under the provisions of this act shall knowingly, willfully and corruptly swear or affirm falsely, he shall be deemed guilty of perjury, and on conviction thereof shall be punished accordingly. [L. '07, p. 475, § 34.]

Cited in 65 Wash. 618; 83 Wash. 423.

§ 4839. Forgery.—Any person who shall forge any name of a person as a signer or witness to a nomination paper shall be deemed

guilty of forgery, and on conviction thereof punished accordingly. [L. '07, p. 475, § 35.]

§ 4840. Vote for United States Senator.—It shall be the duty of the secretary of state to certify to both houses of the legislature, the names of the persons of each political party for whom the highest number of votes were cast at any primary election under the provisions of this law at which any persons were candidates for the nomination for United States senators, said certificates to be made and filed upon the first day of the session of such legislature convening next after said primary election. [L. '07, p. 475, § 36.]

Cited in 50 Wash. 519; 59 Wash. 638.

§ 4842. Nomination of Supreme and Superior Court Judges.—Judges of the supreme and superior courts, state senators and representatives shall not be considered state officers within the meaning of the provisions of this act relating to first choice and second choice voting. When there are to be elected at any general election one or more judges of the supreme court, or of the superior court of any county, the candidates for each respective office whose names are to be placed on the general election ticket shall be determined as follows: The number of candidates equaling the number of judicial positions to be filled who receive the highest number of votes at the primary election, and an equal number of candidates for such positions, providing there are such candidates, who receive the next highest number of votes, shall be the candidates for such respective offices and their names shall appear on the general election ballot under the designation of such respective offices: Provided, however, that where any candidate for any such office shall receive a majority of all votes cast at such primary election for such office, the name or names of such candidates receiving such majority shall be printed separately on the general election ballot, under the designation "Vote for ——," and the name or names of no opposing candidate or candidates shall be printed on such ballot in opposition to such candidate or candidates, but spaces equaling the number of such majority candidates shall be left following such name or names, in which the voter may insert the name of any person for whom he wishes to cast his ballot. Following the names of such majority candidates, under the designation "Vote for ——," the names of the minority candidates who have received the highest number of votes at the primary election equal to twice the number of the remaining places to be filled shall be printed: Provided, further, that the secretary of state, or other proper certifying officer, in certifying to the several county auditors of the state the names of candidates for judicial offices shall specify the names of those who have received a majority vote at such primary election, together with the names of the minor-

ity candidates who are entitled to have their names placed upon the official ballot. The names of all such candidates for such judicial offices shall appear on the general election ballot under the heading: "Nonpartisan Judiciary." Where a vacancy or other cause shall necessitate the election of a judge for a short term, and at the same election one or more judges are to be elected for the full term candidates may announce themselves for either the short or full term, and the ballots shall be arranged accordingly. There shall be a separate ballot for the candidates for nomination for such judicial offices, which shall be the general election ballot hereinbefore referred to, and shall be printed, delivered, voted and counted as hereinbefore provided for the general primary election ballot: Provided, that any voter shall have the privilege of voting this ticket alone. The form of said ballot shall be substantially as follows:

NONPARTISAN JUDICIARY TICKET.

To vote for a person make a cross (×) in the square at the RIGHT of the name of the person for whom you desire to vote.

Judges of Supreme Court.	Vote for...	Judges Superior Court.	Vote for...
John Doe.....		John Doe.....	
John Doe.....		John Doe.....	
John Doe.....		John Doe.....	

[L. '11, p. 489, § 1.]

Cited in 60 Wash. 380; 70 Wash. 430.

See notes to § 4893.

§ 4843. Writing or Pasting Name, Permitted.—Nothing in this act contained shall prevent any voter from writing or pasting on his ballot or ballots the name of any person for whom he desires to vote for any office, and such vote shall be counted the same as if printed upon the ballot and marked by the voter, but no person, precinct committeemen alone excepted, receiving such votes written or pasted upon a primary election ballot shall thereby be nominated for any office or be entitled to have his name printed upon the ballot as a candidate at the general election unless he shall have complied with the provisions of the primary election law and filed his declaration of candidacy at least thirty days before such primary election, unless such candidate shall have been selected as such by a party convention in accordance with law or certified by a county or state central committee in accordance with law. [L. '15, p. 181, § 8. Cf. L. '09, p. 180, § 12.]

Cited in 82 Wash. 143.

§ 4843–1. Repeal — Partial Invalidity. — All existing statutes or portions of statutes inconsistent with the provisions of this act are

hereby repealed. If any section of this act should be held unconstitutional it shall in no wise affect the constitutionality of the remainder thereof. [L. '15, p. 181, § 10.]

"Act" in this section refers to the foregoing amendatory act of 1915.

CHAPTER V.

Minor Party and Special Primary Elections.

§ 4844. Authority to Hold, and How Regulated.—All elections hereafter to be held by any voluntary political association or party, for any delegates or managing committee [or for the nomination of candidates for public office], shall be held under the provisions of this chapter, whenever any committee or body authorized by the rules or customs of such political association shall elect to accept and act under such provisions. [L. '90, p. 419, § 1; 1 H. C., § 468.]

This and the following sections are in the main superseded as to the bracketed words. This chapter can now apply only to parties polling less than ten per cent of the votes cast at the last preceding election; to special elections for filling vacancies for unexpired terms; to elections for towns of the fourth class and school, and certain district elections; to elections for presidential electors and judges of the supreme court; to municipal elections under nonpartisan charter provisions, and to elections for political party delegates, managers, etc. See supra, § 4805.

§ 4845. Desire to Hold Election to be Manifested by Resolution. Whenever it shall be the desire of any such committee or body that such election shall be held under the provisions of this chapter, such desire and acceptance shall be expressed by a resolution duly passed by such committee or body. [L. '90, p. 419, § 2; 1 H. C., § 469.]

§ 4846. Resolution must Declare What.—The resolution must declare,—

1. The time and place of holding the election, and the hours between which the polls are to be kept open; and the polls shall, in all cases, be kept open from 12 o'clock, noon, to 7 o'clock P. M. of the day on which the election is held;

2. The names of three reputable persons to act as judges;

3. The object of the election;

4. That such election will be held under the provisions of the primary election law;

5. The qualifications required for voters, in addition to those prescribed by law. [L. '90, p. 419, § 3; 1 H. C., § 470.]

§ 4847. Publication of Notice of Election—Requisites of.—At least five days prior to any such election, a notice of such election shall be published in some newspaper or newspapers of general circulation in the district, ward, precinct, township, city, or county in and for which the election is called, and shall be posted in at least three

public places in each polling precinct or district for which such election is to be called. Such notice must be signed by the secretary of the committee or body calling such election, and must state the purpose, time, manner, and conditions, together with the place or places of holding such election; also the authority by which the call or notice is published; and the three persons shall be named therein who are appointed for each polling place to act as judges of said election, and who shall supervise or preside at such election in the polling precinct or district for which they are respectively appointed, and such judges shall be legal voters of and householders in the township, precinct, ward or election district for which they are named. And said notice shall likewise declare the qualifications of the persons to vote at such election: Provided, that such prescribed qualifications shall not be inconsistent with those expressed in this chapter. Such notice shall also declare that such election therein called will be held in pursuance of and subject to the provisions of this chapter, under the title of "primary election law"; and any election held in pursuance of any notice calling for an election under the "primary election law" shall be taken and deemed to be a primary election within the meaning of this chapter. [L. '90, p. 420, § 4; 1 H. C., § 471.]

§ 4848. Judges to Take Oath and Appoint Clerks—Vacancy—Penalty.—The persons named as judges of election in the notice required by the last preceding section, or any persons assuming or chosen to be such judges, in the absence, refusal, or failure to act of any of the judges named in such notice, shall first make oath or affirmation that they are legal voters of and householders in the precinct, ward, or election district for which they are appointed to serve; that they will faithfully and correctly conduct such election, protect it against all frauds and unfairness, carefully and truly canvass all votes cast thereat, and in every way conform to the provisions of this chapter, and of the notice or call for the election, which oath may be administered by any one of the judges, or by any person authorized under the laws of this state to administer oaths. And if one or all of the judges appointed to serve at the election be absent, or refuse or fail to serve at the hour appointed for the election to begin, then the electors present, to the number of not less than five, possessing the qualifications of persons entitled to vote at said election, shall choose a person or persons to fill any vacancy or vacancies that may exist. The judges, before proceeding with the election, shall appoint two clerks to assist them in receiving and counting the votes cast, to each of whom shall be administered, by one of the judges, an oath similar to that taken by the judges of election, omitting the statement that affiant is a householder. Any violation of the provisions of this section shall be deemed a mis-

demeanor, and shall subject the offender, on conviction, to punishment by a fine of not less than fifty dollars nor more than two hundred dollars, or by imprisonment in the county jail not less than one nor more than six months, or by both such fine and imprisonment, in the discretion of the court. [L. '90, p. 420, § 5; 1 H. C., § 472.]

§ 4849. Duty of Judges—Vote may be Rejected, When—Penalties. It shall be the duty of the judges of said election to entertain objections made by any qualified elector under said published call or notice to any vote which may be offered, on the ground that the person offering it is not entitled to vote under the terms of said call for said election, or that he is not a citizen of the United States, or a legal resident and voter under the general election laws of the state, in the election precinct, ward, township, or district for which the election is held, or that he has received or been promised, directly or indirectly, any money, fee, or reward for his vote for any candidate, or that he has voted before at that place, or some other place, on that day, or at the same election; and it shall be the duty of one of the judges of the election, if such objection be not withdrawn, to administer to the person so offering to vote an oath or affirmation to the general effect that he will truly testify to all matters relating to his qualifications, under said published call or notice, and under the general election laws of the state. It shall then be the duty of the judges to interrogate the person so objected to as to all matters in particular upon which said objection was made, and generally as to all of his qualifications as an elector at such election. If the person so objected to shall refuse to answer any questions asked, after said oath, or affirmations shall have been administered, or shall refuse to take such oath, it shall be the duty of the judges to reject such vote, and they shall also reject such vote, unless such person shall file with them a written or printed, or partly written and partly printed, statement, by him signed, that he is a qualified voter of the election district in which such election is held, and entitled to vote at such election; and unless such statement shall be accompanied by a similar statement of some person known to at least one of the judges to be a qualified voter in that district, to the effect that he knows the person so challenged, and that his statement is true, which said last statement must also be subscribed by the party making it. If such statements shall be filed, and such oath be taken, and such questions answered in such a manner as to show that the applicant is qualified to vote at such election, it shall be the duty of the judges of the election to receive such vote, and the word "sworn" shall be noted opposite the person's name on the poll-list, to be kept as hereinafter provided. Any violation of the provisions of this section by the judges or clerks of the election, or either of them, shall be deemed

a misdemeanor, and upon conviction shall subject the party so offending to punishment by a fine of not less than one hundred dollars nor more than three hundred dollars, or by imprisonment in the county jail for not less than two nor more than six months, or by both such fine and imprisonment, in the discretion of the court; and any person who shall, upon taking the oath or affirmation, and under the examination herein authorized, willfully make a false statement as to a matter pertinent and material in such examination, shall be deemed guilty of perjury, and upon conviction thereof be punished as prescribed by law for such offense. [L. '90, p. 421, § 6; 1 H. C., § 473.]

§ 4850. Illegal Voting, Bribery, Fraud, etc., How Punished.—Whoever fraudulently votes at any primary election, or offers to vote, after having once voted at such election, or knowing that he is not a qualified voter at such election, willfully votes or offers to vote at such election; or willfully aids or abets anyone not qualified to vote at such primary election in voting or attempting to vote at such election; or by offering a reward or bribe, or by treating or giving to him any spirituous, malt, or other liquors, either directly or indirectly, influences or attempts to influence any voter in giving or withholding his vote at such election; or furnishes a voter with a ticket or ballot, informing him that it contains a name or names different from those which appear thereon with intent to induce him to vote contrary to his intention; or fraudulently or deceitfully changes a ballot of a voter with intent to prevent such voter from voting for such person as he intended; or endeavors to prevent the voting of any voter, or the exercise of unlawful influence by any person over a voter at any such election, for himself or for or against any person, by means of violence or threats of violence or threats of withdrawing custom, or dealing in business or trade, or enforcing the payment of a debt, or bringing a suit or criminal prosecution, or any other threat of injury to be inflicted by him or by such means; or by bribery, or by corrupt or unlawful means, prevents or attempts to prevent any voter from attending or voting at such election; or gives or offers to give any valuable thing or bribe to any judge or clerk of such election, as a consideration for some act to be done, or omitted to be done, contrary to his duty in relation to such election, or shall interfere with or disturb, in any manner, any election held under the provisions of this chapter,—shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not less than two nor more than six months, or by both such fine and imprisonment, in the discretion of the court. [L. '90, p. 422, § 7; 1 H. C., § 474.]

§ 4851. Clerk must Keep Poll-list.—Each clerk must keep a list of persons voting, and the name and residence of each person who

votes must be entered thereon and numbered in the order of voting. [L. '90, p. 423, § 8; 1 H. C., § 475.]

§ 4852. Each Clerk must Keep Record of Challenges.—The judges must cause one of the clerks to keep a list, showing,—

1. The names and residences of all persons challenged;

2. The grounds of such challenge;

3. The determination of the board upon the challenge. [L. '90, p. 423, § 9; 1 H. C., § 476.]

§ 4853. Keep Form of Poll-lists and Tally-lists.—The following is substantially the form of the poll-lists and tally-lists to be kept by the clerks of election:—

POLL—LIST.

Of the primary election held in the —— precinct of the —— ward of ——, in the county of ——, on the —— day of ——, in the year ——. A B, C D, and E F, judges, and G H and J K, clerks, of said —— election, were respectively sworn (or affirmed) as the law directs, previous to their entering on the duties of their respective offices.

Numbers and names of electors voting:—

No.	Name and Residence.		No.	Name and Residence.	
1	A	B	3	E	F
2	C	D	4	G	H

We hereby certify that the number of electors voting at this election is ——.

Attest: A B,
G H, C D,
J K, E F,
Clerks. Judges of Election.

TALLY—LIST.

Names of persons voted for and for what position, and number of votes given for each candidate.

We hereby certify that A B had —— votes for ——; and that C D had —— votes for ——; that E F had —— votes for ——, etc.

A B,
G H, C D,
J K, E F,
Clerks. Judges of Election.

[L. '90, p. 424, § 10; 1 H. C., § 477.]

§ 4854. Oaths, Who may Administer and Certify.—Any one of the judges or either clerk may administer and certify oaths required to be administered during the progress of an election held under this chapter. [L. '90, p. 424, § 11; 1 H. C., § 478.]

Cited in 73 Wash. 68.

§ 4855. Duty of Judges as to Ballot-box.—Before receiving any ballots, the judges must, in the presence of the persons assembled at the polling place, open and exhibit and then close the ballot-box; and thereafter it must not be removed from the polling place nor the view of the bystanders until all the ballots are counted, nor must it be opened until after the polls are finally closed. [L. '90, p. 424, § 12; 1 H. C., § 479.]

§ 4856. Polls, How Opened—Ballots Cast to Contain What.—Before the judges receive any ballots, they must cause it to be proclaimed aloud, at the place of election, that the polls are open. All ballots cast shall contain the full name or initial of the candidate voted for. [L. '90, p. 424, § 13; 1 H. C., § 480.]

§ 4857. Proclamation as to Closing Polls.—Fifteen minutes before the time when the polls are to be closed, that fact must be proclaimed aloud at the place of election; and after the polls are closed no ballots must be received. [L. '90, p. 425, § 14; 1 H. C., § 481.]

§ 4858. Ballots, How Canvassed—Proclamation of Result.—As soon as the polls are finally closed the judges must immediately proceed to canvass the votes given at such election. The canvass must be public, in the presence of the bystanders, and must be continued without adjournment until completed and the result thereof is declared; and must also be conducted at the polling place where the election is held; where, also the result as to each candidate voted for must be, immediately on the completion of such canvass, publicly proclaimed by one of the judges, in a loud voice, and such proclamation shall be prima facie evidence of the result. [L. '90, p. 425, § 15; 1 H. C., § 482.]

§ 4859. Equalizing Number of Ballots with Number of Names on Poll-lists.—In conducting the canvass, the judges shall first count the whole number of ballots in the box, and if the number of such ballots shall be found to exceed the number of names entered on the polling-list, they shall reject so many thereof, without opening the same, or examining or looking at the names thereon, as may be necessary to make the number of ballots correspond to the number of names entered on the polling-lists. [L. '90, p. 425, § 16.]

§ 4860. Poll-lists must be Signed and Attested.—The number of ballots agreeing, or being thus made to agree, with the number of names on the list, the lists must be signed by the judges of election and attested by the clerks, and the number of names thereon must be set down in words and figures at the foot of each list, and over the signatures of the judges and the attestation of the clerks, substantially in the form prescribed in section 4853. [L. '90, p. 425, § 17; 1 H. C., § 484.]

§ 4861. Counting Ballots, How Conducted.—After the lists are thus signed, the judges must proceed to count and ascertain the number of votes cast for each person voted for. The ballots must be taken out and opened by one of the judges, and by him distinctly read aloud, and inspected by the other two judges. [L. '90, p. 425, § 18; 1 H. C., § 485.]

§ 4862. Clerks must Keep Tally.—Each clerk must write down each office or position to be filled, and the name of each person voted for to fill such office, and keep the number of votes for each person for each office by tallies, as they are read aloud. [L. '90, p. 425, § 19; 1 H. C., § 486.]

§ 4863. Lists to be Signed and Attested, How.—As soon as all the votes are counted there must be attached to the tally-lists, lists containing the names of persons voted for and for what office, and the number of votes given for each candidate, the number being written at full length, and such lists must be signed by the judges and attested by the clerks substantially in the form in section 4853. [L. '90, p. 426, § 20; 1 H. C., § 487.]

§ 4864. Ballots, Lists, and Statements, Duty of Officers as to.—After counting the votes, proclaiming the result, and signing the lists as above provided, the judges must cause the statements provided for in section 4849, the ballots and one copy of the lists, to be delivered to the clerk signing the notice of election, and one of the judges must retain the other lists for twenty days after the election, and such statements, ballots, and lists returned to the said clerk shall be by him, after the expiration of twenty days, delivered to the county clerk of the county in which such election was held, and by that officer kept with the books and papers of his office, open like other public records to public inspection, for the space of three months, at the end of which time, if no legal proceedings have been instituted in which such lists, ballots, or statements may be useful as evidence, said county clerk may then destroy the same. [L. '90, p. 426, § 21; 1 H. C., § 488.]

§ 4865. Certificates of Election to be Issued.—The board of election must issue certificates of election to all persons who are chosen to fill any position by the vote of their election district. [L. '90, p. 426, § 22; 1 H. C., § 489.]

§ 4866. Who may Vote.—It shall be unlawful for any person to vote at any primary election, or at any election to select delegates to any convention, called either for the purpose of nominating a candidate or candidates for any elective office, or for the purpose of selecting other delegates to such convention, unless such person so voting, or offering to vote, has the qualification of an elector in the

district embraced within the call for said primary election, at a general or special election held under and in conformity with the general election laws of this state. [L. '90, p. 426, § 23; 1 H. C., § 490.]

§ 4867. Penalty for Violation of Preceding Section.—Any person violating the provisions of the foregoing section shall, on conviction thereof, be fined in any sum not less than one hundred nor more than five hundred dollars, or imprisoned in the county jail not less than two nor more than six months, or both, in the discretion of the court. [L. '90, p. 427, § 24; 1 H. C., § 491.]

Cited in 4 Wash. 2; 5 Wash. 640.

§ 4868. Violations of This Chapter a Misdemeanor—Penalty.—Any person who shall be convicted of the violation of any of the provisions of this chapter, for which no punishment is herein especially provided, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty dollars nor more than two hundred dollars, or imprisoned in the county jail not less than one month nor more than six months, or punished by both such fine and imprisonment, in the discretion of the court. [L. '90, p. 427, § 25; 1 H. C., § 492.]

CHAPTER VI.

Primary Elections for Delegates to Conventions in Cities and Towns.

§ 4869. Primary Elections Regulated by This Chapter.—All primary elections hereafter to be held by any voluntary political associations or party for delegates to any nominating convention of such party for candidates for public office shall be held under the provisions of this chapter in the incorporated cities and towns of this state. [L. '95, p. 361, § 1.]

§ 4870. How Called.—Whenever such primary elections are called by any managing committee authorized under the rules or customs of such voluntary political association or party to call such primary elections, such call shall be made by resolution duly passed by such managing committee and attested by the chairman and secretary of such committee. [L. '95, p. 361, § 2.]

§ 4871. Notice Published.—This resolution shall be published in some newspaper of general circulation in the city or town where such primary election is to be held, at least ten days previous to the time set for such election; and if there be no newspaper published therein, then written copies of such resolution shall be posted in two of the most public places in each precinct in said city or town. [L. '95, p. 361, § 3.]

§ 4872. Resolutions to Contain What.—The resolutions shall declare,—

First: The time and places of holding such primary elections and the hours between which the polls are to kept open;

Second: The object of the election;

Third: The qualifications required of voters in addition to those prescribed by law;

Fourth: The number of persons to be elected as such delegates in each polling precinct, and such other matters as such managing committee, in accordance with the custom of such voluntary political associations or party, usually submit in an official call for such primary elections. [L. '95, p. 362, § 4.]

§ 4873. Voters, Qualifications of.—The qualifications of voters at such primary elections, in addition to those prescribed by such resolution, shall be the same as those at a general election held under the general election law of this state. [L. '95, p. 362, § 5.]

Cited in 8 Wash. 66.

§ 4874. Delegates, Qualifications of.—The persons to be voted for as such delegates at such primary election shall possess all the qualifications required of a voter at such primary election in the respective voting precincts. [L. '95, p. 362, § 6.]

§ 4875. Relative Number of Delegates Voted for.—The persons to be voted for as such delegates shall be selected in excess by at least twice the number to be elected in each polling precinct, and such selection shall be made at least one day previous to such primary election by a caucus of the qualified voters in each precinct, under such call or resolution, and such caucus shall also select three reputable citizens, two to act as judges and one as clerk of such primary election. Such selection shall be certified to such managing committee by the officers of such caucus. [L. '95, p. 362, § 7.]

§ 4876. Judges and Clerks, Qualifications of.—The qualifications and duties of the judges and clerks selected by such caucus and their organization into an election board for their respective precincts shall be similar to those in the general election law, and such election board shall have the right to question the voter as to his previous party affiliation, and shall have the same power in administering oaths, questioning voters as to their qualification, rejecting ballots, etc., as the election board has under the general election law of this state. [L. '95, p. 362, § 8.]

§ 4877. List of Delegates Elected to be Printed.—The managing committee shall cause a list of the names of such delegates so selected to be printed on one ballot of convenient form for each polling precinct, which ballot shall be the only ballot voted at such primary

election and shall be obtained only by the voters from the primary election officers immediately before voting. [L. '95, p. 362, § 9.]

§ 4878. Designation of Persons Voted for.—The voters [voter] shall designate the persons for whom he wishes to vote by marking a cross (×) opposite their names [his name] on such printed ballot, voting for as many persons only as the respective precinct is entitled to elect under such call or resolution: Provided, that nothing in this section shall prevent the voter from inserting or adding any name or names on such printed ballot he may wish to vote for. [L. '95, p. 363, § 10.]

§ 4879. Registered Voters, List of.—It shall be the duty of the registration officers under the general election law of this state to permit the judges or managing committee of such primary elections to make a list of the registered voters in the respective precincts. [L. '95, p. 363, § 11.]

§ 4880. List of Voters Kept.—It shall be the duty of the clerks of each primary election board to keep a tally-list of the names and residences of all persons voting, numbered in the order of the voting, and upon canvassing the vote such clerk shall make a return of all persons voted for, with the number of ballots cast for each person. [L. '95, p. 363, § 12.]

§ 4881. Ballot-boxes Opened Before Election Begins.—Before receiving any ballots the judges, in the presence of the persons assembled at the polling places, shall open and exhibit and then close the ballot-box, and thereafter it must not be removed from the polling place nor from the view of the bystanders until all the ballots are counted, nor must it be opened until the polls are finally closed. [L. '95, p. 363, § 13.]

§ 4882. Proclamation of Opening and Closing Polls.—Before the judges receive any ballots they must cause it to be proclaimed aloud at the places of election that the polls are open, and fifteen minutes before the time of closing that fact must be proclaimed in like manner, and after the final closing of the polls no ballots must be received. [L. '95, p. 363, § 14.]

§ 4883. Votes, When Canvassed.—On closing the polls the judges must immediately proceed to canvass the votes in the presence of the bystanders, and must continue the canvass without adjournment at the polling place until complete and the results thereof declared. [L. '95, p. 363, § 15.]

§ 4884. Judges, Duty of.—After counting the votes, proclaiming the result and signing the return, the judges shall cause the tally-list and ballots to be filed with the clerk of the county wherein such

election is held, which tally-list and ballots shall be kept by him as part of the public records until after the adjournment of the convention for which such primary election was held, and they shall cause the return to be filed with the managing committee under whose authority such primary election was called, whereupon such managing committee shall issue certificates of election in accordance with the result therein declared. Such certificate shall be prima facie evidence of the person's selection. [L. '95, p. 364, § 16.]

§ 4885. Penalty for Falsifying Returns.—Any judge or clerk who shall falsify any primary election return, or in any manner violate the provisions of this chapter, or make it possible to secure a return of such primary election other than the true one by fraudulently canvassing the votes of such primary election, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not less than one hundred nor more than three hundred dollars, or by imprisonment in the county jail for not less than two nor more than six months, or by both fine and imprisonment, in the discretion of the court. [L. '95, p. 364, § 17.]

§ 4886. Penalty for Fraudulent Voting.—(1) Whoever fraudulently votes at any primary election; or (2) offers to vote after having voted at such election; or (3) knowing that he is not a qualified voter under the resolution or call of such managing committee at such primary election, willfully votes or offers to vote at such primary election; or (4) aids or abets anyone not a qualified voter at such primary election in voting; or (5) by offering a reward or bribe, either directly or indirectly, to influence or attempt to influence any elector at such primary election to give or withhold his vote at such primary election; or (6) furnishes a voter, or himself votes, a ballot other than the lawful ballot obtained from the officers of such primary election; or (7) fraudulently or deceitfully changes a ballot of a voter; or (8) prevents the voting of any qualified voter; or (9) exercises an unlawful influence over a qualified voter at such primary election by means of violence or threats of violence, or any other injury; or by bribery or by corrupt means prevents or attempts to prevent any qualified voter from attending or voting at such primary election; or (10) gives, or offers to give, any valuable thing or bribe to any judge or clerk of such primary election as a consideration for some act to be done, or omitted to be done, contrary to his duty in relation to such primary election; or (11) shall in any manner interfere with or disturb any primary election held under the provisions of this chapter, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than fifty nor more than five hundred dollars, or by imprisonment in the county jail for not less than one nor more than six months, or by both

fine and imprisonment, in the discretion of the court. [L. '95, p. 364, § 18.]

§ 4887. Penalty for Violating Other Provisions of This Chapter. Any person who shall violate any section of this chapter for which no punishment is herein especially provided, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty nor more than two hundred dollars, or by imprisonment in the county jail for not less than one nor more than three months, or by both fine and imprisonment, in the discretion of the court. [L. '95, p. 365, § 19.]

See infra, § 4938, penalty for fraudulent voting.

CHAPTER VII.

Ballots.

§ 4888. Ballots Printed and Distributed at Public Expense.—All ballots cast at elections for public officers within this state (except school and irrigation district officers and road overseers) shall be printed and distributed at public expense, as hereinafter provided. The printing of ballots and cards of instruction for the electors in each county, and the delivery of the same to the election officers, as hereinafter provided, shall be a county charge, the payment of which shall be provided for in the same manner as the payment of other county expenses; but the expense of printing and delivering the ballots shall, in the case of municipal elections, be a charge upon the city or town in which such election shall be held. [L. '90, p. 400, § 1; 1 H. C., § 363.]

Cited in 4 Wash. 303; 17 Wash. 21.

§ 4889. Change of Name by Stickers, When.—When any vacancy occurs before election day and after the printing of the tickets, and any person is nominated according to the provisions of this chapter to fill such vacancy, the officer whose duty it is to have the stickers printed and distributed shall thereupon have printed a requisite number of stickers, and shall mail them by registered letter to the judges of election in the various precincts interested in such election, and the judges of election whose duty it is made by the provisions of this chapter to distribute the tickets shall affix such stickers in the proper place on each ticket before it is given out to the elector. [L. '90, p. 405, § 13; 1 H. C., § 375.]

§ 4890. Questions for Popular Vote, How Submitted.—Whenever a proposed constitution or constitutional amendment, or other question is to be submitted to the people of the state for popular vote, the secretary of state shall duly, and not less than thirty days before election, certify the same to the clerk of the board of county com-

missioners of each county in the state, and the clerk of the board of county commissioners of each county shall include the same in the publication provided for in section 4801. Questions to be submitted to the people of a county or municipality shall be advertised as provided for nominees for offices by said section, and in submitting said amendment or question, there shall be printed on the ballot a concise statement, not exceeding seventy-five words, of its essential features in such manner that the voters may clearly identify the proposition in which they are voting. Such statement shall be prepared by the attorney general for the secretary of state, by the prosecuting attorney for the board of county commissioners, and by the legal department of the municipality for the proper officer thereof: Provided, that where the legislature shall have prescribed any particular form, the same shall be used. [L. '13, p. 415, § 1. Cf. L. '90, p. 405, § 14; 1 H. C., § 376.]

§ 4891. County to Provide Ballots—Preparation of by Voter.—Except as in this chapter otherwise provided, it shall be the duty of the clerk of the board of county commissioners of each county to provide ballot-boxes, or pouches, printed ballots, and duplicate poll-books for every election for public officers in which electors, or any of the electors within the county, participate, and to cause to be printed on the ballot the name of every candidate whose name has been certified to or filed with the county auditor in the manner provided for in this chapter. Ballots other than those printed by the respective clerks of boards of county commissioners, according to the provisions of this chapter, shall not be cast or counted in any election. Nothing in this chapter contained shall prevent any voter from writing or pasting on his ballot the names of any person for whom he desires to vote for any office, and such vote shall be counted, the same as if printed upon the ballot and marked by the voter, and any voter may take with him into the polling place any printed or written memorandum or paper to assist him in marking or preparing his ballot, except as hereinafter otherwise provided. [L. '90, p. 405, § 15; 1 H. C., § 377; L. '05, p. 64, § 1.]

Cited in 28 Wash. 673; 58 Wash. 651.

See infra, § 4899, which is to same effect as last part of this section.

§ 4892. Exception as to the Election of Certain Officers.—Elections for school and irrigation district officers and road overseers are excepted from the provisions of the preceding section, and in all municipal elections the duties specified in the preceding section as devolving on the clerk of the board of county commissioners shall devolve on the municipal clerk. [L. '90, p. 406, § 16; 1 H. C., § 378.]

Cited in 1 Wash. 155.

§ 4893. Ballots, Contents, How Prepared and Printed.—All ballots prepared under the provisions of this chapter shall conform to the following requirements:

First. Shall be of white and a good quality of paper, and the names shall be printed thereon in black ink.

Second. Every ballot shall contain the name of every candidate whose nomination for any office specified in the ballot has been filed according to the provisions of this act and no other names.

Third. All nominations of any party or group of petitioners shall be placed under the title of such party or petitioners as designated by them in their certificate of nomination or petition, and the name of each nominee shall be placed under the designation of the office for which he has been nominated.

Fourth. There shall be a ◯ under the party designated and a ☐ at the right of the name of each of its nominees so that the voter may clearly indicate the party or the candidate or the candidates for whom he wishes to cast his ballot; the circle shall be one-half inch in diameter and the square one-fourth of an inch. The size of type for the designation of the office shall be nonpareil caps; that of the candidates not smaller than brevier or larger than small pica caps and shall be connected with squares by leaders.

Fifth. The list of candidates of the republican party shall be placed in the first column of the left-hand side of the ballot, the democratic party the second column and of other party [parties] in the order in which the certificates of nomination have been filed.

The line of demarcation between the party columns shall be inverted nonpareil rule.

If any of the above-named parties shall fail to nominate a ticket, the name of such party shall not appear upon the ballot.

Sixth. No candidates' [candidate's] name shall appear more than once upon the ballot: Provided, that any candidate who has been nominated by two or more political parties may, upon a written notice filed with the clerk of the board of county commissioners at least twenty days before the election is to be held, designate the political party under whose title he desires to have his name placed.

Seventh. Under the designation of the office if more than one candidate is to be voted for there shall be indicated the number of candidates to such office to be voted for at such election.

Eighth. Upon each official ballot a perforated line one-half inch from the left-hand edge of said ballot shall extend from the top of said ballot toward the bottom of the same two inches thence to the left-hand edge of the ballot and upon the space thus formed there shall be no printing except the number of such ballot which shall be upon the back of such space in such position that it shall appear on

the outside when the ballot is folded. The county auditor shall cause official ballots to be numbered consecutively beginning with number 1, for each separate voting precinct.

Ninth. Official ballots for a given precinct shall not contain the names of nominees for justices of the peace and constables of any other precinct except in cases of municipalities where a number of precincts vote for the same nominee for justices of the peace and constables and in the latter case the ballots shall contain only the names to be voted for by the electors of such precinct. Each party column shall be two and five-eighths inches wide.

Tenth. On the top of each of said ballots and extending across the party groups, there shall be printed instructions directing the voters how to mark the ballot before the same shall be deposited with the judges of election. Next after the instructions and before the party group shall be placed the questions of adopting constitutional amendments or any other question authorized by law to be submitted to the voters of such election. The arrangement of the ballot shall in general conform as nearly as possible to the form hereinafter given.

(BALLOT.)

INSTRUCTIONS.—Mark x in ○ under party name, for whose candidate you wish to vote.

If you desire to vote for any candidate of any other party place x in ☐ at the right of the name of such candidate.

(Here place any state or local questions to be voted on.)

REPUBLICAN TICKET.	DEMOCRATIC TICKET.	PROHIBITION TICKET.
○	○	○
PRESIDENTIAL ELECTORS.		
S. G. COSGROVE .....☐		
F. W. HASTINGS.....☐		
C. SWEENEY .....☐		
J. BOYD.....☐		
REPRESENTATIVES IN CONG.		
F. W. CUSHMAN .....☐		
W. L. JONES. .....☐		
JUDGES SUPREME COURT.		
W. MOUNT .....☐		
R. O. DUNBAR.....☐		
GOVERNOR.		
J. M. FRINK..... ..☐		
LIEUTENANT GOVERNOR.		
H. McBRIDE .....☐		
SECRETARY OF STATE.		
S. H. NICHOLS .....☐		
STATE TREASURER.		
C. W. MAYNARD.....☐		
STATE AUDITOR.		
J. D. ATKINSON .....☐		
ATTORNEY GENERAL.		
W. B. STRATTON.....☐		
SUPT. PUBLIC INSTRUCTION.		
R B. BRYAN.....☐		
COM. PUBLIC LANDS.		
S. A. CALLVERT.....☐		
STATE SENATOR 18TH DIST.		
A. S. RUTH.....☐		

[L. '01, p. 186, § 1. Cf. L. '90, p. 406, § 17; L. '91, p. 200, § 1; 1 H. C., § 379; L. '95, p. 387, § 4.]

Cited in 21 Wash. 246; 58 Wash. 650, 651; 60 Wash. 371, 380.

See infra, §§ 4969, 4970, unlawful printing or counterfeiting official ballots, etc. As to requisites of ballots, see § 4914, infra.

§ 4894. Number to be Furnished. — The clerk of the board of county commissioners of each county shall provide for each election precinct in the county a number of ballots equal to one hundred and ten per centum of the registered electors in the precinct or such further number as the county auditor may certify to be necessary and two tallying books, that shall be printed in relation with the ballots: Provided, however, that in municipal elections it shall be the duty of the city or town clerk to provide ballots as specified in this section. [L. '15, p. 348, § 1. Cf. L. '90, p. 407, § 18; 1 H. C., § 380; L. '95, p. 390, § 5.]

Compare L. '95, p. 35, § 1, amending § 380 of 1 Hill's Code, omitted as superseded by the above section, this being the later enactment.

§ 4895. Error of Omission of Name from, How Cured.—Whenever it shall appear by affidavit that an error or omission has occurred in the publication of the names of the candidates nominated for office, or in the printing of the ballots, the superior court of the county may, upon application of any elector, by order, require the clerk of the board of county commissioners or municipal clerk to correct such error, or to show cause why such error should not be corrected. [L. '90, p. 407, § 19; 1 H. C., § 381.]

Cited in 1 Wash. 66.

§ 4896. When and to Whom Delivered. — Before the opening of the polls, the clerk of the board of county commissioners (or the municipal clerk in the case of municipal elections) shall cause to be delivered to the judges of election of each election precinct which is within the county (or within the municipality in case of municipal elections), and in which the election is to be held, at the polling place of the precinct, the proper number of ballots provided for in section 4894 of this chapter. The ballots shall be given to the inspector of each election precinct; but in case it may be impracticable to deliver such ballots to the inspector, then they may be delivered to one of the judges of election of any such precinct, and in making the appointment of judges of election under this chapter and other election laws of this state, not more than a majority of such judges of election shall be appointed from any one political party for each precinct. [L. '90, p. 407, § 20; 1 H. C., § 382; L. '95, p. 390, § 6.]

Cited in 12 Wash. 381.

This section is not in the enacting clause of the Laws of 1895.

§ 4897. Provision for Polling Places—Division of Precincts.—The inspectors of election shall provide in their respective polling places a sufficient number of places, booths or compartments, which shall be furnished with such supplies and conveniences as shall enable the voter conveniently to prepare his ballot for voting, and in which

electors may mark their ballots, screened from observation, and a guard-rail so constructed that only persons within such rail can approach within fifty feet of the ballot-boxes, or the places, booths or compartments herein provided for. The number of such places, booths or compartments shall not be less than one for every fifty electors or fraction thereof registered in the precinct, or voting at the last preceding election where there is no registration. In precincts containing less than twenty-five voters, the election may be conducted under the provisions of this act without the preparation of such booths or compartments as required in this section. No person other than electors engaged in receiving, preparing or depositing their ballots, or a person present for the purpose of challenging the vote of an elector about to cast his ballot, shall be permitted to be within said rail, and in case of small precincts where places, booths or compartments are not required, no persons engaged in preparing their ballots shall in any way be interfered with by any person, unless it be someone authorized by the provisions of this act to assist him or them in preparing his or their ballot. The expense of providing such places or compartments and guard-rails shall be a public charge, and shall be provided for in the same manner as the other election expenses. Subsequent to the first Tuesday after the first Monday in November and prior to the first day of December thereafter, the officers charged by law with the division or alteration of election precincts shall, as far as necessary, alter or divide the existing election precincts in such manner that each election precinct shall not contain more than three hundred voters. [L. '90, p. 408, § 21; 1 H. C., § 383; L. '07, p. 242, § 2.]

Cited in 70 Wash. 598.
See supra, § 4798, division of precincts.
See infra, § 6517, precincts for justice of peace.
See infra, § 9436, abolished under township government.

§ 4898. Delivery of Ballots to Electors—Challenge.—At any election it shall be the duty of the inspector, or one of the judges of election, to deliver ballots to the qualified electors. Any elector desiring to vote shall give his name to the inspector or one of the judges, who shall then, in an audible tone of voice, announce the same, whereupon a challenge may be interposed in the manner provided by law. If no challenge be interposed, or if the challenge be overruled, the inspector or one of the judges shall give him a ballot, at the same time calling to the clerks of election the number of such ballot. In precincts where there is a registration of voters it shall be the duty of such clerks to write the number of the ballot against the name of such elector as the same appears upon the certified copy of poll-books of registration in their possession. In precincts where there is no registration of voters, it shall be the duty of the clerks

to transcribe the name of the elector in the poll-books, and against such name the number of the ballot delivered to the elector. Each qualified elector shall be entitled to receive from the said judges one ballot. [L. '90, p. 409, § 22; 1 H. C., § 384; L. '95, p. 391, § 7.]

Cited in 7 Wash. 195; 12 Wash. 381.

§ 4898–1. Authorizing Absent Voting.—Any elector of the state unavoidably absent from his home county and more than twenty-five miles distant from the precinct in which he is qualified to vote, may vote in any polling place at which he may present himself during polling hours, at general elections to be held, for federal, United States senatorial and congressional, state, or legislative officers, or propositions, in the manner as in this act provided. [L. '15, p. 691, § 1.]

§ 4898–2. Certificate of Home Registration Officer—Oath.—Any elector who shall present himself at any polling place within the state during the hour of voting thereat, presenting to the election officers of said polling place a certificate from the registration officer of the home precinct of said elector certifying that said registration officer is personally acquainted with said elector; that said elector is duly registered and qualified to vote in said home precinct, stating the place of residence of said elector; that said elector has in the presence of said registration officer affixed his signature to said certificate at a place to be designated for "Signature of Absent Voters": Provided that said certificate shall be executed and signed in duplicate, the registration officer retaining one in his permanent files; the elector shall likewise present to the election officers a blank affidavit, to which he shall subscribe and swear before the inspector or one of the judges of said election. The oath to be subscribed to shall be as follows:

State of Washington, }
County of ——, } ss.

I, ——, do solemnly swear (or affirm) that I am a resident and qualified elector in the —— precinct (or ward) of —— city, in the county of ——, state of Washington, duly registered as such, and am entitled to vote at any election held therein on this day; that the polling place within said precinct or ward is not in this county and is more than twenty-five miles therefrom; that this election is common in its main features to both my home precinct and this precinct; that I have had no opportunity to vote thereat; that I will be unable to reach my home voting precinct this day; that I shall lose my vote by reason thereof unless permitted to vote herein, and that I have not voted and will not vote elsewhere at this election.

—— ——.

Subscribed and sworn to before me this —— day of ——, 19—.

——— ———,

of election precinct (or ward) of —— city, —— county, Washington. [L. '15, p. 692, § 2.]

§ 4898–3. Method of Voting.—Upon the elector taking such oath he shall be given an official ballot taken from the highest numbers, which he shall take to a voting booth and mark the same as any resident voter may, except that he shall vote only for federal, United States senatorial and congressional, state and legislative officers, and for which he might vote in his home precinct, and for this purpose he may write in the names of any candidate or candidates under the proper headings in such ballot, and after marking the same shall fold such ballot and hand it to one of the judges or inspector of election, but such ballot shall not be deposited in the ballot-box of such precinct nor entered upon the poll-books of such precinct among the names of resident voters. The ballot shall have attached thereto the affidavit made by said voter, and together they shall be securely sealed in an envelope to be presented to the election officers by the elector, and upon which envelope shall be printed the following, and which statement shall be properly filled out and signed by the election officers, to wit:

ABSENT VOTERS' BALLOT.

Name ———————————————————

Residence, (street or house) ———————————————————

Home precinct (or ward) ———————————————————

City ———————————————————

County ———————————————————

Date ———————————————————

We, the election officers of —— precinct (or ward), city of ——, county of ——, state of Washington, hereby certify that the ballot, together with the oath of the above-named voter, was received by us and sealed in this envelope at the election held on the date aforesaid.

——— ———,
Inspector.

——— ———,
Judge.

——— ———,
Judge.

[L. '15, p. 692, § 3.]

§ 4898–4. Return of Ballot to Home County—Canvass.—Such envelope when so sealed and certified shall be returned by the officers of election where such vote was cast to the county auditor of the county in which such voter cast his vote, along with the other elec-

tion returns, and upon receipt of such envelopes the county auditors shall forward the same to the county auditor where the voter claims residence, and which envelopes shall be filed and kept securely locked until the time for canvassing of the votes of such county. Upon the canvassing of the votes by the canvassing board of such county, whenever any precinct is called in which there shall be on file one or more such envelopes, the board shall cause such envelopes to be opened, and shall canvass and count the same for such precinct as nearly as possible in the same manner as such votes would have been counted had they been cast in such precinct, entering the same in the poll-book as absent voters, and shall modify the election returns of such precinct accordingly. Such ballot shall become a part of the returns of such precinct, and shall be kept or destroyed accordingly. [L. '15, p. 693, § 4.]

§ 4898–5. Challenges.—The vote of any absent member [voter] may be challenged for any cause at the time the same is canvassed by the canvassing board of the county, and the said canvassing board shall have all the power and authority given by law to officers of election to determine herein the legality of such ballot. [L. '15, p. 694, § 5.]

§ 4898–6. Election Supplies for Absent Voting.—The officers or persons who are now, or may hereafter, be required by law to furnish supplies to officers of registration, shall furnish therewith a supply of blank affidavits, envelopes, and certificates, as herein required, and there shall be provided also in each election poll-book a separate registration for absent voters. Any elector receiving the certificate required in section 4898–2, shall also receive a blank affidavit and envelope, as required by this act, from the registration officer, and which affidavit and envelope the elector will present to the election officers at the time he offers to vote. [L. '15, p. 694, § 6.]

§ 4898–7. Penalty.—Any person who violates any of the provisions of this act, relating to swearing and voting, shall be guilty of a felony and shall be punished by imprisonment of not more than five years. [L. '15, p. 694, § 7.]

§ 4899. Ballot, How Prepared by Voter.—On receipt of his ballot the elector shall forthwith and without leaving the polling place retire alone to one of the places, booths or apartments provided to prepare his ballot. If he desires to vote for all the candidates of any political party he may mark a cross "×" after the name, against the political designation of such party, and shall then be deemed to have voted for all the persons named as the candidates of such party. If he desires to vote for any particular candidate of any other political party he may do so by placing after the name of such candidate a mark "×": Provided, that if two or more can-

didates for such office are to be elected, then such voter shall place his mark "×" after the name of each of the candidates for whom he wishes to vote for that particular office, and in that case such voter shall then be deemed to have voted for all the persons named as the candidates of the political party after which he shall have made his mark "×," except those who are otherwise designated as herein provided. Each elector may prepare his ballot by marking a cross "×" after the name of every person or candidate for whom he wishes to vote. In case of a ballot containing a constitutional amendment or other question to be submitted to the vote of the people the voter shall mark a cross "×" after the question, for or against the amendment or proposition, as the case may be. Any elector may write in the blank spaces, or paste over any other name, the name of any person for whom he may wish to vote. Before leaving the booth or compartment the elector shall fold his ballot in such a manner that the number of the ballot shall appear on the outside thereof, without displaying the marks on the face thereof, and he shall keep it folded until he has voted. Having folded the ballot, the elector shall deliver it folded to the inspector, who shall, in an audible tone of voice, repeat the name of the elector and the number of the ballot. The election clerks having the certified copies of the poll-books of registration or poll-books in charge, shall, if they find the number marked opposite the elector's name on the register or poll-books to correspond with the number of the ballot handed to the inspector, mark opposite the name of such elector the word "voted," and one of the clerks shall call back, in an audible tone, the name of the elector and the number of his ballot. The inspector shall separate the slip containing the number of the ballot from the ballot and shall deposit the ballot in the ballot-box. The numbers removed from ballots shall be immediately destroyed. [L. '90, p. 409, § 23; 1 H. C., § 385; L. '95, p. 391, § 8.]

Cited in 5 Wash. 86; 17 Wash. 22; 28 Wash. 673, 674.

§ 4900. Restriction upon Occupation of Voting Booths.—Not more than one person shall be permitted to occupy any one booth at one time, and no person shall remain in or occupy a booth or compartment longer than may be necessary to prepare his ballot, and in no event longer than five minutes: Provided, that the other booths or compartments are occupied. [L. '90, p. 410, § 24; 1 H. C., § 386.]

§ 4901. Voter may Receive Ballot in Lieu of One Spoiled.—Any voter who shall, by accident or mistake, spoil his ballot may, on returning said spoiled ballot, receive another in place thereof. [L. '90, p. 410, § 25; 1 H. C., § 387.]

§ 4902. Disabled or Illiterate Voter, How Assisted. — Any voter who declares to the judges of election, or when it shall appear to the

judges of election that he cannot read, and was at the time of the taking effect of this act a qualified elector, or that by blindness or other physical disability he is unable to mark his ballot, shall upon request receive the assistance of one or two of the election officers in the marking thereof, and such officer or officers shall certify on the outside thereof that it has been so marked, with his or their assistance, and shall thereafter give no information regarding the same. The judges may in their discretion require from such person so offering to vote a declaration of such disability, that he was at the time of the taking effect of this act a qualified elector and of his disability to read and speak the English language, to be made by the voter under oath before them and they are hereby qualified to administer the same. No elector, other than the one who may, because of his inability to read, or physical disability, be unable to mark his ballot, shall divulge to any person within the polling place the name of any candidate for whom he intends to vote or [to] ask or receive the assistance of anyone within the polling place in the preparation of his ballot. [L. '01, p. 287, § 6. Cf. L. '90, p. 410, § 26; 1 H. C., § 388.]

§ 4903. Election Officers not to Deposit Ballots Unless Stamped.—No inspector or judge of election shall deposit in any ballot-box any ballot upon which the official stamp as hereinbefore provided for does not appear. Every person violating the provisions of this section shall be deemed guilty of a misdemeanor. [L. '90, p. 410, § 27; 1 H. C., § 389.]

Cited in 3 Wash. 23, 122, 123, 414, 416; 12 Wash. 384.
This section is probably impliedly repealed by the amendment to Bal. Code, § 1369, dispensing with official stamps. See § 4898, infra.

§ 4904. Instructions for Guidance of Electors—Posting of.—The clerk of the board of county commissioners of each county shall cause to be printed in large type on cards, in English, instructions for the guidance of electors in preparing their ballots. He shall furnish ten such cards to the judges of election of each election precinct, and one additional card for each fifty electors or fractional part thereof in the precinct, at the same time and in the same manner as the printed ballots. The judges of election shall post not less than one of such cards in each place or compartment provided for the preparation of ballots, and not less than three of such cards elsewhere in and about the polling places, upon the day of election. Such cards shall be printed in large, clear type, and shall contain full instructions to the voters as to what should be done, viz.:—

1. To obtain ballots for voting;
2. To prepare the ballots for deposit in the ballot-boxes;
3. To obtain a new ballot in the place of one spoiled by accident or mistake. [L. '90, p. 411, § 28; 1 H. C., § 390; L. '95, p. 392, § 9.]

§ 4905. Ballots Void, When. — In the canvass of the votes, any ballot or parts of a ballot from which it is impossible to determine the elector's choice shall be void and shall not be counted: Provided, that when a ballot is sufficiently plain to gather therefrom a part of the voter's intention, it shall be the duty of the judges of election to count such part. [L. '90, p. 411, § 29; 1 H. C., § 391; L. '95, p. 393, § 10.]

Cited in 12 Wash. 381; 17 Wash. 196; 28 Wash. 672; 86 Wash. 236.
See notes to § 4899, supra.

§ 4906. Fraud as to Certificates of Nomination or Ballots a Felony.—Any person who shall falsely make, or make oath to or fraudulently deface or fraudulently destroy, any certificate of nomination, or any part thereof, or file or receive for filing any certificate of nomination knowing the same or any part thereof to be falsely made, or suppress any certificate of nomination which has been duly filed, or any part thereof, or forge or falsely make the official indorsement on any ballot, shall be deemed guilty of a felony, and upon conviction thereof, in any court of comeptent jurisdiction, shall be punished by imprisonment in the penitentiary for a period of not less than one year nor more than five years. [L. '90, p. 411, § 30; 1 H. C., § 392.]

§ 4907. Defacing or Destroying Supplies, Lists, etc., How Punished.—Any person who shall during the election willfully remove or destroy any of the supplies, or other conveniences placed in the booths or compartments for the purpose of enabling the voter to prepare his ballot, or prior to or on the day of election willfully deface or destroy any list of candidates posted in accordance with the provisions of this chapter, or who shall during an election tear down or deface the cards printed for the instruction of voters, shall be deemed guilty of a misdemeanor, and upon conviction thereof, in any court of competent jurisdiction, shall be fined in any sum not exceeding one hundred dollars. [L. '90, p. 412, § 31; 1 H. C., § 393.]

See infra, § 4958, penalty for fraudulent voting.

§ 4908. Duty of Public Officers at Elections—Punishment for Violation of.—Any public officer upon whom any duty is imposed by this chapter, who shall willfully do or perform any act or thing herein prohibited, or willfully neglect or omit to perform any duty as imposed upon him by the provisions of this chapter, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall forfeit his office, and shall be punished by imprisonment in the county jail for a term of not less than one month nor more than six months, or by a fine of not less than fifty dollars, and not more than five hundred dollars, or by both such fine and imprisonment. [L. '90, p. 412, § 32; 1 H. C., § 394.]

See note to § 4907.

§ 4909. Electioneering Prohibited—What Ballot must be Voted—Secrecy.—No officer of election shall do any electioneering on election day. No person shall do any electioneering on election day within any polling place, or any building in which an election is being held, or within fifty feet thereof, nor obstruct the doors or entries thereto, or prevent free ingress to and egress from said building. Any election officer, sheriff, constable, or other peace officer, is hereby authorized and empowered, and it is hereby made his duty, to clear the passageway and prevent such obstruction, and to arrest any person creating such obstruction. No person shall remove any ballot from the polling place before the closing of the polls. No person shall show his ballot after it is marked to any person in such a way as to reveal the contents thereof, or the name of any candidate or candidates for whom he has marked his vote, nor shall any person solicit the elector to show the same; nor shall any person, except a judge of election, receive from any elector a ballot prepared for voting. No elector shall receive a ballot from any other person than one of the judges of election having charge of the ballots, nor shall any person other than such inspector or judges of election deliver a ballot to such elector. No elector shall vote or offer to vote any ballot except such as he has received from the judges of election having charge of the ballots. No elector shall place any mark upon his ballot by which it may afterward be identified as the one voted by him. Any elector who does not vote a ballot delivered to him by the judges of election having charge of the ballots shall before leaving the polling place, return such ballot to such judges. Whoever shall violate any of the provisions of this section shal be deemed guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction shall be fined in any sum not exceeding one hundred dollars, and adjudged to pay the costs of prosecution. [L. '90, p. 412, § 33; 1 H. C., § 395.]

Cited in 21 Wash. 249.

See note to § 4907.

§ 4910. Secretary of State must Distribute Election Laws.—It shall be the duty of the secretary of state to cause to be published, in pamphlet form, and distributed through the clerks of the boards of county commissioners of the respective counties, a sufficient number of copies of this law, together with the registration law of the state and such other laws as bear upon the subject of election, as will place a copy thereof in the hands of all officers of elections. [L. '90, p. 413, § 34.]

CHAPTER VII-A.

Voting Machines.

§ 4910-1. Use of Voting Machines at Elections. — At all state, county, city, town, township and district elections of any character, primary, general, special or otherwise, hereafter held in the state of Washington, ballots or votes may be cast, registered, recorded and counted by means of voting machines, as hereinafter provided. [L. '13, p. 177, § 1.]

Cited in 78 Wash. 84.

§ 4910-2. State Board of Voting Machine Examiners.—The governor, the secretary of state, and the state treasurer and their successors in office are hereby created and constituted the state board of voting machine examiners. It shall be the duty of said board to examine all makes of voting machines submitted to it and determine whether such machines comply with the requirements of this act, and can safely be used by voters at elections under the provisions of this act. Any person or corporation owning or being interested in a voting machine may submit same to said board for examination, and said board shall thereupon publicly examine and report upon such machine, pursuant to the provisions of this act. For the purpose of assistance in examining such machine the said board may employ not more than three expert machinists at a cost of not more than ten dollars for each day employed. The compensation of said machinists shall be paid by the person or corporation submitting the machine. Within thirty days after completing the examination of any voting machine the board shall make and file with the secretary of state its report on such machine, together with such written or printed description and such drawings and photographs as shall clearly identify such machine and the mechanical operation thereof; and within ten days after receiving such report, the secretary of state shall send a copy thereof to the county commissioners of each county, to the common council of each city, and to the board or governing body of each district or other municipality within the state. Any voting machine that shall receive the approval of a majority of said board may be used for conducting any or all elections subject to the provisions of this act. Any machine that shall not receive said approval shall not be adopted for or used at any election. After a voting machine has been approved by said board, any change, or improvement therein that does not impair its accuracy, efficiency, or capacity, shall not render necessary a re-examination or reapproval thereof. [L. '13, p. 178, § 2.]

§ 4910-3. Definition of Terms Employed in This Act.—The list of offices and candidates, and the statements of questions used on the

voting machines shall be deemed an official ballot and the words "ballot labels," as used in this act shall mean the cards, paper, or other material containing the names of offices and candidates, and statements of questions to be voted on. The word "diagram" shall mean an illustration of the official ballot when placed upon the machine, showing the names of the parties, offices and candidates, and statements of the questions in their proper places, together with the voting devices therefor, and shall be considered a sample ballot. The word "question" shall mean a statement of such constitutional amendment or other proposition as shall be submitted to a popular vote at any election. The words "irregular ballot" shall mean the paper or other material on which a vote is cast for persons whose names do not appear on the ballot labels. The words "vote indicators" shall mean those devices with which votes are indicated for parties, candidates, or for or against questions. The words "candidate counters" and "question counters" shall mean the counters on which are registered the votes cast for candidates and on questions respectively. The words "public counter" shall mean a counter or other device, which shall at all times publicly indicate how many times the machine has been voted on at an election. The words "protective counter" or "protective devices" shall mean a counter or device that will register each time the machine is operated and shall be so constructed, and so connected that it cannot be reset, altered or operated, except by operating the machine. The words "voting machine booth" shall mean the inclosure occupied by the voter when voting. The word "model" shall mean a mechanically operated model of a portion of the face of the machine illustrating the manner of voting. The word "custodian" shall mean the person charged with the duty of testing and preparing the voting machine for the election. The words "statement of canvass" shall mean a statement and return in book form of the votes cast at any election, together with suitable certificates of its correctness. [L. '13, p. 179, § 3.]

§ 4910–4. Requirements of Voting Machines.—No voting machine shall be approved by the state board of voting machine examiners unless it be so constructed as to fulfill the following requirements: It shall secure to the voter secrecy in the act of voting. It shall provide facilities for voting for the candidates of as many political parties or organizations as may make nominations, and for or against as many questions as may be submitted. The voting devices for the candidates shall be arranged in separate parallel party lines, one or more lines for each party and in parallel office rows transverse thereto. It shall permit the voter to vote for any person for any office that he shall have the right to vote for but none other. It shall, except at primary elections, permit the voter to vote for all

the candidates of one party or in part for the candidates of one party and in part for the candidates of one or more other parties. It shall, except at primary elections, provide means whereby the voter can by a single operation vote for all the candidates of one party. It shall permit the voter to vote for as many persons for an office as he is lawfully entitled to vote for but no more. It shall prevent the voter from voting for the same person more than once for the same office. It shall permit the voter to vote for or against any question he may have the right to vote on but none other. It shall correctly register or record all votes cast for any and all persons and for or against any and all questions. It shall be provided with a lock or locks by which all operation of the registering mechanism can be prevented as soon as the polls of the election are closed. It shall be provided with a "protective counter," or "protective device" whereby any operating or tampering with the machine before or after the election will be detected. It shall be provided with a counter which shall show at all times during an election how many persons have voted. It shall be provided with a mechanical model, illustrating the manner of voting on the machine suitable for the instruction of voters. It may also be provided with one device for each party, for voting for all the presidential electors of that party by one operation, and a ballot label therefor containing only the words "presidential electors" preceded by the name of that party and followed by the names of the candidates thereof for the offices of President and Vice-president, and a registering device there which shall register the vote cast for said electors when thus voted for collectively: Provided, however, that means shall be furnished whereby the voter can cast a vote in part for the candidates for presidential electors of one party and in part for those of one or more other parties or in part or in whole for persons not nominated by any party. [L. '13, p. 180, § 4.]

§ 4910–5. Voting Machines may be Adopted, Procured and Used. The county commissioners of any county, the common council of any city or town, the township board of any township or the board or governing body of any district or municipality, at any regular meeting or at a special meeting called for the purpose, may adopt, purchase, or otherwise procure, and provide for the use of, any voting machine approved by the state board of voting machine examiners, in all or a portion of the election precincts thereof; and thereafter said machine may be used for voting at all primaries and elections for public offices and on all questions and for receiving, registering and counting the votes thereof in such election district or districts as such county commissioners, council or board shall direct. The county commissioners or council may, not later than forty days before any election, create, unite, combine, or divide one or more elec-

tion districts or precincts for the purpose of using one or more voting machines therein at such election, and such uniting, combining or dividing shall be done in the manner now prescribed by law for the change of election districts. More than one voting machine may be used in the same election district. The number of voters to be in each of said districts or precincts shall be determined by said commissioners, council or board, but shall not exceed six hundred for each machine. [L. '15, p. 324, § 1; L. '13, p. 181, § 5.]

Cited in 78 Wash. 87.

§ 4910–6. Payment for Voting Machines.—The county commissioners of any county, the council of any city, the supervisors of any town or township, or the governing board of any district or municipality may, on the adoption and purchase of a voting machine or machines, provide for the payment thereof in such a manner as they may deem for the best interest of the county, city, town or township, district or municipality, and may for that purpose issue bonds, warrants, certificates of indebtedness, notes or other negotiable obligations, which shall be a charge upon such county, city, town, township, district, or municipality, or may pay for the same in cash out of the general fund or otherwise; and may make such contract for the purchase of such machines with regard to price, manner of purchase and time of payment as to the said officials shall seem proper, and in estimating the amount of taxes for the general fund, if any, such amount shall be added, extending over such time as may be required to fully pay for such machines. Such bonds, certificates, warrants, notes or other obligations may be issued to bear interest not to exceed five per cent per annum. They may be made payable at such time or times as the authorities may determine, but shall not be issued or sold at less than par. [L. '13, p. 182, § 6.]

§ 4910–7. Printed Matter and Supplies.—Within a proper and reasonable time before each election at which voting machines are to be used, the secretary of state shall prepare samples of the printed matter and supplies named in this section, and shall furnish one of each thereof to the board or official in charge of the election of each county, city, township or district in which the machines are to be used; such samples to meet the requirements of the election to be held and to suit the construction of the machine to be used. The board or officials charged with the duty of providing ballots shall provide for each voting machine for each election the following printed matter and supplies: Suitable printed or written directions to the custodian for testing and preparing the voting machines for the election; one certificate on which the custodian can certify that he has properly tested and prepared the voting machine for the election; one certificate on which some person other than the cus-

todian can certify that the voting machine has been examined and found to have been properly prepared for the election; one certificate on which the party representatives can certify that they have witnessed the testing and preparation of the machines; one certificate on which the deliverer of the machines can certify that he has delivered the machines to the polling places in good order; one card stating the penalty for tampering with or injuring a voting machine; two seals for sealing a voting machine; one envelope in which the keys to the voting machine can be sealed and delivered to the election officers, said envelope to have printed or written thereon the designation and location of the election district in which the machine is to be used, the number of the machine, the number shown on the protective counter thereof after the machine has been prepared for the election and the number or other designation on such seal as the machine is sealed with; said envelope to have attached to it a detachable receipt for the delivery of the keys of the voting machine to the inspector of election; one envelope in which the keys to the voting machine can be returned by the inspector of election; one card stating the name and telephone address of the custodian on the day of election; two statements of canvass on which the election officers can report the canvass of the votes as shown on the voting machine together with other necessary information relating to the election, said statements of canvass to take the place of all tally-keepers, statements and returns as provided heretofore; three complete sets of ballot labels; two diagrams; five suitable printed instructions to the inspector of election; three notices to inspectors and judges of election to attend the instruction meetings; three certificates that the inspector and judges of an election have attended the instruction meeting, have received the necessary instruction, and are qualified to conduct the election with the machine and they may supply a sufficient number of extra ballots for use in case it shall be impossible to make use of the voting machine in any such precinct or precincts.

The ballot labels shall be printed in black ink on clear white material of such size and arrangement as to suit the construction of the machine: Provided, however, the ballot labels for questions may contain a condensed statement of each question to be voted on, accompanied by the words "Yes" and "No"; the titles of the offices on the ballot labels shall be printed in type as large as the space for such office will reasonably permit, and where more than one candidate can be voted for an office, there shall be printed below the office title the words "vote for any two," or such number as the voter is lawfully entitled to vote for out of the whole number of candidates nominated.

If the election be one at which all the candidates for the office of presidential electors are to be voted for with one device, the county commissioners shall furnish for each machine at least five lists of the names of the presidential electors nominated and at least fifty paper ballots with which the voter can vote thereon for part of the candidates for the office of the presidential electors of one party and part of the candidates therefor of one or more other parties or for persons for that office not nominated by any party. For election districts in which voting machines are to be used no paper ballots shall be furnished for any offices to be voted for on the machine except as hereinafter provided. [L. '15, p. 325, § 2; L. '13, p. 182, § 7.]

§ 4910–8. Instructions to Voters Before Election.—Before each election at which voting machines are to be used the custodian shall place on public exhibition a suitable number of machines for the proper instruction of voters. Such machines shall be so arranged and so equipped with ballot labels as to best illustrate the method of voting at that election, and so far as practical shall contain the names of the offices to be filled, the names of the candidates to be voted for, together with their proper party designations, in case of party elections, and statements of the questions to be voted on. Not more than ten nor less than three days before each election at which voting machines are to be used the board or officials charged with the duty of providing ballots shall publish in newspapers representing at least two political parties a diagram of reduced size showing the face of the voting machine after the official ballot labels are arranged thereon, together with illustrated instructions how to vote and a statement of the locations of such voting machines as shall be on public exhibition; or in lieu of such publication said board or officials may send by mail or otherwise at least three days before the elections a printed copy of same to each registered voter. [L. '15, p. 327, § 3; L. '13, p. 184, § 8.]

§ 4910–9. Instructions to Election Officers.—The election board of each election district in which a voting machine is used shall consist of one inspector, and two judges of election who shall also act as clerks of election. Where more than one machine is to be used in an election district, one additional inspector of election shall be appointed for each additional machine. In any voting precinct or district where the number of registered voters is less than one hundred the election board may consist of one inspector, one judge and one clerk. Before each election at which voting machines are to be used, the custodian shall instruct all inspectors and judges of election that are to serve thereat in the use of the machine and their duties in connection therewith; and he shall give to each inspector

and judge that has received such instructions and is fully qualified to conduct the election with the machine a certificate to that effect. For the purpose of giving such instructions, the custodian shall call such meeting or meetings of the inspectors and judges as shall be necessary. Each inspector and judge shall attend such meeting or meetings and receive such instructions as shall be necessary for the proper conduct of the election with the machine; and, as compensation for the time spent in receiving such instruction each inspector and judge that shall qualify for and serve in the election shall receive the sum of one dollar, to be paid to him at the same time and in the same manner as compensation is paid to him for his services on election day. No inspector or judge of election shall serve in any election at which a voting machine is used unless he shall have received such instruction and is fully qualified to perform his duties in connection with the machine and has received a certificate to that effect from the custodian of the machines: Provided, however, that this shall not prevent the appointment of an inspector, or judge of election to fill a vacancy in an emergency. [L. '15, p. 327, § 4; L. 13, p. 185, § 9.]

§ 4910–10. Testing and Preparing Voting Machines for Election. The county auditor of a county, the clerk of a city, or other district in which voting machines are to be used shall cause same to be properly prepared therefor; and for that purpose shall employ for such time as is necessary one or more competent persons who shall be known as the voting machine custodians, who shall be sworn to perform their duties honestly and faithfully, and for such purpose shall be considered as officers of election, and shall be paid for the time actually spent in the discharge of their duties in the same manner and amount as other election officers are paid. One custodian shall be employed for each twenty machines; if more than one be employed they shall be selected from the political parties entitled to representation on a board of election officers.

In preparing a voting machine for an election, the custodian shall, according to the printed directions furnished by such auditor or clerk, arrange the machine and labels therefor so that it will in every particular meet the requirements for voting and counting at such election, thoroughly test same, and certify thereto to said auditor or clerk. A voting machine may be so arranged for an election that the names of candidates nominated independently may be placed in the same party row with those nominated by a political party entitled to the use of a party voting device, provided such placing does not prevent such independently nominated candidates from being voted for individually, and provided it does not prevent or interfere with the operating of the party voting device of such party.

It may also be so arranged that candidates nominated independently, or by political organizations which have nominated but one candidate, each shall be placed in the same party row and voted for individually; and in that event the party voting device of such party row shall be locked against movement, and the political designations of such candidates shall be printed upon the ballot labels in connection with their names. The auditor or clerk shall direct the arrangement of all ballot labels on such machine in case of nonpartisan primaries and elections in cities of the first class operating under freeholders' charters, the arrangement of the names of candidates upon ballot labels shall conform as nearly as practicable to such charter provisions for the arrangement of names on paper ballots. In all other cases of nonpartisan primaries and elections, and in all cases of party primaries and elections, the arrangement of names of candidates upon the ballot labels shall conform as nearly as practicable to the provisions of law for the arrangement of names on paper ballots.

After being prepared for the primary or election, each machine shall be examined by the auditor or clerk, and if the same be prepared in accordance with law for use thereat, he shall file a certificate thereof in his office. The custodian shall cause all voting machines to be delivered to the polling places in charge of an authorized official who shall certify to their delivery in good order on the certificate furnished therefor. After such delivery the auditor or clerk shall provide proper protection therefor. The custodian shall provide a lantern or proper light for every machine, which light shall be in good order and give sufficient light to enable voters while in the booth to read the ballot labels, and suitable for use by the election officers in examining the counters. [L. '15, p. 328, § 5; L. 13, p. 186, § 10.]

§ 4910–11. Delivery of Election Supplies and Keys.—The auditor or clerk shall cause to be delivered to the inspector or one of the judges of election not later than forty-five minutes before the time for opening the polls the keys for the voting machine, which shall be delivered in a sealed envelope on which shall be written the designation and location of the election district, the number of the voting machine, the number or other designative mark on the seal, and the number registered on the protective counter as reported by the custodian for which a receipt shall be taken on the blank attached thereto, two diagrams, one extra set of ballot labels, one envelope containing seal for sealing the machine after the polls are closed, one envelope for the return of the keys, two statements of canvass, and all other supplies necessary for conducting the election. [L. '15, p. 330, § 6; L. '13, p. 188, § 11.]

§ 4910–12. Opening the Polls.—The election officers of each election district in which a voting machine is to be used shall meet at the polling place thereof at least forty-five minutes before the time set for opening the polls, and before unlocking the machine for voting shall proceed as follows: They shall see that the voting machine is placed where it can be conveniently attended by the election officers and conveniently operated by the voters, and where, unless its construction requires otherwise, the ballot labels thereon can be plainly seen by the election officers and the public when not being voted on. They shall see that the model is placed where each voter can conveniently operate it and receive instructions thereon as to the manner of voting, before entering the machine booth. They shall post one diagram inside the polling-room and one outside, in places where the voters can conveniently examine them. They shall see that the lantern or other means provided for giving light is in such condition that the voting machine is sufficiently lighted to enable voters to readily read the names on the ballot labels. They shall see that the ballot labels are in the proper places on the machine. They shall see if the number or other designating mark on the seal sealing the machine, also the number registered on the protective counter agree with the number written on the envelope containing the keys; and if same do not agree they shall at once notify the custodian and delay unlocking the machine and opening the polls until he shall have re-examined the machine. If such numbers or marks do so agree the election officers shall then proceed to see if the public counter and all the candidate and question counters register "000." If any of such counters shall be found to register some number other than "000," the judge of election shall at once notify the custodian who shall set such counter at "000." After performing their duties as provided in this section, the election officers shall certify thereto in the appropriate places on the statement of canvass as provided thereon. When the polls are declared open, the inspector or judge of election shall break the seal and unlock the machine for voting. [L. '13, p. 188, § 12.]

§ 4910–13. Conducting the Election.—Before each voter enters the voting machine booth each clerk shall insert in his list of voters opposite the voter's name the letter V and the number of his vote. The election officers shall, so far as possible, inform him how to operate the machine and illustrate same upon the model, and call his attention to the diagram. No voter shall remain within the voting machine booth longer than two minutes, and if he shall refuse to leave at the end of that time, he shall be removed by the election officers: Provided, however, that they may grant him a longer time if other voters are not waiting to vote. Whenever a voter who has

the right to vote only on certain offices and certain questions shall enter the [voting] machine [booth], the election officer shall so adjust same that he can vote on such office and questions, but on no others. If any voter shall, in the presence of the election officers, declare that by reason of physical disability he is unable to register or record his vote upon the machine, two election officers of opposite political parties, in case of party primaries or elections, or two officials in case of nonpartisan primaries, or elections, shall enter the voting machine booth with him and indicate and register his vote for such candidates and for or against such questions as he shall designate. If any voter shall, after entering the voting machine booth, ask for information regarding its operation, the election officers shall give him such necessary information. Any election officer who shall deceive any voter in registering or recording his vote under this section, or who shall register or record such vote in any other way than as designated by such voter, or who shall give information to any person as to what candidates or for or against what questions such voters voted, or who shall seek to suggest or persuade any voter to vote for any party, or for any candidate, or for or against any question shall be guilty of a felony and shall be punished by being fined not less than fifty dollars nor more than five hundred dollars or imprisoned in a state prison for not less than six months or more than one year or by both such fine and imprisonment. Except as herein provided for in cases of physically disabled voters, the operation of voting shall be secret. The election officers shall occasionally examine the face of the machine and the ballot labels to determine if same have been injured or tampered with. No voter shall be permitted to enter the machine booth or move the operating lever more than once.

In case any voting machine used in any election district shall, during or before the time the polls are opened, become injured so as to render it inoperative in whole or in part, it shall be the duty of the judge immediately to give notice thereof to the officials charged with the care of the machine, and it shall be the duty of said official, if possible, to repair the machine at once, or to substitute another machine for the injured machine; and, at the close of the polls, if a machine has been so substituted the records of both machines shall be taken and the votes shown on their corresponding counters shall be added together in ascertaining the results of the election. If no other machine can be procured for use at such election, and the injured machine cannot be repaired in time for further use at such election the officers of said election shall permit the use by voters of paper ballots prepared as in cases where paper ballots are used, and which shall be furnished the election officers by the auditor or

clerk, which ballots shall be received by the election officers, and placed by them in a receptacle, to be provided therefor and counted with the votes registered on the voting machine, and the result declared the same as though there had been no accident to the voting machine; any marking of such paper ballots by the voters which shall clearly indicate their intentions shall be deemed a proper and sufficient method of marking such ballots; the paper ballots thus voted shall be preserved and returned to the auditor or clerk with a certificate or statement setting forth how and why the same came to be voted. For this purpose the printed diagram of reduced size referred to in section eight (8) of this act, may be used if such can be procured. [L. '15, p. 331, § 7; L. '13, p. 189, § 13.]

§ 4910–14. Canvassing the Vote.—At the hour for closing the polls, the judge of election shall declare the polls of the election closed and shall not permit any further operation of the machine except provided as follows, namely: That such voters as shall at the hour of closing be within the polling-room and awaiting their turn to vote shall be considered as having begun the act of voting and shall be permitted to cast their votes upon the machine. As soon as such voters have voted, the election officers shall lock and seal the machine, unlock and open the doors of the counter compartment, and canvass the votes registered on the counters therein and the votes recorded on or in the device or devices for voting for persons not nominated and shall make two statements of canvass thereof in the following manner: One election officer shall call the designating number and letter of each candidate's counter in the order given on the statement of canvass, and another election officer shall repeat such number and letter as it is read, and announce the vote registered on such counter, which shall thereupon be entered in ink on each of the statements of canvass. The canvass of each office shall be completed before proceeding to the next. The vote on each question shall be canvassed in the same manner. The votes cast on the irregular ballots and paper ballots shall then be canvassed. All votes for persons or questions, the names or propositions of which do not appear on the ballot labels, must be cast in the proper places on or in the device for irregular ballots, and all votes for persons or questions whose names or propositions do appear upon the ballot labels must be cast on the counters therefor, and any votes not so cast shall not be counted, except in case of the use of paper ballots: Provided, however, that all elections at which presidential electors are voted for with one device, the voter may vote on or in the device for irregular ballots in part for the presidential electors of one party and in part for those of one or more other parties, or in part or in whole for persons not nominated by any party. After completing

and writing down the canvass of the votes cast, the election officers shall verify the same by comparing the figures on the statements of canvass with the figures on the counters in the machine and the names recorded on or in the device for voting for persons not nominated, and shall then certify, in the appropriate place on each of these statements of canvass, as to the number of voters that voted at the election as shown by the poll-list and by the number registered on the public counter; the number registered on the protective counter and the number or other designating marks on the seal with which the machine has been sealed. After completing and certifying to the statements of canvass, the inspector or a judge shall read therefrom in a distinct voice the name of each candidate, the designating number and letter of his counter as stated thereon, and the vote entered for each; also the vote for and against each question. During the canvassing and announcing of the vote, the counter compartment shall remain open, and opportunity shall be given any person lawfully present to examine the counters to determine the correctness of the vote as announced. The counter compartment shall then be locked and all the keys of the machine shall be delivered in a sealed envelope to the officers or board in charge of the election. One copy of the statement of canvass shall be delivered forthwith in a sealed envelope to the office of the county auditor, city comptroller, city clerk, or other governing body, and if the election be one at which state or county offices are voted for, one copy of the returns shall be delivered in a sealed envelope to the county clerk. The word "election" as used in this act shall mean general, special or primary election. The word "city" shall mean city or town. [L. '15, p. 332, § 8; L. '13, p. 191, § 14.]

§ 4910–15. Provisions for Recanvass of Vote.—The registering mechanism of each voting machine used in any election shall remain locked and sealed against operation for a period of thirty days following such election: Provided, however, that whenever it shall appear that there is a discrepancy in the returns of any election district, the county commissioners, council, board or other governing body shall summon the inspector and judges of election thereof, who shall in their presence make a record of the number or other designating mark on the seal, and the number on the protective counter, open the counter compartment, and, without unlocking said machine against voting, shall recanvass the vote cast thereon. Before making such recanvass the county commissioners, council or board, shall give notice in writing to the custodian and to each political party or organization that shall have nominated candidates for the election, of the time and place where said recanvass is to be made; and each of such political parties or organizations may send two representa-

tives to be present at such recanvass. If, upon such recanvass, it should be found that the original canvass of the returns has been correctly made from the machine, and that the discrepancy still remains unaccounted for, the county commissioners, council, board or other governing body, with the assistance of the custodian, shall in the presence of the said inspector and judges of election and the authorized representatives of the several political parties or organizations, unlock the voting and counting mechanism of said machine and proceed to thoroughly examine and test the machine to determine and reveal the true cause or causes, if any, of the discrepancy in the returns from said machine. Before being tested the counter shall be set at "000," after which each counter shall be operated at least one hundred times. After the completion of said examination and test, the custodian shall then and there prepare a statement in writing giving in detail the result thereof, and said statement shall be witnessed by the persons present and shall be filed with the officer or board in charge of the election. [L. '13, p. 193, § 15.]

§ 4910–16. Penalty for Injuring or Tampering With a Voting Machine.—Any person who shall tamper with or injure or attempt to injure any voting machine to be used or being used in an election, or who shall prevent or attempt to prevent the correct operation of such machine, or any unauthorized person who shall make or have in his possession a key to a voting machine to be used or being used in an election, shall be guilty of a felony and shall be punished by a fine of not less than one hundred dollars or more than five hundred dollars or imprisonment in the state prison for not less than one year or more than five years, or both such fine and imprisonment. [L. '13, p. 194, § 16.]

§ 4910–17. Joint Purchase and Use of Machine.—In purchasing the necessary voting machines to be used at general, primary or other elections, as herein provided, the board of county commissioners of the several counties, and the legislative bodies of the incorporated cities, towns or districts therein, may by agreement entered into by said board of county commissioners and the legislative body of any incorporated city, town or district in such county, provide for the joint purchase and subsequent ownership thereof, and for the care, maintenance and use of the same. [L. '13, p. 194, § 17.]

§ 4910–18. Primary and Election Laws Made Applicable to Use of Voting Machines.—All the provisions of the primary and election laws and of any city charter or ordinance not inconsistent with this act shall apply to all elections in districts or precincts where voting machines are used; and any provisions of law or of any city charter or ordinance which conflict with the use of such machines as herein set forth, shall not apply to the districts or precincts in which voting

machines are used; and all acts or parts of acts or city charters or ordinances in conflict with any of the provisions of this act, shall be of no force or effect in election districts or precincts where voting machines are used. [L. '13, p. 194, § 18.]

CHAPTER VIII.

Opening Polls and Voting.

§ 4911. Time for Opening and Closing Polls.—At all elections where national, state, county or municipal officers are elected, the polls shall be opened at 8 o'clock A. M. and closed at 8 o'clock P. M.: Provided, that in precincts outside of incorporated towns and cities the hour of opening of said polls shall be 9 o'clock A. M., the hour of closing 7 o'clock P. M. [L. '90, p. 413, § 35; 1 H. C., § 397; L. '07, p. 581, § 1.]

§ 4912. Proclamation.—The board of judges, before they commence receiving ballots, shall cause it to be proclaimed aloud at the place of voting that the polls are now open. [L. '66, p. 34, § 2; Cd. '81, § 3077; 1 H. C., § 399.]

§ 4913. Auditors to Furnish Poll-books.—It shall be the duty of the auditors of the several counties to furnish the inspectors of each election precinct with two poll-books, at least five days before the time of holding the election. [L. '66, p. 34, § 31; Cd. '81, § 3078; 1 H. C., § 400.]

§ 4914. Voting, Manner of—Ballots, Requisites of.—The voting shall be by ballot. No ballot shall bear any impression, device, color, or thing designated to distinguish such ballot from other legal ballots, or whereby the same may be known or designated. The ballot shall be eight inches in width and of such length as shall be necessary to print the names of all candidates, who shall be duly nominated according to law, and whose nominations shall be duly certified to the clerk of the board of county commissioners, such length to be determined by the said clerk of said board of county commissioners. All of the official ballots, after the same shall be so prepared by the said clerk, shall be of the same size for each and every precinct, and shall not vary one-eighth of an inch in breadth from the above specification. [Cf. L. '66, p. 34, § 4; Cd. '81, § 3079; L. '86, p. 128, § 1; 1 H. C., § 401; L. '95, p. 393, § 11.]

Cited in 17 Wash. 196; 86 Wash. 237.

See notes and references to § 4909.

§ 4915. Poll-list, How Kept—Ballots Rejected to be Preserved.—The name of each elector whose ballot has been thus received shall be immediately entered by each clerk in the column of his poll-list headed "Names of voters," numbering each name in the additional

column as it is taken down, so that it may be seen at any time whether the two lists agree. Whenever the board of election rejects a ballot, it must at the time of such rejection cause to be made thereon, and signed by a majority of the board, an indorsement of such rejection, and of the cause thereof. All rejected ballots must be preserved and returned in the same manner as other ballots. Whenever a question arises in the board as to the legality of a ballot, or any part thereof, and the board decide in favor of the legality, such action, together with a concise statement of the fact that gave rise to the objection, must be indorsed upon the ballot, and signed by a majority of the board. [L. '66, p. 34, § 5; Cd. '81, § 3080; 1 H. C., § 402.]

§ 4916. Challenging Votes, Regulations Concerning.—Any person offering to vote may be challenged as unqualified by the inspector or either of the judges, or by any legal voter, and it shall in all cases be the duty of the inspector and each of the judges to challenge any person offering to vote whom they shall know or suspect not to be duly qualified as an elector. [L. '66, p. 34, § 6; Cd. '81, § 3081; 1 H. C., § 403.]

§ 4917. Duty of Officers Where Person is Challenged—Oath.—When any person offering to vote is challenged, it shall be the duty of the judges to declare to him the qualifications of an elector, and the inspector or one of the judges shall tender him the following oath: "You do swear (or affirm) that you will truly and fully answer all questions as shall be put to you touching your place of residence and qualifications as an elector." The inspector or one of the judges shall then proceed to question the person challenged in relation to his name, place of residence, how long he has resided in the precinct and county, where his last place of residence was, also as to his citizenship and whether a native or naturalized citizen and if the latter, when, where, and in what county or before what officer he was naturalized; whether he can read and speak the English language, and may submit to him for reading extracts of English prose, and all such other questions as shall tend to test his qualifications as to citizenship and the right to vote. [L. '01, p. 288, § 7. Cf. L. '66, p. 34, § 7; Cd. '81, § 3082; 1 H. C., § 404.]

§ 4918. Vote is to be Rejected, When.—If any person shall refuse to take the aforesaid oath, when so tendered, or to answer any and all pertinent questions as to qualifications, his vote shall be rejected; and if the board of judges are satisfied, from answers as aforesaid, that such person is not a legal voter, they shall reject his vote. [L. '66, p. 34, § 8; Cd. '81, § 3083; 1 H. C., § 405.]

§ 4919. Oath of Voter—Evidence of Citizenship.—If such person shall insist that he is entitled to vote, and the board of judges

find no cause to reject his vote under the preliminary examination, and the challenge shall not be withdrawn, he shall not be entitled to vote unless he takes the following oath to be administered by the inspector or one of the judges, viz.: "You do swear (or affirm as the case may be) that you have resided in this state twelve months preceding this election; in this county ninety days; and in this precinct or ward thirty days, and have not voted this day, and that you are otherwise qualified to vote at this election"; and in case the person offering a vote is a naturalized citizen he shall produce evidence of his citizenship. [L. '01, p. 288, § 8. Cf. L. '66, p. 35, § 9; Cd. '81, § 3084; L. '86, p. 128, § 1; 1 H. C., § 406.]

Cited in 3 Wash. 540; 12 Wash. 198, 271, 593.

See Const., Art. VI, §§ 1–4, qualifications of electors.

§ 4920. Person Challenged may Vote, When—Identification.—If any person shall take the oath as tendered to him by the inspector or judges and no evidence is offered to traverse the same, by the officer or party challenging, and shall otherwise comply with the requirements of law regulating the balloting, he shall be admitted to vote; but before the ballot of the voter shall be deposited he shall be required to sign the registration book in the column headed "Identification," provided for that purpose, and on the same line as, and opposite to the original signature of the voter offering to vote, which original signature shall be so concealed as not to be seen by the voter offering to vote; and in case such voter is incapable of writing his name, he shall, at the left-hand side of the column, make a cross or other mark usually employed by such voter for indicating his signature, and some person who is personally known to the inspector and who personally knows the voter, shall sign the registration book in his behalf as identifying witness. If such voter offering to vote shall refuse to take the oath or affirmation so tendered him or to write his signature as required, his vote shall be rejected. [L. '05, p. 65, § 2. Cf. L. '66, p. 36, § 10; Cd. '81, § 3085; 1 H. C., § 407; L. '93, p. 273, § 1.]

§ 4921. Infamous Crime, Challenge on Ground of—Proceedings.—If the vote of any person be challenged, on the ground that he has been convicted of an infamous crime, and shall remain unpardoned or disfranchised by any court of a competent jurisdiction, he shall not be required to answer any questions respecting such alleged conviction, and in the absence of any authenticated record of such fact, it may be competent for two disinterested witnesses, upon oath, to prove the same. [L. '66, p. 36, § 11; Cd. '81, § 3086; 1 H. C., § 408.]

§ 4922. Closing of Polls—Proclamation.—When the polls are closed, proclamation thereof shall be made at the place of voting,

and no votes shall be afterward received. [L. '66, p. 36, § 12; Cd. '81, § 3087; 1 H. C., § 409.]

§ 4923. Surplus Ballots to be Destroyed.—It is hereby made the duty of the judges of election for each election precinct immediately upon the closing of the polls, and before the ballots are counted, to destroy all unused ballots furnished for use at such precinct. [L. '93, § 2, p. 222.]

CHAPTER IX.

Counting Ballots and Declaring Result.

§ 4924. Counting Votes—Ballot-box not to be Removed.—As soon as the polls are closed on the afternoon of the day of election, the judges shall open the ballot-box and commence counting the votes, and in no case shall the box be removed from the room in which any election may be held until all the ballots are counted. [L. '66, p. 37, § 1; Cd. '81, § 3088; 1 H. C., § 410.]

§ 4925. Details as to Counting.—The counting of ballots shall in all cases be public. The ballots shall be taken out carefully, one by one, by the inspector or one of the judges, who shall open them and read aloud the name of each person contained therein, and the office for which every such person is voted for. [L. '66, p. 37, § 1; Cd. '81, § 3089; 1 H. C., § 411.]

§ 4926. Duty of Clerks as to Keeping Tally, etc.—Each clerk shall write down each office to be filled, and the name of each person voted for for such office, and shall keep the number of votes by tallies, as they are read aloud by the inspector or judge. The counting of the votes shall be continued without adjournment until all are counted. [L. '66, p. 38, § 1; Cd. '81, § 3090; 1 H. C., § 412.]

§ 4927. Tickets, When to be Rejected.—If two tickets are found folded together they shall both be rejected, and if more persons are designated on any ticket for any office than are to be elected to such office, such part of the ticket shall not be counted for any of them; but no ticket shall be lost for want of form, or mistake in initials of names, if the board of judges can determine to their satisfaction the person voted for and the office intended. [L. '66, p. 38, § 2; Cd. '81, § 3091; 1 H. C., § 413.]

Cited in 17 Wash. 197; 28 Wash. 672; 86 Wash. 237.

§ 4928. Disposition of.—It shall be the duty of the inspector, or one of the judges, to string the ballots at the time of counting, and after all the ballots have been counted and strung, it shall be the duty of the inspector to place them in a sealed envelope, and write thereon, "Ballots of —— precinct, —— county, state of Wash-

ington, of election held this —— day of ——, 19—," and send said sealed envelope to the auditor of the county where said election is held, who shall keep said sealed envelope containing said ballots unopened for the period of six months, to be used only as evidence in case or cases of contest when called for, at the end of which time it shall be the duty of said county auditor to burn said ballots in presence of two other county officers. [L. '68, p. 19, § 2; Cd. '81, § 3092; 1 H. C., § 414.]

Cited in 56 Wash. 602; 71 Wash. 505.

§ 4929. Certificates—Election Returns—How Made Out, and Contents.—As soon as all the votes are read off and counted, a certificate shall be drawn up on each of the papers, containing the poll-list and tallies, or attached thereto, stating the number of votes each person voted for has received, and designating the office to fill which he was voted for, which number shall be written in words at full length. Each certificate shall be signed by the clerks, the judges, and inspector; one of said certificates, with ballots, poll-lists, and tally paper, oath of inspector, judges, and clerks, shall be sealed up by the inspector and indorsed "Election returns," and be directed or sent by the inspector to the county auditor of the county in which the election is to be held. [L. '66, p. 38, § 3; Cd. '81, § 3093; 1 H. C., § 415.]

See infra, § 8998, returns certified by secretary of state to governor and legislature.

§ 4930. Returns, Delivery of—Other Papers—Disposition of—Non-performance of Judge's Duty.—The said package shall be delivered to the county auditor by one of the judges or clerks of the election in person, or may be sent by registered mail; and when the voting precinct is more than fifteen (15) miles from the county seat the said package shall be forthwith transmitted to the county auditor by registered mail. When sent by mail, it shall be mailed by one of the judges. The other of said certificates, with poll-list and tally papers, oaths of judges, inspector and clerks shall be retained by the inspector and preserved by him at least six months. Tally papers, poll-list or certificate returned from any election shall not be set aside, nor rejected for want of form, nor on account of not being strictly in accordance with the directions of this chapter, if the same be satisfactorily understood: Provided, that if any judge or inspector of election shall neglect or fail to seal and return the ballots, tally-list and poll-books in the manner provided by law, such judge or inspector shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five nor more than fifteen dollars. [L. '03, p. 124, § 1. Cf. L. '66, p. 38, § 4; Cd. '81, § 3094; 1 H. C., § 416.]

§ 4931. Canvass of Votes—Oath to be Taken by Auditor—Misdemeanor.—On the tenth day after the day of each election, or as soon as he shall have received the returns from each precinct of the county, if he receive them within the time, it shall be the duty of the county auditor to notify two county officers (as provided in the next section), to be present at the office of said county auditor on a day named by said county auditor, for the purpose of canvassing the votes cast at election in the different precincts of the county, and it shall be the duty of the superior judge to administer the following oath or affirmation to the county auditor having in his possession the election returns of said county: "I do solemnly swear (or affirm) that the returns purporting to be the election returns of the several precincts in this county have been in no wise altered by additions or erasures, and that they are the same as when I received them; so help me God"; the said oath or affirmation to be in writing, and signed by the county auditor and certified to by the superior judge, and placed on file in said auditor's office, among the papers appertaining to said election. And then the said auditor, with the assistance of two county officers aforesaid, shall proceed to count the votes of said county or precincts, a statement of which shall be drawn up and signed by them. And it shall be deemed a misdemeanor in the county auditor, if he shall neglect or refuse to return the total number of votes as counted, if such votes can be with reasonable certainty ascertained. [Cf. L. '66, p. 39, § 6; L. '68, p. 20, § 1; Cd. '81, § 3095; 1 H. C., § 417.]

Cited in 12 Wash. 423; 39 Wash. 253, 255.

This section is altered to conform to the next succeeding section.

§ 4932. County Board for Canvassing Returns.—The county auditor, chairman of the board of county commissioners and prosecuting attorney shall be the county canvassing board of election returns for all special and general county and state elections in each county. [L. '93, p. 271, § 1.]

Cited in 12 Wash. 423; 39 Wash. 253; 70 Wash. 310, 433.

§ 4933. Vacancy, How Filled.—If for any reason there is a vacancy or vacancies in the canvassing board provided for in this chapter, the remaining member or members of the board shall have the power and it is hereby made his or their duty to choose the county officer or officers to fill such vacancy or vacancies. [L. '93, p. 271, § 2.]

§ 4934. Certificate of Election to be Issued, When.—The person having the highest number of votes given for each office, to be filled by the voters of a single county, or of a precinct, shall be declared duly elected, and the county auditor shall immediately notify him of

his election, and it shall be the duty of said auditor to make out and deliver to any person so notified a certificate of election, upon his making application to the auditor. [Cf. L. '66, p. 39, § 7; L. '67, p. 6, § 2; Cd. '81, § 3096; 1 H. C., § 418.]

Cited in 39 Wash. 254.

§ 4935. Tie Vote, How Decided—Certificate of Election.—If the requisite number of county or precinct officers shall not be elected by reason of two or more persons having an equal and highest number of votes for one and the same office, the county auditor shall give notice to the several persons so having the highest and an equal number of votes to attend at the office of the auditor at the time to be appointed by said auditor, who shall then and there proceed publicly to decide by lot which of the persons so having an equal number of votes shall be declared duly elected and the said auditor shall make out and deliver to the person thus declared duly elected a certificate of his election, as hereinbefore provided. [L. '67, p. 7, § 3; Cd. '81, § 3097; 1 H. C., § 419.]

See infra, § 4940, and references, special election to decide tie vote.

§ 4936. Proceedings When Canvassing Officer a Candidate.—When a county auditor is to be elected, the superior judge shall examine the returns, as soon as they are filed, and issue to the person chosen a certificate of election in the form prescribed in the preceding section. [L. '66, p. 39, § 8; Cd. '81, § 3098; 1 H. C., § 420.]

See supra, §§ 4931–4933.

§ 4937. Abstract of Votes to Secretary of State.—It shall be and is hereby made the duty of the county auditor in each county of this state, immediately after making abstracts of the vote, given in his county at the general or special election, for members of the legislature, county, state or district officers, or members of congress, to transmit by mail a certified copy of said abstract to the secretary of state, at the seat of government. It shall be the duty of the secretary of state to furnish uniform and proper blanks to each and every county auditor in the state, on which said county auditor shall make returns to the secretary's office. The county auditor shall make returns of all persons voted for for state, county and district officers. [Cf. L. '66, p. 40, § 12; Cd. '81, § 3101; 1 H. C., § 423; L. '95, p. 394, § 12.]

§ 4938. Informality not to Deter Issuance of Certificate, When.—No certificate shall be withheld on account of any defeat or informality in the returns of any election, if it can with reasonable certainty be ascertained from such return what office is intended, and who is entitled to such certificate, nor shall any commission be withheld by the governor on account of any defect or informality

of any return made to the office of the secretary of state. [L. '66, p. 41, § 13; Cd. '81, § 3102; 1 H. C., § 424.]

§ 4939. Returns Transmitted by Registered Mail, When.—Whenever returns are required to be transmitted by the county auditor to the secretary of state, it shall be the duty of the county auditor to deliver the same to some postmaster of the county at the postoffice, to be transmitted by registered mail. [L. '66, p. 41, § 14; Cd. '81, § 3103; 1 H. C., § 425.]

§ 4940. Special Election Necessary to Decide Tie Vote, When.—If, at any election to fill any [state] district or legislative office, two or more persons receive the highest and equal number of votes, it shall be declared that there is no choice, and a special election to fill such office shall be ordered by the proper officer. [L. '66, p. 41, § 15; Cd. '81, § 3104; 1 H. C., § 426.]

Cited in 54 Wash. 155; 76 Wash. 315, 316, 329, 333.

See Const., Art. III, § 4, executive officers of state, how chosen when vote equal.

See Const., Art. II, § 15, writs of election to fill vacancies in legislature.

See Const., Art. VI, § 8, election of county and district officers to be biennial.

See supra, § 4935, tie vote decided by lot in case of county or precinct officers.

CHAPTER IX-A.

The Recall.

§ 4940-1. Charges—How Formed.—Whenever any legal voter or committee or organization of legal voters of the state or of any political subdivision thereof shall desire to demand the recall and discharge of any elective public officer of the state or of such political subdivision, as the case may be, under the provisions of sections 33 and 34 of article I of the constitution, he or they shall prepare a typewritten charge, reciting that such officer, naming him and giving the title of his office, has committed an act or acts of malfeasance, or an act or acts of misfeasance while in office, or has violated his oath of office, or has been guilty of any two or more of the acts specified in the constitution as grounds for recall, which charge shall state the act or acts complained of in concise language, without unnecessary repetition, and shall be signed by the person or persons making the same, give their respective postoffice addresses, and be verified under oath that he or they believe the charge or charges to be true. [L. '13, p. 454, § 1.]

Cited in 77 Wash. 580; 80 Wash. 68; 81 Wash. 189.

§ 4940-2. Charges Where Filed.—In case the officer whose recall is to be demanded be a state officer, the person making the charge shall file the same with the secretary of state. In case the officer

whose recall is to be demanded be a county officer, the person or persons making the charge shall file the same with the county auditor. In case the officer whose recall is to be demanded be an officer of an incorporated city or town, the persons making the charge shall file the same with the clerk of said city or town. In case the officer whose recall is to be demanded is an officer of any other political subdivision of the state, the persons making the charge shall file the same with the officer whose duty it is to receive and file petitions for nomination of candidates for the office concerning the incumbent of which the recall is to be demanded. [L. '13, p. 454, § 2.]

§ 4940–3. Ballot Synopsis of Charges.—If the acts complained of in the charge are acts of malfeasance or misfeasance while in office, or a violation of the oath of office, as specified in the constitution, the officer with whom the charge is filed shall formulate a ballot synopsis of such charge of not to exceed two hundred words, which shall set forth the name of the person charged, the title of his office, and a concise statement of the elements of the charge, and shall notify the persons filing the charge of the exact language of such ballot synopsis, and attach a copy thereof to and file the same with the charge, and thereafter such charge shall be designated on all petitions, ballots and other proceedings in relation thereto by such synopsis. [L. '13, p. 455, § 3.]

§ 4940–4. Form of Petition.—Upon being notified of the language of the ballot synopsis of the charge, the persons filing the charge shall cause to be printed on single sheets of white paper of good quality twelve inches in width by fourteen inches in length and with a margin of one and three-fourths inches at the top for binding, blank petitions for the recall and discharge of such officer. Such petition shall be substantially in the following form:

WARNING.

Every person who shall sign this petition with any other than his true name, or who shall knowingly sign more than one of these petitions, or who shall sign this petition when he is not a legal voter, or who shall falsely represent to any registration officer that he is a certain person whose name appears upon the registration books, or who shall make any false statement to any registration officer as to his identity or place of residence, shall be fined, or imprisoned, or both.

PETITION FOR RECALL.

Of (here insert the name of the person whose recall is petitioned for, the office which he holds, and the political division in which the office exists, as "John Doe, sheriff of —— county, Washington.") to

the honorable (here insert the name and title of the officer with whom the charge is filed.).

We, the undersigned citizens of (the state of Washington or the political subdivision in which the recall is invoked, as the case may be) and legal voters of the respective precincts set opposite our respective names, respectfully direct that a special election be called to determine whether or not (here insert the name of the person charged and the office which he holds) be recalled and discharged from his office, for and on account of (his having committed the act or acts of malfeasance or misfeasance while in office or having violated his oath of office, as the case may be), in the following particulars: (here insert the synopsis of the charge); and each of us for himself says: I have personally signed this petition, I am a legal voter of the state of Washington in the precinct, and city (or town), written after my name, and my residence address is correctly stated.

Initials of Registration Officers.	Petitioner's Signatures.	Residence Address, Street and Number, if any.	Precinct Name or Number.	Ward Number, if any.	City or Town.
(Here follow 20 numbered lines divided into columns as below)					
.....	1.....	.....	.....	.....	.....
.....	2.....	.....	.....	.....	.....
.....	3.....	.....	.....	.....	.....
.....	4.....	.....	.....	.....	.....
.....	etc.....	.....	.....	.....	.....

I, the undersigned, hereby certify that I am the officer of the city (town or precinct) of ——, county of ——, state of Washington, having the custody of the registration books containing the signatures, addresses and precincts of the registered legal voters of said city (town or precinct): that the signatures on the foregoing petition were signed in my office; that the initials opposite said signatures respectively, are my initials or the initials of a duly authorized deputy in my office; that before any such signature opposite which initials are written, was signed upon said petition, the person proposing to sign the same was required to identify himself as a duly registered legal voter, or to establish his right to and register as a legal voter in the registration books in my office; that after said petition was signed the signature thereon was carefully compared with the signature of such voter in the registration books and found to apparently have been written by the same hand, and that thereupon the officer making the comparison placed his initials opposite such signature and entered the residence address, precinct, ward

and city (or town) shown upon the registration book opposite said signature; and that when the foregoing petition was taken from my office it contained —— initialed signatures and no more, and that before surrendering said petition I caused the red ink perpendicular line thereon to be drawn through the blank spaces for signatures.

Dated the —— day of —— 19—.

—— ——

Registration officer of the city (town or precinct) of ——.

By —— ——, Deputy.

[L. '15, p. 197, § 1; L. '13, p. 455, § 4.]

§ 4940–6. Size of Petition.—Each recall petition shall at the time of signing, certifying and filing with the officer with whom the charge is filed, as hereinafter in this act provided, consist of not more than five sheets with numbered lines for not more than twenty signatures on each sheet, with the prescribed warning, title and certificate on each sheet, and a full, true and correct copy of the charge against such officer referred to therein, printed on sheets of paper of like size and quality as the petition, and firmly fastened together. [L. '15, p. 200, § 3; L. '13, p. 457, § 6.]

§ 4940–7. Petitions Checked—Omission.—Upon the recall petitions being prepared as hereinabove provided, and from time to time thereafter, the persons in charge of such recall may deposit such number of blank petitions in the proper form hereinabove in this act prescribed, as they may deem expedient, with the registration officer of any city, town or precinct and take his receipt therefor, and it shall be the duty of each such registration officer with whom blank petitions are deposited, to, at all times display in a conspicuous place or places in his office and in each branch office under his charge, signs or placards bearing the words "Recall petitions may be signed here," which words shall be in letters of sufficient size to be easily read, and it shall be the duty of each registration officer to, at all times when his office is open for the registration of voters, permit any duly registered voter whose registration appears upon the books of such office, and who has not theretofore signed the particular recall petition which he desires to sign, to sign any such petition deposited in his office, and whenever and so long as any recall petition shall be on file in any registration office for signing, such office shall be kept open on each Friday and Saturday from 6 P. M. to 9 P. M. in addition to the regular office hours; Provided, that he shall not permit more than twenty registered voters to sign on any one sheet of such petition and shall require the voters who sign the same, to sign upon the blank line for that purpose. Whenever any person shall apply to the registration officer for permission to sign

any recall petition, the registration officer, or his deputy, to whom the application is made, shall if such person is not registered, require such person to register in the manner provided by law before permitting them to sign any recall petition. If such person states that he is a registered voter, the officer shall ask such questions concerning his place of birth, age, occupation and place of residence as will identify the person with the name upon the registration books, and if the answers to such questions correspond with the information upon the registration books, shall ascertain whether the registration books show that the registered voter has previously signed such petition, and if it appears that he has not previously signed, the officer shall permit such person to sign such petition with pen and ink. In either case the officer shall compare the signature on the petition with the signature on the registration books, and if such signature shall appear to the officer to have been written by the same hand, the officer shall enter upon the petition opposite the signature, the residence address, the precinct name or number, the ward number, if any, and the name of the city (or town) of such voter as shown by the registration books, and shall write the initials of his given name or names and of his surname, with pen and ink, on the petition opposite and at the left of the signature and shall write on the registration books in the column headed "Remarks" the words "Recall of (name of officer charged)." If the signature upon the petition appears to the officer to have been written by a different hand than that on the registration books the officer shall refuse to initial and certify the signature. Whenever the persons in charge of any recall petition shall demand the return of any petition deposited with any registration officer, as hereinabove provided, and shall return the receipt therefor, the officer shall cause a red ink perpendicular line to be drawn through the blank spaces for signatures on any such petition and shall fill out the certificate and certify the number of initialed signatures on each sheet of such petition and date and sign such certificate. [L. '15, p. 200, § 4; L. '13, p. 457, § 7.]

§ 4940–8. Names Necessary — Contributions — Expenditures. — When a person, committee, or organization demanding the recall of any public officer shall have secured upon such recall petition the signatures of a number of legal voters equal to twenty-five per cent of the total number of votes cast for all candidates for the office to which the officer whose recall is demanded was elected at the preceding election, in case such officer be a state officer, an officer of a city of the first class, a member of a school board in a city of the first class, or a county officer of a county of the first, second or third class; or the signatures of a number of legal voters equal to thirty-five per cent of the total number of votes cast for all candidates for the office to which the officer whose recall is demanded was elected

at the preceding election, if the officer whose recall is demanded is an officer of any other political subdivision, city, town, township, precinct or school district than those hereinbefore mentioned, or is a state senator or representative, he or they may submit said petition to the officer with whom the charge is filed for filing in his office. At the time of submitting such petition the person, committee, or organization submitting the same shall file with the officer to whom such petition is submitted a full, true and detailed statement giving the names and postoffice addresses of all persons, corporations and organizations who have contributed any moneys to aid in the preparation of the charge and in the preparation and filing of the petition, with the amount contributed by each, and a full, true and detailed statement of all expenditures, giving the amounts expended, the purpose for which expended and the names and postoffice addresses of the persons and corporations to whom paid, which statement shall be verified by the affidavit of the person or some member of the committee or organization making the charge, and until such statement is filed the officer shall refuse to receive such petition. [L. '15, p. 202, § 5; L. '13, p. 458, § 8.]

Cited in 81 Wash. 187, 189.

§ 4940–9. Canvassing Petitions—Election.—Upon the filing of such petition in his office, the officer with whom the charge was filed shall stamp on each of said petitions the date of filing, and shall notify the persons filing the same and the officer whose recall is demanded by said petition, of the date when said petition will be canvassed, which date shall be not less than five nor more than ten days from the date of filing, and shall, at the time set for said canvass, in the presence of at least one person representing the petition and in the presence of the officer charged or someone representing him, if either should desire to be present, detach the sheets containing the signatures and certificates from the copies of the charge and cause them to be firmly attached to one or more copies of the charge in such volumes as will be most convenient for canvassing and filing, and shall proceed to canvass the petitions and to count the names of duly initialed and certified legal voters thereon. If at the conclusion of the canvass and count it shall be found that such petition bears the requisite number of signatures of certified legal voters, the officer with whom the petition is filed shall fix a date not less than ten nor more than fifteen days after the conclusion of the canvass, for calling a special election to determine whether or not the officer charged shall be recalled and discharged from his office, and shall on said date call such special election, to be held not less than thirty or more than forty days from the date of the call, and give notice thereof in the manner required by law for calling special elections in the state

or in the political subdivision, as the case may be. But if it be found that the petition does not contain the requisite number of signatures of certified legal voters, the officer shall so notify the person filing the petition, and, at the expiration of thirty days from the conclusion of the count, shall unless prevented therefrom by the injunction or mandate of the courts, as hereinafter provided, destroy the petitions. [L. '15, p. 203, § 6; L. '13, p. 459, § 9.]

§ 4940–10. Illegal Signatures.—The officer making the canvass as hereinabove provided shall keep a record of all names appearing on said petition which are not certified to be legal voters of the state or of the political subdivision, as the case may be, and shall report the same to the prosecuting attorneys of the respective counties where such names appear to have been signed, to the end that prosecutions may be had for violations of this act. [L. '15, p. 204, § 7; L. 13, p. 460, § 10.]

§ 4940–11. Conduct of Elections—Form of Ballot.—The special election to be called as hereinabove provided shall be carried on and conducted in the same manner as general state, county, municipal or other political subdivision elections, as the case may be, are conducted and carried on, and it shall be the duty of all officers of the state, county, municipality or other political subdivisions to provide for the holding of such election and the necessary places and officers, ballot-boxes, ballots, poll-books and returns as are required by law for holding general elections. The ballots at any such election shall contain a full, true and correct copy of the ballot synopsis of the charge hereinabove provided for, and shall be so arranged that any voter can, by making one cross (×) express his desire to have the officer charged recalled or discharged from his office, or retained therein. Substantially the following form shall be a compliance with the provisions of this section:

RECALL BALLOT.

(Here insert the ballot synopsis of the charge.)

FOR the recall of (here insert the name of the officer).....☐
AGAINST the recall of (here insert the name of the officer)....☐
[L. '13, p. 460, § 11.]

§ 4940–12. Returns—Canvass.—The election officers in the various precincts shall count the ballots and make returns thereon to the officer of the county, municipality or other political subdivision, as required by law for making returns of general elections: Provided, that in case the officer whose recall is demanded is the officer to whom, under the law, returns of elections are made, such returns shall be made to the officer with whom the charge is filed, and who called the special election; and in case of an election for the recall

of a state officer, the county canvassing boards of the various counties shall canvass and return the result of such election to the officer calling such special election. [L. '13, p. 461, § 12.]

§ 4940–13. Results Published—Office Declared Vacant.—Upon the completion of the returns of any such election to the proper officer, he shall cause to be published in the manner required by law for the publication of the results of general elections, the result of such election, and a majority of all votes cast at such recall election be for the recall of the officer charged, such officer shall thereupon be recalled and discharged from his office, and the office shall thereupon become and be vacant; and such vacancy shall be filled in the manner provided by the constitution and the laws of the state of Washington, or the charter and ordinances of the municipality, as the case may be. [L. '13, p. 461, § 13.]

§ 4940–14. Mandamus—Procedure.—The superior court of the county constituting or containing any political subdivision of the state in which the recall is invoked as in this act provided shall have original jurisdiction to compel the performance of any act required of any officer of such political subdivision under the provisions of this act, in case such officer refuse to perform the same, or to prevent the performance by any such officer of any act in relation to the recall not in compliance with the provisions of this act; and the supreme court shall have like original jurisdiction in relation to state officers and revisory jurisdiction over the decisions of the superior courts: Provided, that any proceeding to compel or prevent the performance of any such act shall be begun within ten days from the time the cause of complaint arises, and shall be considered an emergency matter of public concern and take precedence over other cases, and be speedily heard and determined; and any proceeding to review a decision of any superior court shall be begun and perfected within fifteen days after such decision, and shall be by the supreme court considered an emergency matter of public concern, and speedily heard and determined. [L. '13, p. 461, § 14.]

§ 4940–15. False Signing.—Every person who shall sign any recall petition provided for in this act with any other than his true name, shall be guilty of a felony; and every person who shall knowingly sign more than one of such petitions for the recall of any officer, or who shall falsely represent to any registration officer that he is a certain person whose name appears upon the registration books, or who shall make to such registration officer any false statement as to his identity or place of residence, and every registration officer who shall knowingly permit any person other than a duly registered voter to sign any such petition, and each person who shall knowingly initial any signature which he does not believe to be the

signature of a legal voter, or who shall knowingly make any false report or certificate on any such petition, shall be guilty of a gross misdemeanor. [L. '15, p. 204, § 8; L. '13, p. 462, § 15.]

§ 4940–16. Corrupt Practices — Professional Recallers. — Every officer who shall willfully violate any of the provisions of this act, or who shall willfully fail to comply with the provisions of this act; and every person who shall for any consideration, compensation, gratuity, reward or thing of value or promise thereof, sign or decline to sign any recall petition; or who shall advertise in any newspaper, magazine or other periodical publication, or in any book, pamphlet, circular or letter, or by means of any sign, signboard, bill, poster, handbill, or card or in any manner whatsoever, that he will either for or without compensation or consideration, solicit, procure or obtain signatures upon, or influence or induce, or attempt to influence or induce, persons to sign or not to sign any recall petition or vote for or against any recall; or who shall for pay or any consideration, compensation, gratuity, reward or thing of value or promise thereof, solicit, procure or obtain, or attempt to procure or obtain signatures upon any recall petition; or who shall pay or offer or promise to pay, or give or offer or promise to give any consideration, compensation, gratuity, reward or thing of value to any person to induce him to sign, or not to sign, or to solicit, procure or attempt to procure or obtain signatures upon, any recall petition, or to vote for or against any recall; or who shall by any other corrupt means or practice or by threats or intimidation interfere with or attempt to interfere with the right of any legal voter to sign or not to sign any recall petition or to vote for or against any recall, or who shall receive, accept, handle, distribute, pay out, or give away either directly or indirectly any money, consideration, compensation, gratuity, reward or thing of value, contributed by or received from any person, firm, association or corporation having his, their or its residence or principal office outside of the state of Washington, or corporation the majority of whose stockholders are nonresidents of the state of Washington, for any service, work, or assistance of any kind, done or rendered for the purpose of aiding in procuring signatures upon any recall petition or the adoption or rejection of any recall, or who shall within one hundred feet of the entrance to any registration office, solicit or attempt to induce any person to sign or not to sign any recall petition, shall be guilty of a gross misdemeanor. [L. '15, p. 205, § 9; L. '13, p. 462, § 16.]

Cited in 79 Wash. 16.

§ 4940–17. Time for Taking Effect. — This act shall take effect January 1, 1916. [L. '15, p. 206, § 10.]

CHAPTER X.

Contesting Elections.

§ 4941. Causes for.—Any elector of the proper county may contest the right of any person declared duly elected to an office to be exercised in and for such county; and also any elector of a precinct may contest the right of any person declared duly elected to any office in and for such precinct, for any of the following causes:—

1. For malconduct on the part of the board of judges or any member thereof;

2. When the person whose right to office is contested was not, at the time of election, eligible to such office;

3. When the person whose right is contested shall have been, previous to such election, convicted of an infamous crime, by any court of competent jurisdiction, such conviction not having been reversed, nor such person relieved from the legal infamy of such conviction;

4. When the person whose right is contested has given to any elector or inspector, judge or clerk of the election, any bribe or reward, or shall have offered any such bribe or reward for the purpose of procuring his election;

5. On account of illegal votes. [L. '66, p. 42, § 1; Cd. '81, § 3105; 1 H. C., § 427.]

Cited in 14 Wash. 605; 56 Wash. 596; 71 Wash. 506; 81 Wash. 189; 86 Wash. 233.

See infra, § 8906, evidence for legislative contest.
See infra, § 7590, in cities of first class.
See infra, § 7729, in cities of fourth class.

§ 4942. Malconduct of Judges, When Sufficient to Annul Election. No irregularity or improper conduct in the proceedings of the board of judges, or any one of them, shall be construed to amount to such malconduct as to annul or set aside any election, unless the irregularity or improper conduct shall have been such as to procure the person whose right to the office may be contested to be declared duly elected when he had not received the highest number of legal votes. [L. '66, p. 43, § 2; Cd. '81, § 3106; 1 H. C., § 428.]

Cited in 70 Wash. 608.

§ 4943. County Election to be Annulled, When.—When any election held for an office exercised in and for a county is contested on account of any malconduct on the part of the board of judges of any precinct election, or any member thereof, the election shall not be annulled and set aside upon any proof thereof, unless the rejection of the vote of such precinct or precincts shall change the result as to such office in the remaining vote of the county. [L. '66, p. 43, § 3; Cd. '81, § 3107; 1 H. C., § 429.]

§ 4944. Election may be Set Aside on Account of Illegal Votes, When.—Nothing in the fifth ground of contest, specified in section 4941, shall be so construed as to authorize an election to be set aside on account of illegal votes, unless it shall appear that an amount of illegal votes has been given to the person whose right to the office is contested, which, if taken from him, would reduce the number of his legal votes below the number of votes given to some other person for the same office, after deducting therefrom the illegal votes which may be shown to have been given to such other person. [L. '66, p. 43, § 4; Cd. '81, § 3108; 1 H. C., § 430.]

§ 4945. Who may Contest.—No person shall be competent to contest an election unless he is a qualified elector of the district, county, or precinct, as the case may be, in which the office is to be exercised. [L. '66, p. 43, § 5; Cd. '81, § 3109; 1 H. C., § 431.]

Cited in 61 Wash. 390.

§ 4946. Statement of Contestant to Contain What.—When any such elector shall choose to contest the right of any person declared duly elected to such office, he shall, within ten days after such person shall have been declared elected to such office, file with the clerk of the superior court of the county a written statement setting forth specifically,—

1. The name of the party contesting such election, and that he is a qualified elector of the district, county, or precinct, as the case may be, in which such election was held;

2. The name of the person whose right to the office is contested;

3. The office;

4. The particular cause or causes of such contest, which statement shall be verified by the affidavit of the contesting party that the matters and things therein contained are true, as he verily believes. [L. '66, p. 43, § 6; Cd. '81, § 3110; 1 H. C., § 432.]

Cited in 39 Wash. 254; 56 Wash. 596.

§ 4947. Allegations of Illegal Voting, Sufficiency of—Testimony. When the reception of illegal votes is alleged as a cause of contest, it shall be sufficient to state generally that illegal votes were cast, which, if given to the person whose election is contested in the specified precinct or precincts, will, if taken from him, reduce the number of his legal votes below the number of legal votes given to some other person for the same office; but no testimony shall be received of any illegal votes unless the party contesting such election shall deliver to the opposite party, at least three days before such trial, a written list of the number of illegal votes and by whom given, which he intends to prove on such trial, and no testimony shall be received of any illegal votes, except such as are specified in such list. [L. '66, p. 44, § 7; Cd. '81, § 3111; 1 H. C., § 433.]

§ 4948. **Statement of Cause not to be Rejected for Want of Form.** No statement of the cause of contest shall be rejected, nor the proceedings thereon dismissed by any court before which such contest may be brought for trial, for want of form, if the particular cause or causes of contest shall be alleged with such certainty as will sufficiently advise the defendant of the particular proceedings or cause for which such election is contested. [L. '66, p. 44, § 8; Cd. '81, § 3112; 1 H. C., § 434.]

Cited in 74 Wash. 75.

§ 4949. **Trial of Contest.**—Upon such statement being filed, it shall be the duty of the clerk to inform the judge of the superior court, who may give notice, and order a session of said court to be held at the usual place of holding said court, on some day to be named by him, not less than ten nor more than twenty days from the date of such notice, to hear and determine such contested election: Provided, if no session be called for the purpose, such contest shall be determined at the first regular session of said court after such statement is filed. [L. '66, p. 44, § 9; Cd. '81, § 3113; 1 H. C., § 435.]

Cited in 56 Wash. 596, 599, 600, 602.

§ 4950. **Citation to Issue.**—The clerk of said court shall also at the time issue a citation for the person whose right to the office is contested, to appear at the time and place specified in said notice, which citation shall be delivered to the sheriff or constable, and be served upon the party in person; or if he cannot be found, by leaving a copy thereof at the house where he last resided. [L. '66, p. 45, § 10; Cd. '81, § 3114; 1 H. C., § 436.]

Cited in 56 Wash. 596.

§ 4951. **Witnesses may be Summoned and Compelled to Attend.**—The said clerk shall issue subpoenas for witnesses in such contested election at the request of either party, which shall be served by the sheriff or constable, as other subpoenas, and the superior court shall have full power to issue attachments to compel the attendance of witnesses who shall have been duly subpoenaed to attend if they fail to do so. [L. '66, p. 45, § 11; Cd. '81, § 3115; 1 H. C., § 437.]

§ 4952. **Hearing of Contest—Judgment.**—Said court shall meet at the time and place designated to determine such contested election by the rules of law and evidence governing the determination of questions of law and fact, so far as the same may be applicable, and may dismiss the proceedings if the statement of the cause or causes of contest is insufficient, or for want of prosecution. After hearing the proofs and allegations of the parties, the court shall pronounce judgment in the premises, either confirming or annulling

and setting aside such election, according to the law and right of the case. [L. '66, p. 45, § 12; Cd. '81, § 3116; 1 H. C., § 438.]

Cited in 74 Wash. 76.

§ 4953. Other Person Than One Returned may be Declared Elected.—If in any such case it shall appear that another person than the one returned has the highest number of legal votes, said court shall declare such person duly elected. [L. '66, p. 45, § 13; Cd. '81, § 3117; 1 H. C., § 439.]

§ 4954. Costs, How Awarded Where Election Confirmed.—If the proceedings are dismissed for insufficiency, want of prosecution, or the election is by the court confirmed, judgment shall be rendered against the party contesting such election for costs, in favor of the party whose election was contested. [L. '66, p. 45, § 15; Cd. '81, § 3119; 1 H. C., § 440.]

§ 4955. Costs, How Awarded Where Election Annulled.—If such election is annulled and set aside, judgment for costs shall be rendered against the party whose election was contested, in favor of the party contesting the same. [L. '66, p. 45, § 16; Cd. '81, § 3120; 1 H. C., § 441.]

§ 4956. Appeal.—Either party, feeling himself aggrieved by the judgment of said court, may appeal therefrom to the supreme court, as in other cases of appeal thereto. [L. '66, p. 46, § 18; Cd. '81, § 3122; 1 H. C., § 442.]

Cited in 62 Wash. 169; 71 Wash. 505, 506; 82 Wash. 136.

§ 4957. Certificate of Election Becomes Void, When.—Whenever an election shall be annulled and set aside by the judgment of the superior court, when no appeal has been taken therefrom within ten days, such certificate or commission, if any have been issued, shall be thereby rendered void. [L. '66, p. 46, § 19; Cd. '81, § 3123; 1 H. C., § 443.]

Cited in 56 Wash. 596; 62 Wash. 169; 71 Wash. 506; 74 Wash. 75; 82 Wash. 136.

CHAPTER XI.

Offenses Against the Suffrage.

§ 4958. Fraudulent Voting.—If any person shall vote, or attempt to vote more than once at any election, or shall knowingly hand in two or more tickets together, or, having voted in one township, precinct, ward, or county, shall afterward, on the same day, vote, or attempt to vote, in another township, precinct, ward, or county, such person shall be guilty of a gross misdemeanor and shall be incapable of voting at any election or holding any office for two years

thereafter. [L. '11, p. 394, § 1. Cf. L. '54, p. 93, § 95; Cd. '81, § 903; 2 H. P. C., § 120.]

Cited in 67 Wash. 620.

See, also, infra, index, "Elections—crimes."

§ 4959. Disqualified Persons Voting.—If any person, knowing that he does not possess the legal qualifications of a voter, at any election authorized by law to be held in this state for any office whatever, shall vote at such election, such person shall be guilty of a felony. [L. '11, p. 394, § 1.]

§ 4960. Collusion of Election Officers.—If any inspector or judge of any such election shall knowingly permit any elector to cast a second vote at any such election, or shall knowingly permit any person not a qualified elector to vote at any such election, such inspector or judge of election shall be guilty of a felony and be incapable of holding any office in this state for five years thereafter. [L. '11, p. 394, § 1.]

§ 4961. Officers Attempting to Influence Voter.—If any inspector, judge, or clerk of an election shall attempt to induce, by persuasion, menace, or reward, or promise thereof, any elector to vote for any person, such inspector, judge, or clerk shall be guilty of a gross misdemeanor. [L. '11, p. 394, § 1.]

§ 4962. Tampering With Ballot by Officer.—If any judge, inspector, clerk, or any other officer of an election shall open or mark, by folding or otherwise, any ticket presented by such elector at such election, or attempt to find out the names thereon, or suffer the same to be done by any other person, before such ticket is deposited in the ballot-box, such judge, inspector, or clerk shall be guilty of a gross misdemeanor. [L. '11, p. 394, § 1.]

§ 4963. Intimidating or Bribing Voter.—If any person shall use menace, force, threat or corrupt means at or previous to any election held pursuant to the laws of the state toward any elector to hinder or deter such elector from voting at said election, or shall directly or indirectly offer any bribe or reward of any kind to induce any elector to vote for or against any person, or proposition, or shall authorize any person so to do, such person shall be guilty of a felony. [L. '11, p. 394, § 1; L. '01, p. 298, § 1. Cf. L. '54, p. 93, § 97; L. '73, p. 205, § 106; Cd. '81, § 909; 2 H. P. C., § 125.]

§ 4964. Improper Influence or False Assertion, etc.—No person shall in any way, directly or indirectly, by menace or other corrupt means or device [directly or indirectly], attempt to influence any person in giving or refusing to give his vote in any such election, or to deter or dissuade any person from giving his vote therein, or to disturb, hinder, persuade, threaten, or intimidate any person from

giving his vote therein, nor shall any person at any such election, knowingly and willfully, make any false assertion or propagate any false report concerning any person who shall be a candidate thereat, which shall have a tendency to prevent his election, or with a view thereto, and if any person shall be guilty of any act forbidden or declared to be unlawful by this section, he shall be deemed and taken to be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine and imprisonment, or both, at the discretion of the court before which such conviction shall be had: Provided, that in no case shall such fine exceed the sum of two hundred and fifty dollars, or such imprisonment the term of six months. [Cd. '81, § 3140; 2 H. P. C., § 126.]

Cited in 26 Wash. 663.

§ 4965. Fraudulent Attempt to Influence Voter.—If any person shall fraudulently cause, or attempt to cause, any elector, at any election [held] pursuant to law in this state, to vote for a person different from the one he intended to vote for, such person so offending shall be fined not more than one hundred nor less than ten dollars. [L. '54, p. 92, § 92; Cd. '81, § 902; 2 H. P. C., § 127.]

§ 4966. Inducing Certain Indians to Vote.—If any person shall induce, or attempt to induce, any Indian to vote or offer his vote at any such election, such person so offending, upon conviction thereof, shall be fined in any sum not exceeding five hundred dollars, to which may be added imprisonment in the county jail not to exceed three months: Provided, that this section shall not be so construed as to include Indians who are citizens and entitled to vote under the amendments to the constitution of the United States and the laws of congress. [Cd. '81, § 910; 2 H. P. C., § 129.]

§ 4967. Nonfeasance or Malfeasance of Election Officers.—Every person charged with the performance of any duty under the provisions of any law of this state relating to elections, or to any September primary or any other primary election held pursuant to law or the provisions of any charter or ordinance of any town or city of this state, who willfully neglects or refuses to perform such duty, or who, in the performance of such duty, or in his official capacity, knowingly or fraudulently violates any of the provisions of law relating to such duty, shall be guilty of a felony. [L. '11, p. 394, § 1. Cf. L. '77, p. 205, § 2; Cd. '81, § 912; 2 H. P. C., § 130.]

Cited in 69 Wash. 174, 175.

See supra, §§ 4885, 4887, violating primary election law.

§ 4968. Sale of Liquor on Election Day.—Any person who shall barter, sell, give away, or in any manner dispose of any intoxicating liquors, on the day of any general or special election of state,

county, or municipal officers within the state, district, county, or corporation in which said election is held, and before the polls have closed, shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than two hundred dollars, or by imprisonment in the county jail not less than ten nor more than thirty days, or both, in the discretion of the court. [Cd. '81, §§ 907, 908; L. '91, p. 124, § 18; 2 H. P. C., § 131.]

§ 4969. Bribery of Voter by Candidate.—If any candidate for office, in any election as hereafter mentioned, under the laws of this state, or any other person, shall, directly or indirectly, offer, promise, procure, confer, or give any money, property, thing in action, victuals, drink, preferment, or other consideration or valuable thing, by way of fee, reward, gift, or gratuity, for giving or refusing to give any vote in any election of any public officer, state, county, or municipal, whatever, or any person who shall carry voters to any polling place, by wagon, steamboat, or otherwise, for the purpose of influencing their votes, such person shall be deemed and taken to be guilty of a misdemeanor, and on conviction thereof be punished by fine or imprisonment, or both, at the discretion of the court, said fine not to exceed one thousand dollars, nor such imprisonment to exceed six months; and further, such person shall, on such conviction, and as part of the judgment of the court, be deprived of the right of suffrage, and such candidate for office be disqualified to hold any office to which he was elected at such election; and further, if any person shall directly or indirectly ask for, accept, receive, or take any such bribe, or the promise thereof, by giving or refusing to give his vote in any such election, he shall be deemed guilty of a misdemeanor, and punished with the like penalties as hereinbefore prescribed. [Cd. '81, § 3148; 1 H. C., § 444.]

See supra, § 4963, bribery of voter, penalty.

§ 4970. Unlawful Printing or Distribution of Official Ballots.—Any printer, business manager or publisher employed by any officer authorized by the laws of this state to procure the printing of any official ballot or any person engaged in printing the same who shall appropriate to himself or give or deliver or knowingly permit to be taken any of said ballots by any other person than such officer authorized by law to receive the same, or shall willfully print or cause to be printed any official ballot in any other form than that prescribed by law or as directed by the officer so authorized to procure the said printing, or with any other names thereon or with the names spelled otherwise than as directed by such officer, or the names or printing thereon arranged in any other way than that authorized and directed by law, shall be guilty of a misdemeanor, and upon conviction thereof shall be sentenced to pay a fine not

exceeding one thousand dollars, nor less than five hundred dollars, or imprisonment in the county jail for a term not exceeding one year nor less than six months, or both at the discretion of the court. [L. '93, p. 274, § 1.]

§ 4971. Unlawful Possession or Counterfeiting of Official Ballots. Any person other than the officer charged by law with the care of ballots, or a person intrusted by any such officer with the care of the same for the purposes required by law, who shall have in his possession outside of the voting-room any official ballot, or any person who shall make or have in his possession any counterfeit of any official ballot, shall be guilty of a misdemeanor, and upon conviction thereof shall be sentenced to pay a fine of not exceeding one thousand dollars nor less than five hundred dollars, or to undergo imprisonment in the county jail for a term not less than six months or more than one year, or both at the discretion of the court. [L. '93, p. 274, § 2.]

Cited in 77 Wash. 651.

See supra, § 4893, ballots, how prepared and printed.

CHAPTER XII.

Initiative and Referendum.

§ 4971–1. Proposals—Name and Address of Submitters.—It shall be the duty of the attorney general whenever requested so to do by any legal voter or committee or organization of legal voters of the state who shall desire to propose any measure to be submitted to the legislature or to the people by initiative petition, to advise the proponents of such measure as to its form and phraseology, but nothing herein contained shall be construed as requiring the proponents of such measure to consult the attorney general before filing any such measure with the secretary of state. Whenever any legal voter or committee or organization of legal voters of the state shall desire to propose any measure to be submitted to the legislature, or to the people upon initiative petition or shall desire to order by petition the referendum of any act, bill or law, or any part thereof, passed by the legislature, he or they shall file in the office of the secretary of state five printed or typewritten copies of the proposed initiative measure or of the act or part thereof on which a referendum is desired, accompanied by the name and postoffice address of the person, committee, or organization proposing the same, and the affidavit of such person or the affidavit of some member of such committee or organization, that such person is, or the members of such committee or organization are, legal voters. Measures to be submitted upon initiative petition shall be filed within ten months prior to the election or the session of the legislature at which they

are to be submitted. The secretary of state shall give to each such measure a serial number, using a separate series for initiative and referendum measures, respectively, and forthwith transmit to the attorney general a copy of such measure bearing its serial number, and thereafter such measure shall be known and designated on all petitions, ballots and proceedings as "Initiative Measure No. ——," or "Referendum Measure No. ——," as the case may be. [L. '15, p. 186, § 1; L. '13, p. 418, § 1.]

Cited in 77 Wash. 653; 81 Wash. 628.

§ 4971–2. Form of Ballot Title.—Within ten days after the receipt of any such measure the attorney general shall formulate therefor and transmit to the secretary of state a ballot title of not to exceed one hundred words, bearing the serial number of such measure, which ballot title may be distinct from the legislative title of such measure, and shall express, and give a true and impartial statement of the purpose of such measure, and shall not be intentionally an argument, or likely to create prejudice, either for or against the measure. Such ballot title formulated by the attorney general shall be the ballot title of such measure unless changed on appeal as hereinafter provided. [L. '13, p. 418, § 2.]

Cited in 77 Wash. 653.

§ 4971–3. Appeal—Court to Fix Title.—Upon the filing of such ballot title in his office, the secretary of state shall forthwith notify the persons proposing the measure by telegraph and by mail of the exact language thereof. In case such persons are dissatisfied with said ballot title they may at any time within ten days from the filing thereof in the office of the secretary of state appeal from the decision of the attorney general to the superior court of Thurston county by petition setting forth the measure, the title formulated by the attorney general and their objections thereto, and praying for amendment thereof. A copy of said petition, together with a notice that an appeal has been taken shall be served upon the secretary of state and upon the attorney general. Upon the filing of such petition on appeal the court shall forthwith, or at such time to which the hearing may be adjourned by consent of the appellants, examine the proposed measure, the title prepared by the attorney general and the objections thereto and may hear argument thereon, and shall as soon as possible render its decision and certify to and file with the secretary of state such ballot title as it shall determine will meet the requirements of this act. The decision of the superior court shall be final, and the title so certified shall be the established ballot title. Such appeal shall be heard without costs to either party. [L. '13, p. 419, § 3.]

§ 4971–4. Title Mailed to Proposers.—When the ballot title shall have been finally established, the secretary of state shall file the in-

strument establishing it with the proposed measure and transmit a copy thereof by mail to the persons proposing the measure. Thereafter such ballot title shall be the title of the measure in all petitions, ballots and other proceedings, if any, in relation thereto. Upon the ballot title being established, the persons proposing the measure may prepare and cause to be printed upon single sheets of white paper of good quality twelve inches in width and fourteen inches in length, with a margin of one and three-quarters inches at the top for binding, blank petitions for proposing measures for submission to the legislature or to the people, or for ordering legislative enactments to be referred to the people, as the case may be. [L. '13, p. 419, § 4.]

§ 4971–5. Petitions to Legislature—Form.—Petitions for proposing measures for submission to the legislature at its next regular session, to be filed with the secretary of state not less than ten days before such regular session, shall be substantially in the following form:

WARNING.

Every person who shall sign this petition with any other than his true name, or who shall knowingly sign more than one of these petitions, or who shall sign this petition when he is not a legal voter, or who shall falsely represent to any registration officer that he is a certain person whose name appears upon the registration books, or who shall make any false statement, to a registration officer as to his identity or place of residence, shall be punished by fine or imprisonment or both.

INITIATIVE PETITION FOR SUBMISSION TO THE LEGISLATURE:

To the Honorable ——, Secretary of State of the State of Washington:

We, the undersigned citizens ot the state of Washington and duly registered legal voters of the respective precincts set opposite our names respectfully direct that this petition and that certain proposed measure known as Initiative Measure No. ——, and entitled (here set forth the established ballot title of the measure), a full, true and correct copy of which is hereto attached, shall be transmitted to the legislature of the state of Washington at its next ensuing regular session, and we hereby respectfully petition the legislature to enact said proposed measure into law; and each of us for himself says: I have personally signed this petition; I am a duly registered legal voter of the precinct and city (or town), written after my name, and my residence address is correctly stated.

Initials of Registration Officer.	Petitioner's Signature.	Residence Address, Street and Number, if any.	Precinct Name or Number.	Ward Number, if any.	City or Town.
(Here follow 20 numbered lines divided into columns as below)					
.....	1.....	.....	.....	.....	.....
.....	2.....	.....	.....	.....	.....
.....	3.....	.....	.....	.....	.....
.....	etc.....	.....	.....	.....	.....

I, the undersigned, hereby certify that I am the officer of the city (town or precinct) of ——, county of ——, state of Washington, having the custody of the registration books containing the signatures, addresses and precincts of the registered legal voters of said city (town or precinct); that the signatures on the foregoing petition were signed in my office; that the initials opposite said signatures respectively are my initials, or the initials of a duly authorized deputy in my office; that before any such signatures opposite which initials are written, was signed upon said petition the person proposing to sign the same was required to identify himself as a duly registered legal voter or to establish his right to and register as a legal voter in the registration books in my office; that after said petition was signed the signature thereon was carefully compared with the signature of such voter in the registration books and found to apparently have been written by the same hand, and that thereupon the officer making the comparison placed his initials opposite such signature and entered the residence address, precinct, ward and city or town shown upon the registration book opposite said signature; and that when the foregoing petition was taken from my office it contained —— initialed signatures and no more and that before surrendering said petition I caused the red ink perpendicular line thereon to be drawn through the blank spaces for signatures.

Dated the —— day of ——, 19—.

—— ——

Registration officer of city (town or precinct) of ——.

By —— ——,

Deputy.

[L. '15, p. 187, § 2; L. '13, p. 420, § 5.]

Cited in 81 Wash. 629, 646.

§ 4971–6. Petitions to People—Form.—Petitions for proposing measures for submission to the people for their approval or rejection at the next ensuing general election, to be filed with the secretary

of state not less than four months before such general election, shall be substantially in the following form:

WARNING.

(Same form as in section 4971–5.)

INITIATIVE PETITION FOR SUBMISSION TO THE PEOPLE.

To the Honorable ——, Secretary of State of the State of Washington:

We, the undersigned citizens of the state of Washington and duly registered legal voters of the respective precincts set opposite our names, respectively direct that that certain proposed measure known as Initiative Measure No. ——, entitled (here insert the established ballot title of the measure), a full, true and correct copy of which is hereto attached shall be submitted to the legal voters of the state of Washington for their approval or rejection at the general election to be held on the —— day of ——, A. D. 19—; and each of us for himself says: I have personally signed this petition; I am a duly registered legal voter of the precinct, and city (or town), written after my name, and my residence address is correctly stated.

(Followed by the same form of blanks and certificates as in section 4971–5.) [L. '15, p. 189, § 3; L. '13, p. 421, § 6.]

§ 4971–7. Petitions to Refer—Form.—Petitions ordering that bills or parts of bills passed by the legislature be referred to the people at the next ensuing general election, or special election ordered by the legislature, to be filed with the secretary of state within ninety days after the final adjournment of the session of the legislature at which such bill was passed, shall be substantially in the following form:

WARNING.

(Same form as in section 4971–5.)

PETITION FOR REFERENDUM.

To the Honorable ——, Secretary of State of the State of Washington:

We, the undersigned citizens of the state of Washington and duly registered legal voters of the respective precincts set opposite our names, respectfully order and direct that Referendum Measure No. ——, entitled (here insert the established ballot title of the measure) being a (part or parts of a) bill passed by the ——th legislature of the state of Washington at the last regular (special) session of said legislature, shall be referred to the people of the state for their approval or rejection at the regular (special) election to be held on the —— day of —— A. D. 19—; and each for himself says

I have personally signed this petition; I am a duly registered legal voter of the precinct, and city (or town), written after my name, and my residence is correctly stated.

(Followed by the same form of blanks and certificate as in section 4971–5.) [L. '15, p. 190, § 4; L. '13, p. 422, § 7.]

§ 4971–9. Size of Petitions.—Each initiative or referendum petition shall at the times of signing, certifying and filing with the secretary of state, as hereinafter in this act provided, consist of not more than five sheets with numbered lines for not more than twenty signatures on each sheet, with the prescribed warning, title and form of petition and certificate on each sheet, and a full, true and correct copy of the proposed measure referred to therein printed on sheets of paper of like size and quality as the petition, firmly fastened together. [L. '15, p. 191, § 6; L. '13, p. 423, § 9.]

Cited in 81 Wash. 650.

§ 4971–10. Check of Petitions—Certificate.—Upon the ballot title of any initiative or referendum measure being established as hereinabove provided, and from time to time thereafter the proponents of such measure may deposit such number of blank petitions, in the proper form hereinabove in this act prescribed, as they may deem expedient with the registration officer of any city, town or precinct, and take his receipt therefor, and it shall be the duty of each such registration officer with whom blank petitions are deposited to, at all times, display in a conspicuous place or places in his office and in each branch office under his charge, signs or placards bearing the words "Initiative or Referendum petitions may be signed here," which words shall be in letters of sufficient size to be easily read, and it shall be the duty of every registration officer, whenever any initiative or referendum petition shall be filed in his office for signing, to keep the office or offices under his charge open, for the purpose of permitting voters who desire so to do to sign the same, on each Friday and Saturday evening from 6 o'clock until 9 o'clock, and to supply sufficient deputies to facilitate such signing, during the ninety (90) days immediately following the adjournment of any session of the legislature, in the case of referendum petitions, and during the ninety (90) days immediately preceding the time they must be filed with the secretary of state, in the case of initiative petitions, and it shall be the duty of each such registration officer to, at all times when his office is open for the registration of voters, permit any duly registered voter whose registration appears upon the books of such office, and who has not theretofore signed the particular initiative or referendum petition which he desires to sign, to sign any such initiative or referendum petition deposited in his office, provided that he shall not permit more than twenty registered

voters to sign on any one sheet of such petition, and shall require the voters who sign the same to sign upon the blank lines for that purpose. Whenever any person shall apply to the registration officer for permission to sign any initiative or referendum petition, the registration officer or his deputy to whom the application is made shall if such person has not registered, require such person to register in the manner provided by law before permitting him to sign any initiative or referendum petition. If such person states that he is a registered voter, the officer shall ask such questions concerning his place of birth, age, occupation and place of residence as will identify the person with the name upon the registration book, and if the answers to such questions correspond with the information upon the registration book, shall ascertain whether the registration book shows that the registered voter has previously signed such petition, and if it appears that he has not previously signed, the officer shall permit such person to sign such petition with pen and ink. In either case the officer shall carefully compare the signature on the petition with the signature on the registration book and if such signature shall appear to the officer to have been written by the same hand, the officer shall enter upon the petition opposite the signature the residence address, the precinct name or number, the ward number if any, and the name of the city or town of such voter as shown by the registration book, and shall write the initials of his given name or names and of his surname, with pen and ink, on the petition opposite and at the left of the signature, and shall write on the registration book in the column headed "Remarks" the letter "I" or "R," followed by the number of the initiative or referendum petition, as the case may be, so signed. If the signature upon the petition appears to the officer to have been written by a different hand than that on the registration book the officer shall refuse to initial and certify the signature. Whenever the proponents of any initiative or referendum measure shall demand the return of any petition deposited with any registration officer as hereinabove provided, and shall return the receipt therefor, the officer shall cause a red ink perpendicular line to be drawn through the blank spaces for signatures on any such petition and shall fill out the certificate and certify the number of initialed signatures on each sheet of such petition and date and sign such certificate. [L. '15, p. 191, § 7; L. '13, p. 423, § 10.]

Cited in 81 Wash. 629.

§ 4971-11. Number of Signatures—Contributors—Expenditures.—When the person, committee or organization proposing any such initiative measure or demanding any such referendum shall have secured upon any such initiative petition the signatures of fifty

thousand legal voters or the signatures of legal voters equal in number to or exceeding ten per centum of the whole number of electors who voted for governor at the regular gubernatorial election last preceding, or shall have secured upon any such referendum petition the signatures of thirty thousand legal voters, or the signatures of legal voters equal in number to or exceeding six per centum of the whole number of electors who voted for governor at the regular gubernatorial election last preceding, he or they may submit said petition to the secretary of state for filing in his office. At the time of submitting such petition the person, committee or organization submitting the same shall file with the secretary of state a full, true and detailed statement giving the names and postoffice addresses of all persons, corporations and organizations who have contributed any moneys to aid in the preparation, publication and advertising of the measure and the preparation, circulation and filing of the petition, with the amount contributed by each, and a full, true and detailed statement of all expenditures, giving the amounts expended, the purpose for which expended, and the names and postoffice addresses of the persons and corporations to which paid, which statement shall be verified by the affidavit of the person or some member of the committee or organization in charge of the measure, and until such statement is filed with the secretary of state shall refuse to receive such petition. [L. '13, p. 424, § 11.]

§ 4971–12. Time for Filing Petition.—The secretary of state upon any such petition being submitted to him for filing shall examine the same, and if upon examination said petition appear to be in proper form and to bear the requisite number of signatures of legal voters, and if said petition be an initiative petition proposing a measure to be submitted to the legislature at its next ensuing regular session and is submitted for filing not less than ten days before such regular session, or if said petition be an initiative petition proposing a measure to be submitted to the people for their approval or rejection at the next ensuing general election and is submitted for filing not less than four months before such general election, or if said petition be a referendum petition ordering and directing that the whole or some part or parts of a bill passed by the legislature be referred to the people for their approval or rejection at the next ensuing general election or a special election ordered by the legislature, and such petition is submitted for filing not more than ninety days after the final adjournment of the session of the legislature which passed the bill, the secretary of state shall accept and file said petition in his office; otherwise, he shall refuse to file the same, but shall stamp on said petitions the word "submitted" and the date

of submission, and shall retain said petitions pending appeal. [L. '13, p. 424, § 12.]

Cited in 81 Wash. 640.

§ 4971–13. Appeal from Refusal of Secretary of State to File—Review.—If the secretary of state shall refuse to file any such initiative or referendum petition when submitted to him for filing, the persons submitting the same for filing may, within ten days after such refusal, apply to the superior court of Thurston county for a citation requiring the secretary of state to bring such petitions before the court, and for a writ of mandate to compel him to file the same. Such application shall take precedence over other cases and matters and shall be speedily heard and determined. If the court shall issue citation, and upon final hearing shall determine that the petitions are legal in form and apparently contain the requisite number of signatures and were submitted for filing within the time prescribed in the constitution, it shall issue its mandate requiring the same to be filed in his office by the secretary of state as of the date of submission for filing. The decision of the superior court granting a writ of mandate shall be final and no appeal shall be allowed from the decision of the superior court refusing to grant a writ of mandate, but such decision may be reviewed by the supreme court in a writ of certiorari sued out within five days after the decision of the superior court, and such review shall be considered an emergency matter of public concern, and shall be heard and determined with all convenient speed, and if the supreme court shall decide that the petitions are legal in form and apparently contain the requisite number of signatures of legal voters, and were filed within the time prescribed in the constitution, it shall issue its mandate direct to the secretary of state, requiring that said petitions be filed in his office as of the date of submission. In case no appeal is taken from the refusal of the secretary of state to file said petitions within the time prescribed, or in case an appeal is taken and the secretary of state is not required to file said petitions by the mandate of either the superior or the supreme court, the secretary of state shall destroy said petitions. [L. '13, p. 425, § 13.]

Cited in 81 Wash. 640.

§ 4971–14. Petitions to be Volumed and Filed.—If the secretary of state accept and file any such initiative or referendum petition upon its being submitted for filing or if he be required to file the same by the court he shall forthwith, in the presence of the governor, or, if the governor be absent, in the presence of some other state officer and in the presence of the persons submitting such petition for filing, if such persons desire to be present, detach the sheets containing the signatures and certificates and cause them all to be

firmly attached to one or more printed copies of the proposed initiative or referendum measure in such volumes as will be most convenient for canvassing and filing, and shall number such volumes and file the same and stamp on each thereof the date of filing. [L. '13, p. 426, § 14.]

§ 4971-15. Canvass of Petition.—Upon the filing of such volumes of an initiative petition proposing a measure for submission to the legislature at its next regular session, the secretary of state shall forthwith in the presence of at least one person representing the proponents and one person representing the opponents of the proposed measure, should either desire to be present, proceed to canvass the petition and to count the names of duly initialed and certified registered legal voters thereon. If, at the conclusion of the canvass and count, it shall appear that such petition bears the requisite number of names of duly certified registered legal voters, the secretary of state shall transmit a certified copy of such proposed measure to the legislature at the opening of its session together with a certificate of the facts relating to the filing of such petition and the canvass and count thereof. [L. '15, p. 193, § 8; L. '13, p. 426, § 15.]

Cited in 81 Wash. 630.

§ 4971-16. Fraudulent Names.—The secretary of state shall, while making said count, keep a record of all names appearing on said petition which are not certified to be registered legal voters, and shall report the same to the prosecuting attorneys of the respective counties where such names were signed to the end that prosecutions may be had for violations of this act. [L. '15, p. 193, § 9; L. '13, p, 427, § 16.]

§ 4971-17. Rulings of Secretary of State Subject to Mandamus or Injunction.—Any citizen who shall be dissatisfied with the determination of the secretary of state that the petition contains or does not contain the requisite number of duly certified signatures of registered legal voters or who has reasonable ground to believe that any such petition determined by the secretary of state to have the requisite number of signatures contains a sufficient number of fraudulent signatures or certificates to affect the result, or that a sufficient number of valid signatures to affect the result have been rejected by the secretary of state from the count on any petition which he has determined not to have the requisite number, may, within five days after such determination, apply to the superior court of Thurston county for a citation requiring the secretary of state to submit said petition to said superior court for examination, and for a writ of mandate compelling the certification of the measure and petition, or for an injunction to prevent the

certification thereof to the legislature, as the case may be, which application shall be made by petition and [shall be made by petition and] shall set forth the grounds therefor, and shall be verified under oath by or on behalf of the petitioner or petitioners and such application and all proceedings had thereunder shall take precedence over all other cases and shall be speedily heard and determined. If said petition for a citation shall state facts sufficient to warrant the issuance of said citation, the same shall issue and be served upon the secretary of state, and the court at the hearing upon the return of such citation shall have jurisdiction to hear de novo and determine all matters presented by said petition and by any petition in intervention that may be filed in said proceeding and hear the testimony of witnesses and receive documentary or other evidence offered on behalf of the secretary of state, the petitioners or any petitioner in intervention and shall decide all questions of law and of fact with all convenient speed and shall dismiss the proceedings or enter a writ of mandate or injunction in accordance with its determination, as the case may be. No appeal shall be allowed from the decision of the superior court granting or refusing to grant a writ of mandate or injunction, but such decision may be reviewed by the supreme court on a writ of certiorari sued out within five days after the decision of the superior court, and if the supreme court shall decide that the writ of mandate or injunction, as the case may be, should issue, it shall issue such writ direct to the secretary of state; otherwise, it shall dismiss the proceedings, and the clerk of the supreme court shall forthwith notify the secretary of state of the decision of the supreme court. [L. '15, p. 194, § 10; L. '13, p. 427, § 17.]

Cited in 81 Wash. 631.

§ 4971–18. Canvass of Names Within Thirty Days.—When the petition filed shall be a referendum petition or an initiative petition for submission of a measure to the people the secretary of state shall canvass and count the names on such petition within thirty days after filing and like proceedings shall and may be had thereon as provided in sections 4971–15, 4971–16, and 4971–17. [L. '13, p. 428, § 18.]

§ 4971–19. Certificate to County Auditor.—If such referendum or such initiative petition for submission to the people shall be found sufficient, the secretary of state shall at the time and in the manner he certifies to the county auditors of the various counties the names of candidates for state and district officers certify to each county auditor the serial numbers and ballot titles of the several initiative and referendum measures to be voted upon at the

next ensuing general election or special election ordered by the legislature. [L. '13, p. 428, § 19.]

Cited in 81 Wash. 631.

§ 4971–20. Serial Number for Referendum Bills.—Whenever any bill passed by the legislature shall be by the legislature referred to the people for their approval or rejection at the next ensuing general election or at a special election ordered by the legislature, the secretary of state shall give such bill a serial number, using a separate series, such series being designated "Referendum Bills," and if the legislature shall not have prescribed a ballot title shall obtain from the attorney general a ballot title therefor in the manner provided in this act for obtaining ballot titles for initiative measures, and shall certify the serial number and ballot title of such bill to the county auditors for printing on the ballots for such general or special election in like manner as initiative measures for submission to the people are certified. [L. '13, p. 428, § 20.]

§ 4971–21. Certified by Serial Number.—Whenever any measure proposed by initiative petition for submission to the legislature is rejected by the legislature or the legislature shall take no action thereon before the end of the regular session at which it is submitted, the secretary of state shall certify the serial number and ballot title thereof to the county auditors for printing on the ballots at the next ensuing general election in like manner as initiative measures for submission to the people are certified. [L. '13, p. 428, § 21.]

§ 4971–22. Substitute Measure to Take Same Number.—Whenever any measure proposed by initiative petition for submission to the legislature is rejected by the legislature and the legislature proposes a different measure dealing with the same subject, the secretary of state shall give such different measure the same serial number as that borne by the initiative measure followed by the letter "B," and such measure proposed by the legislature shall be designated as "Alternative Measure No. —— B," and the secretary of state shall obtain from the attorney general a ballot title therefor in the manner provided in this act for obtaining ballot titles for initiative measures, and shall certify the alternative serial number and ballot title of such alternative measure to the county auditors for printing on the ballots for the election at which such measures are to be submitted to the people, in like manner as initiative measures for submission to the people are certified. The ballot title for such alternative measure shall be different from the ballot title of the initiative measure in lieu of which it is proposed, and shall indicate as clearly as possible the essential differences in the measure. [L. '13, p. 429, § 22.]

§ 4971-23. Printing of Numbers and Titles on Ballots.—It shall be the duty of the several county auditors to cause to be printed on the official ballots for the election at which initiative and referendum measures are to be submitted to the people for their approval or rejection the serial numbers and ballot titles, certified by the secretary of state, under separate headings in the order of the serial numbers. Measures proposed for submission to the people by initiative petition shall be under the heading, "Proposed by Initiative Petition"; bills passed by the legislature and ordered referred to the people by referendum petition shall be under the heading, "Passed by the Legislature and Ordered Referred by Petition"; bills passed and referred to the people by the legislature shall be under the heading, "Proposed to the People by the Legislature"; measures proposed to the legislature and rejected or not acted upon shall be under the heading, "Proposed to the Legislature and Referred to the People"; measures proposed to the legislature and alternative measures passed by the legislature in lieu thereof shall be under the heading, "Initiated by Petition and Alternative by Legislature." [L. '13, p. 429, § 23.]

§ 4971-24. Provision for Voting—Ballot.—Except as in the next succeeding section provided, each measure submitted to the people for approval or rejection shall be so printed on the ballot, under the proper heading, that a voter can by making one cross (×) express his approval or rejection of such measure. Substantially the following form shall be a compliance with this section:

PROPOSED BY INITIATIVE PETITION.

Initiative Measure No. 22, entitled (here insert the ballot title of the measure).

FOR Initiative Measure No. 22.....☐
AGAINST Initiative Measure No. 22.....☐
[L. '13, p. 430, § 24.]

§ 4971-25. Alternative—Ballot.—In all cases where initiative measures proposed to the legislature have been rejected by the legislature and alternative measures passed by the legislature in lieu thereof the serial numbers and ballot titles of both such measures shall be so printed on the official ballots that a voter can express separately by making one cross (×) for each, two preferences: first, as between either measure and neither, and secondly, as between one and the other, as provided in the constitution. Substantially the following form shall be a compliance with the constitutional provision:

INITIATED BY PETITION AND ALTERNATIVE BY LEGISLATURE.

Initiative Measure No. 25, entitled (here insert the ballot title of the initiative measure).

Alternative Measure No. 25B, entitled (here insert the ballot title of the alternative measure).

Vote FOR EITHER, or AGAINST BOTH.

FOR EITHER Initiative No. 24 OR Alternative No. 25B.....☐
AGAINST Initiative No. 25 AND Alternative No. 25B.....☐

and vote FOR one.

FOR Initiative Measure No. 25.....☐
FOR Alternative Measure No. 25B.....☐

[L. '13, p. 430, § 25.]

§ 4971–26. Arguments—Number—Selection.—The person, persons, committee or organization filing any initiative or referendum petition proposing a measure, or ordering a referendum for submission to the people, and any other citizen or committee or organization of citizens shall have the right at the time of filing such petition or within ten days after such petition has been accepted and filed, to file with the secretary of state for printing and distribution arguments advocating the proposed measure or referendum, and any citizen or committee or organization of citizens may, within twenty days after such petition has been accepted and filed, file an argument in opposition to such measure or referendum for printing and distribution, provided, that not more than two separate arguments advocating such measure or referendum and not more than three separate arguments in opposition thereto shall be printed by and distributed at the expense of the state. If more than two arguments advocating or more than three arguments in opposition to such measure or referendum are filed, the secretary of state shall forthwith notify the persons filing the arguments advocating or in opposition to such measure or referendum of that fact, and if the persons filing such arguments do not agree among themselves within thirty days after the acceptance and filing of such petition as to which of said arguments shall be printed by the state, the secretary of state shall select for printing, binding and distribution, in addition to the argument advocating such measure filed by the persons proposing the same, one additional argument, and shall select three arguments in opposition to such measure, to be printed by the state. In making such selections the secretary of state shall select the argument advocating and the three arguments in opposition to the measure which he shall consider the strongest, taking into account the arguments proposed and the form in which they are presented. If in the opinion of the secretary of state any argument for or

against a measure offered for filing contain any obscene, vulgar, profane, scandalous, libelous, defamatory or treasonable matter or any language tending to provoke crime or a breach of the peace, or any language or matter the circulation of which through the mails is prohibited by any act of congress, the secretary of state shall refuse to file such argument: Provided, that the person submitting such argument for filing may appeal to a board of censors consisting of the governor, the attorney general and the superintendent of public instruction, and the decision of a majority of such board shall be final. Each such argument either for or against the measure shall not exceed two pages of the pamphlet hereinafter required to be published by the state and shall contain the serial designation and number of the measure and state the name of the person or organization advancing it. The person or organization filing such argument shall at the time of filing the same deposit with the secretary of state sufficient money, the amount to be estimated by the secretary of state, to cover the increased cost of paper for the printing and binding of such argument. In the case of measures initated by petition and submitted to the legislature and alternatives passed by the legislature in lieu thereof, the person, committee or organization proposing the measure may likewise within ten days after the filing of the petition, or within ten days after the final passage of the alternative measure, file an argument in support of the initiative measure, and other citizens may file arguments in support thereof within ten days after the final passage of the alternative measure, and the legislature may by resolution file an argument in support of the alternative measure, and other citizens may file arguments in support thereof. But only two arguments in support of each measure, in addition to the argument filed by the proponents of the measure, and by the legislature, shall be printed by and distributed at the expense of the state, and if the persons filing arguments do not agree among themselves as to what arguments shall be printed the secretary of state shall select arguments to be printed. Arguments for and against bills passed and referred to the people by the legislature, including amendments to the constitution proposed by the legislature, shall be filed, selected and printed in the same manner. [L. '13, p. 431, § 26.]

Cited in 80 Wash. 694.

§ 4971–27. Publication of Pamphlet.—At least sixty days prior to any election at which any initiative or referendum measure is to be submitted to the people, the secretary of state shall cause to be printed in pamphlet form a true copy of the serial designation and number, the ballot title, the legislative title, the full text of and the argument for and arguments against each such measure, including

amendments to the constitution proposed by the legislature, to be submitted to the people in the foregoing order, and shall cause all of such measures to be printed and bound in a single pamphlet in the following order: First, those "Proposed by Initiative Petition"; second, those "Proposed to the People by the Legislature"; third, those "Proposed to the Legislature and Referred to the People"; fourth, those "Initiated by Petition and Alternative by the Legislature," and fifth, "Amendments to the Constitution Proposed by the Legislature." The pages of such pamphlet shall be not larger than five and three-fourths by eight and three-fourths inches in size, and the outside measurement of the printed matter of each page shall be not less than four and one-half by seven and one-third inches, including running head, and shall be printed in eight-point roman-faced type, set solid in two columns, each thirteen ems pica to the line, separated by a pica slug, with appropriate headings. Said pamphlet shall be printed on No. 1 print paper weighing thirty-two pounds to the ream of sheets twenty-four by thirty-six inches. The cost of printing and binding such pamphlets shall be paid from the money appropriated for printing for the secretary of state: Provided, the increased cost of printing and binding such arguments shall be paid from the moneys deposited to cover the same and the balance of any such moneys, if any, and the moneys deposited for arguments not printed shall be returned to the persons depositing it respectively. Such number of pamphlets shall be printed as shall fill the requirements as to distribution hereinafter provided. It shall be the duty of the secretary of state to publish in such pamphlets a table of contents and a brief alphabetical index of subjects. [L. '13, p. 433, § 27.]

Cited in 80 Wash. 695.

§ 4971–28. List of Voters—Filing.—Not more than four nor less than three months before any election at which initiative or referendum measures are to be submitted to the people, the officer having custody of the registration-books in each city, town or precinct where registration of voters is required shall prepare and transmit to the secretary of state typewritten lists of the names and addresses of the legal voters of such city, town or precinct, as shown by the registration books, and the county auditors of each county shall prepare and transmit to the secretary of state typewritten lists of the names and postoffice addresses of the legal voters in each precinct in said county where registration of voters is not required, as shown by the poll-books of the last preceding general election. The secretary of state shall notify such officers of the dates of such elections. [L. '13, p. 434, § 28.]

§ 4971–29. Distribution of Pamphlets.—Not less than fifty-five days before any election at which initiative or referendum measures are to be submitted to the people, the secretary of state shall transmit, by mail with postage fully prepaid, to every voter in the state whose address he has, or can with reasonable diligence ascertain, one copy of the pamphlet hereinabove provided for, and shall transmit by the least expensive means copies of such pamphlet as follows: To each county auditor three copies for each voting precinct in the county; to the libraries of each educational, charitable, penal and reformatory institution of the state three copies; to each state officer and member of a state board and to each county officer two copies; to each judge of the supreme and superior courts two copies; to the state library five copies; to each public library in the state two copies; to each member of the legislature two copies; and shall reserve for distribution on request such number of copies as he shall deem necessary. The cost of mailing or shipping said pamphlets shall be paid from the money appropriated for postage for the secretary of state. It shall be the duty of the county auditors of the several counties to transmit the copies of the pamphlets so furnished them to the election officers of the respective precincts, to be kept at the polling place throughout election day for the information of voters. [L. '13, p. 434, § 29.]

§ 4971–30. Election Returns—Canvass of Votes.—The votes on the initiative and referendum measures submitted to the people, as in this act provided, shall be counted, canvassed and returned by the regular precinct election officers, and by the county auditors, in the manner provided by law for canvassing and returning votes for candidates for state offices. It shall be the duty of the secretary of state, in the presence of the governor, within thirty days after any such election to canvass the votes for each measure and certify to the governor the result thereof, and the governor shall forthwith issue his proclamation giving the whole number of votes cast in the state for and against such measure, and declaring such measures as are approved by the majority of those voting thereupon, provided that the vote cast upon such measure shall equal one-third of the total vote cast at such election, to be the law of the state of Washington from the date of such proclamation. [L. '13, p. 435, § 30.]

§ 4971–31. Penalty.—Every person who shall sign any initiative or referendum petition provided for in this act with any other than his true name shall be guilty of a felony. Every person who shall knowingly sign more than one of such petitions for the same measure or who shall sign any such petition knowing that he is not a registered legal voter, or who shall falsely represent to any regis-

tration officer that he is a certain person whose name appears upon the registration books, or who shall make to such registration officer any false statement as to his identity or place of residence, and every registration officer who shall knowingly permit any person other than a duly registered voter to sign any such petition or who shall knowingly initial any signature which he does not believe to be the signature of a duly registered legal voter or who shall knowingly make any false report or certificate on any such petition shall be guilty of a gross misdemeanor. [L. '15, p. 195, § 11; L. '13, p. 436, § 32.]

Cited in 81 Wash. 646.

§ 4971–32. Professional Solicitors—Hiring Solicitors—Corruption in General.—Every officer who shall willfully violate any of the provisions of this act, for the violation of which no penalty is herein prescribed, or shall willfully fail to comply with the provisions of this act; and every person who shall for any consideration, compensation, gratuity, reward or thing of value or promise thereof sign or decline to sign any initiative or referendum petition; or who shall advertise in any newspaper, magazine or other periodical publication or in any book, pamphlet, circular or letter or by means of any sign, signboard, bill, poster, handbill or card or in any manner whatsoever, that he will either for or without compensation or consideration solicit, procure or obtain signatures upon, or influence or induce or attempt to influence or induce persons to sign or not to sign any initiative or referendum petition or vote for or against any initiative or referendum measure; or who shall for pay or any consideration, compensation, gratuity, reward or thing of value or promise thereof, solicit, procure or obtain or attempt to procure or obtain signatures upon any initiative or referendum petition; or who shall pay or offer or promise to pay, or give or offer or promise to give any consideration, compensation, gratuity, reward or thing of value to any person to induce him to sign or not to sign, or to solicit, procure, or attempt to procure or obtain signatures upon any initiative or referendum petition, or to vote for or against any initiative or referendum measure; or who shall by any other corrupt means or practice or by threats or intimidation interfere with or attempt to interfere with the right of any legal voter to sign or not to sign any initiative or referendum petition to vote for or against any initiative or referendum measure; or who shall receive, accept, handle, distribute, pay out or give away either directly or indirectly any money, consideration, compensation, gratuity, reward or thing of value contributed by or received from any person, firm, association or corporation having his, their or its residence or principal office outside of the state of Washington, or corporation the majority of

whose stockholders are nonresidents of the state of Washington, for any service, work or assistance of any kind done or rendered for the purpose of aiding in procuring signatures upon any initiative or referendum petition or the adoption or rejection of any initiative or referendum measure, or who shall in, or within one hundred feet of the entrance to, any registration office solicit or attempt to induce any person to sign or not to sign any initiative or referendum petition shall be guilty of a gross misdemeanor. [L. '15, p. 195, § 12; L. '13, p. 436, § 32.]

Cited in 81 Wash. 646.

§ 4971–33. Time for Taking Effect.—This act shall take effect January 1, 1916. [L. '15, p. 197, § 13.]

TITLE XXX.

ELECTRIC LIGHT AND POWER COMPANIES.

See "Street and Electric Railways."

4972. Grant of franchise by city, town, or county—Procedure.
4973. Right to lease or purchase.
4974. Power of eminent domain granted—Must assume duties of public service corporation.
4975. Power must be applied to public use.
4976. Action against company for violation of act—Procedure.
4976–1. Rules for construction.
4976–2. Copy of act to be posted.
4976–3. Time to comply.
4976–4. Change of rules—Violations.
4976–5. Rules of public service commission—Effect.
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§ 4972. Grant of Franchise by City, Town or County—Procedure.

The legislative authority of the city or town having control of any public street or road, or, where such street or road is not within the limits of any incorporated city or town, then the board of county commissioners of the county wherein such road or street is situated, may grant authority for the construction, maintenance and operation of transmission lines for transmitting electric power, together with poles, wires and other appurtenances, upon, over, along and across any such public street or road, and in granting such authority the legislative authority of such city or town, or the board of county commissioners, as the case may be, may prescribe the terms and conditions on which such transmission line and its appurtenances, shall be constructed, maintained and operated upon, over, along and across such road or street, and the grade or elevation at which the same shall be constructed, maintained and operated: Provided, that hereafter on application being made to the board of county commissioners for such authority, the board shall fix a time and place for hearing the same, and shall cause the county auditor to give public notice thereof at the expense of the applicant, by posting written or printed notices in three public places in the county seat of the county, and in at least one conspicuous place on the road or street or part thereof, for which application is made, at least fifteen days before the day fixed for such hearing, and by publishing a like notice three times in some daily newspaper published in the county, or if no daily newspaper is published in the county, then the newspaper doing the county printing, the last publication to be at least five days before the day fixed for such hearing, which notice shall state the name or names of the applicant or applicants, a description of the roads or streets or parts thereof for which the application is made, and the time and place fixed for the hearing. Such hearing may be ad-

journed from time to time by order of the board. If after such hearing the board shall deem it to be for the public interest to grant such authority in whole or in part, the board may make and enter the proper order granting the authority applied for or such part thereof as the board deems to be for the public interest, and shall require such transmission line and its appurtenances to be placed in such location on or along the road or street as the board finds will cause the least interference with other uses of the road or street. In case any such transmission line is or shall be located in part on private right of way, the owner thereof shall have the right to construct and operate the same across any county road or county street which intersects such private right of way, if such crossing is so constructed and maintained as to do no unnecessary damage: Provided, that any person or corporation constructing such crossing or operating such transmission line on or along such county road or county street shall be liable to the county for all necessary expense incurred in restoring such county road or county street to a suitable condition for travel. [L. '03, p. 360, § 1.]

See supra, §§ 2656, 2837, injury to lines.
See infra, § 5612, franchises on county roads.
See infra, §§ 8005, 8011, cities may acquire or dispose of.
See infra, §§ 9123, 9169, taxation of.

§ 4973. Right to Lease or Purchase.—Any corporation incorporated or that may hereafter be incorporated under the laws of this state or any state or territory of the United States, for the purpose of manufacturing, transmitting or selling electric power, may lease or purchase and operate (except in cases where such lease or purchase is prohibited by the constitution of this state) the whole or any part of the plant for manufacturing or distributing electric power or energy of any other corporation, heretofore or hereafter constructed, together with the franchises, powers, immunities and all other property or appurtenances appertaining thereto: Provided, that such lease or purchase has been or shall be consented to by stockholders of record holding at least two-thirds in amount of the capital stock of the lessor or grantor corporation; and all such leases and purchases heretofore made or entered into by consent of stockholders as aforesaid are for all intents and purposes hereby ratified and confirmed, saving, however, any vested rights of private parties. [L. '03, p. 362, § 3.]

§ 4974. Power of Eminent Domain Granted—Must Assume Duties of Public Service Corporation.—Any corporation authorized to do business in this state, which, under the present laws of the state, is authorized to condemn property for the purpose of generating and transmitting electrical power for the operation of railroads or railways, or for municipal lighting, and which by its charter or articles

of incorporation, assumes the additional right to sell electric power and electric light to private consumers outside the limits of a municipality and to sell electric power to private consumers within the limits of a municipality, which shall provide in its articles that in respect of the purposes mentioned in this section it will assume and undertake to the state and to the inhabitants thereof the duties and obligations of a public service corporation, shall be deemed to be in respect of such purposes a public service corporation, and shall be held to all the duties, obligations and control, which by law are or may be imposed upon public service corporations. Any such corporation shall have the right to sell electric light outside the limits of a municipality and electric power both inside and outside such limits to private consumers from the electricity generated and transmitted by it for public purposes and not needed by it therefor: Provided, that such corporation shall furnish such excess power at equal rates, quality and conditions considered, to all consumers alike, and shall supply it to the first applicants therefor until the amount available shall be exhausted: Provided further, that no such corporation shall be obliged to furnish such excess power to any one consumer to an amount exceeding twenty-five per cent of the total amount of such excess power generated or transmitted by it. In exercising the power of eminent domain for public purposes it shall not be an objection thereto that a portion of the electric current generated will be applied to private purposes, provided the principal uses intended are public: Provided, that all public service or quasi-public service corporations shall at no time sell, deliver and dispose of electrical power in bulk to manufacturing concerns at the expense of its public service functions, and any person, firm or corporation that is a patron of such corporation as to such public function, shall have the right to apply to any court of competent jurisdiction to correct any violation of the provisions of this act. [L. '07, p. 349, § 1. Cf. L. '99, p. 147, § 1; L. '03, p. 362, § 2.]

Cited in 50 Wash. 13, 15; 52 Wash. 203, 205; 70 Wash. 487, 489.

See supra, §§ 891–936, procedure.

§ 4975. Power must be Applied to Public Use.—Whenever any corporation has acquired any property by decree of appropriation based on proceedings in court under the provisions of this act, no portion of the electricity generated or transmitted by it by means of the property appropriated under the provisions of this act shall be used or applied by such corporation for or to a business or trade not under the present laws deemed public or quasi-public conducted by itself. [L. '07, p. 350, § 2.]

"Act" in this section refers to §§ 4974–4976.

§ 4976. Action Against Company for Violation of Act—Procedure.—In the event of the violation of any of the requirements of this act by any corporation availing itself of its provisions, an appropriate suit may be maintained in the name of state upon the relation of the attorney general, or, if he shall refuse or neglect to act, upon the relation of any individual aggrieved by the violation, or violations, complained of, to compel such corporation to comply with the requirements of this act. A violation of this act shall cause the forfeiture of the corporate franchise if the corporation refuses or neglects to comply with the orders with respect thereto made in the suit herein provided for. [L. '07, p. 350, § 3.]

"Act" refers to the two last previous sections.

§ 4976–1. Rules for Construction.—It shall be unlawful from and after the passage of this act for any officer, agent, or employee of the state of Washington, or of any county, city or other political subdivision thereof, or for any other person, firm or corporation, or its officers, agents or employees, to run, place, erect, maintain, or use any electrical apparatus or construction, except as provided in the rules of this act.

Rule 1. No wire or cable carrying a current of less than seven hundred fifty (750) volts of electricity within the corporate limits of any city or town shall be run, placed, erected, maintained or used on any insulator the center of which is less than thirteen (13) inches from the center line of any pole. And no such wire shall be run past any pole to which it is not attached at a distance of less than thirteen (13) inches from the center line thereof. This rule shall not apply to any wire or cable where the same is run from underground and placed vertically on the pole; nor to any wire or cable where the same is attached to the top of the pole; nor to a pole-top fixture as between it and the same pole; nor to any wire or cable between the points where the same is made to leave any pole or fixture thereon for the purpose of entering any building or other structure and the point of attachment to such building or structure; nor to any jumper wire or cable carrying a current or connected with a transformer or other appliance on the same pole; nor to bridle or jumper wires on any pole which are attached to or connected with single wires on the same pole; nor to any aerial cable as between such cable and any pole upon which it originates or terminates; nor to exclusive telephone or telegraph toll-lines; nor to aerial cables containing telephone, telegraph, or signal wires, or wires continuing from same, where the cable is attached to poles on which no wires or cables other than the wires continuing from said cable are maintained, provided, that electric light or power wires or cables are in no case

maintained on the same side of the street or highway on which said aerial cable is placed.

Rule 2. No wire or cable used to carry a current of over seven hundred fifty (750) volts of electricity within the incorporate limits of any city or town shall be run, placed, erected, maintained or used on any insulator the center of which is nearer than twenty-four (24) inches to the center line of any pole. And no such wire or cable shall be run past any pole to which it is not attached at a distance of less than twenty-four (24) inches from the center line thereof: Provided, that this shall not apply to any wire or cable where the same is run from underground and placed vertically on the pole; nor to any wire or cable where the same is attached to the top of the pole; nor to a pole-top fixture, as between it and the same pole; nor to any wire or cable between the points where the same is made to leave any pole or fixture thereon for the purpose of entering any building or other structure, and the point of attachment to said building or structure; nor to any jumper wire or cable carrying a current or connected with transformers or other appliances on the same pole: Provided, further, that where said wire or cable is run vertically, it shall be rigidly supported and where possible run on the ends of the cross-arms.

Rule 3. No wire or cable carrying a current of more than seven hundred fifty (750) volts, and less than seventy-five hundred (7,500) volts of electricity, shall be run, placed, erected, maintained or used within three (3) feet of any wire or cable carrying a current of seven hundred fifty (750) volts or less of electricity; and no wire or cable carrying a current of more than seventy-five hundred (7,500) volts of electricity shall be run, placed, erected, maintained, or used within seven (7) feet of any wire or cable carrying less than seventy-five hundred (7,500) volts.

Provided, that the foregoing provisions of this paragraph shall not apply to any wire or cable within buildings or other structures; nor where the same are run from underground and placed vertically upon the pole; nor to any service wire or cable where the same is made to leave any pole or fixture thereon for the purpose of entering any building or other structure, and the point of attachment to said building or structure; nor to any jumper wire or cable carrying a current or connected with a transformer or other appliance on the same pole.

Provided, that where run vertically, wires or cables shall be rigidly supported, and where possible run on the ends of the cross-arms.

Provided, further, that as between any two wires or cables mentioned in Rules 1, 2 and 3 of this section, only the wires or cables last in point of time so run, placed, erected or maintained, shall be held to be in violation of the provisions thereof.

Rule 4. No wire or cable used for telephone, telegraph, district messenger, or call-bell circuit, fire or burglar alarm, or any other similar system, shall be run, placed, erected, maintained or used on any pole at a distance of less than three (3) feet from any wire or cable carrying a current of over three hundred (300) volts of electricity; and in all cases (except those mentioned in exceptions to Rules 1, 2 and 3) where such wires or cables are run, above or below, or cross over or under electric light or power wires, or a trolley wire, a suitable method of construction, or insulation or protection to prevent contact shall be maintained as between such wire or cable and such electric light, power or trolley wire; and said methods of construction, insulation or protection shall be installed by, or at the expense of the person owning the wire last placed in point of time: Provided, that telephone, telegraph or signal wires or cables operated for private use and not furnishing service to the public, may be placed less than three (3) feet from any line carrying a voltage of less than seven hundred and fifty (750) volts.

Rule 5. Transformers, either single or in bank, that exceed a total capacity of over ten (10) K. W. shall be supported by a double cross-arm, or some fixture equally as strong. No transformer shall be placed, erected, maintained or used on any cross-arm or other appliance on a pole upon which is placed a series electric arc lamp or arc light: Provided, this shall not apply to a span wire supporting a lamp only. All aerial and underground transformers used for low potential distribution shall be subjected to an insulation test in accordance with the standardized rules of the American Institute of Electrical Engineers. In addition to this each transformer shall be tested at rated line voltage prior to each installation and shall have attached to it a tag showing the date on which the test was made, and the name of the person making the test.

Rule 6. No wire or cable carrying more than seventy-five hundred (7,500) volts of electricity shall be run, placed, erected, maintained or used on curves or corners of greater than fifteen (15) degrees without maintaining guards sufficient to hold said wire or cable in case of breakage of pins or insulators to which the same are attached, except where said wire or cable terminates or dead-ends on curves or corners.

No wire or cable, other than ground wires, used to conduct or carry electricity, shall be placed, run, erected, maintained or used vertically on any pole without causing such wire or cable to be at all times sufficiently insulated the full length thereof to insure the protection of anyone coming in contact with said wire or cable.

Rule 7. The neutral point or wire of all transformer secondaries strung or erected for use in low potential distributing systems shall be grounded in all cases where the normal maximum difference of

potential between the ground and any point in the secondary circuit will not exceed one hundred and fifty (150) volts. When no neutral point or wire is accessible one side of the secondary circuit shall be grounded in the case of single phase transformers, and any one common point in the case of interconnected polyphase bank or banks of transformers. Where the maximum difference of potential between the ground and any point in the secondary circuit will, when grounded, exceed one hundred fifty (150) volts, grounding shall be permitted. Such grounding shall be done in the manner provided in Rule 33.

Rule 8. In all cases where a wire or cable larger than No. 14 B. W. G. originates or terminates on insulators attached to any pin or other appliance, said wire or cable shall be attached to at least two insulators.

Provided, however, that this section shall not apply to service wires to buildings; nor to wires run vertically on a pole; nor to wires originating or terminating on strain insulators or circuit breakers; nor to telephone, telegraph or signal wires outside the limits of any incorporated city or town.

Rule 9. All poles along which shall be run vertically any wire or cable used to conduct or carry a current of over two hundred fifty (250) volts shall be provided with steps, and no steps shall be placed on any pole nearer the ground than seven (7) feet.

Rule 10. Fixtures placed or erected for the support of wires on the roofs of buildings shall be of sufficient strength to withstand all strains to which they may be subjected, due to the breaking of all wires on one side thereof, and, except where insulated wires or cables are held close to fire walls by straps or rings, shall be of such height and so placed that all of the wires supported by such fixtures shall be at least seven (7) feet above any point of roofs less than one-quarter pitch over which they pass or may be attached, and no roof fixtures or wire shall be so placed that they will interfere with the free passage of persons upon, over, to or from the roofs.

Rule 11. No guy wire or cable shall be placed, run, erected, maintained or used within the incorporate limits of any city or town on any pole or appliance to which is attached any wire or cable used to conduct electricity without causing said guy wire or cable to be efficiently insulated with circuit breakers at all times at a distance of not less than eight feet nor more than ten feet measured along the line of said guy wire or cable from each end thereof: Provided, no circuit breaker shall be required at the lower end of the guy wire or cable where the same is attached to a ground anchor, nor shall any circuit breaker be required where said guy wire or cable runs direct from a grounded messenger wire to a grounded anchor rod.

Rule 12. In all span wires used for the purpose of supporting trolley wires or series arc lamps there shall be at least two circuit breakers, one of which shall at all times be maintained no less than four (4) feet nor more than six (6) feet distance from the trolley wire or series arc lamp, and in cases where the same is supported by a building or metallic pole, the other circuit breaker shall be maintained at the building or at the pole: Provided, that in span wires which support two or more trolley wires no circuit breaker shall be required in the span wire between any two of the trolley wires: Provided, further, that in span wires supporting trolley wires attached to wooden poles only the circuit breaker adjacent to the trolley wire shall be required.

Rule 13. At all points where in case of a breakdown of trolley span wires, the trolley wire would be liable to drop within seven (7) feet of the ground, there shall be double span wires and hangers placed at such points.

Rule 14. All wires or appliances carrying a current of less than seventy-five hundred (7,500) volts, inside of any building or vault, for the distribution of electrical energy, shall be sufficiently insulated, or so guarded, located, or arranged as to protect any person from injury. All wires or appliances carrying a current of over seventy-five hundred (7,500) volts, shall be insulated, or so located or arranged, as to protect any person from injury; or shall be protected by a grounded metallic guard screen or other device equally as efficient, so arranged that no person may come within three times the arcing distance of the given voltage of such conductor or appliance as rated by the American Institute of Electrical Engineers for discharges between needle points; or by a guard-rail or other device so arranged that no person may come within three feet of the same.

Rule 15. The secondary circuit of current transformers, the casings of all potential regulators and arc-light transformers, all metal frames of all switchboards, metal oil tanks used on oil switches except where the tank is part of the conducting system, all motor and generator frames, the entire frame of the crane and the tracks of all traveling cranes and hoisting devices, shall be thoroughly grounded, as provided in Rule 33.

Rule 16. All generators and motors having a potential of more than three hundred (300) volts shall be provided with a suitable insulated platform or mat so arranged as to permit the attendant to stand upon such platform or mat when working upon the live parts of such generators or motors.

Rule 17. Suitable insulated platforms or mats shall be provided for the use of all men while working on any live part of switchboards on which any wire or appliance carries a potential in excess of three hundred (300) volts.

Rule 18. Every generator, motor, transformer, switch or other similar piece of apparatus and device used in the generation, transmission or distribution of electrical energy in stations or substations, shall be either provided with a name plate giving the capacity in volts and amperes, or have this information stamped thereon in such a manner as to be clearly legible.

Rule 19. In all cases there shall be two switches used at the station or substation in each feeder for the transmission of electrical energy at constant potential of seven hundred fifty (750) volts or over; one shall be an oil switch so situated as to insure the safety of the person operating the same; the other shall be a disconnecting switch: Provided, that oil switches shall not be required in direct current feeders.

Rule 20. When lines of seven hundred fifty (750) volts or over are cut out at the station or substation to allow employees to work upon them, they shall be short-circuited and grounded at the station, and shall in addition, if the line wires are bare, be short-circuited, and where possible grounded at the place where the work is being done.

Rule 21. All switches installed with overload protection devices, and all automatic overload circuit breakers must have the trip coils so adjusted as to afford complete protection against overloads and short circuits, and the same must be so arranged that no pole can be opened manually without opening all the poles, and the trip coils shall be instantly operative upon closing.

Rule 22. All feeders for electric railways must, before leaving the plant or substation, be protected by an approved circuit breaker which will cut off the circuit in case of an accidental ground or short circuit.

Rule 23. There shall be provided in all distributing stations a ground detecting device.

Rule 24. There shall be provided in all stations, plants, and buildings herein specified warning cards printed on red cardboard not less than two and one-fourth by four and one-half inches in size, which shall be attached to all switches opened for the purpose of linemen or other employees working on the wires. The person opening any line switch shall enter upon said card the name of the person ordering the switch opened, the time opened, the time line was reported clear and by whom, and shall sign his own name.

Rule 25. No manhole containing any wire carrying a current of over three hundred (300) volts shall be less than six (6) feet from floor to inside of roof; if circular in shape it shall not be less than six feet in diameter; if square it shall be six feet from wall to wall: Provided, however, that this paragraph shall not apply to any manhole in which it shall not be required that any person enter to perform work: Provided, further, that the foregoing provisions of this

paragraph shall not apply where satisfactory proof shall be submitted to the proper authorities that it is impracticable or physically impossible to comply with this law within the space or location designated by the proper authorities.

Rule 26. All manholes containing any wires or appliances carrying electrical current shall be kept in a sanitary condition, free from stagnant water or seepage or other drainage which is offensive or dangerous to health, either by sewer connection or otherwise, while any person is working in the same.

Rule 27. No manhole shall have an opening to the outer air of less than twenty-six (26) inches in diameter, and the cover of same shall be provided with vent hole or holes equivalent to three square inches in area.

Rule 28. No manhole shall have an opening which is, at the surface of the ground, within a distance of three (3) feet at any point from any rail of any railway or street-car track: Provided, that this shall not apply where satisfactory proof shall be submitted to the proper authorities that it is impracticable or physically impossible to comply with the provisions of this paragraph: Provided, that in complying with the provisions of this rule only the construction last in point of time performed, placed or erected shall be held to be in violation thereof.

Rule 29. Whenever persons are working in any manhole whose opening to the outer air is less than three (3) feet from the rail of any railway or street-car track, a watchman or attendant shall be stationed on the surface at the entrance of such manhole at all times while work is being performed therein.

Rule 30. There shall be provided proper cutout switches on all primary and secondary wires in all manholes where the wires are connected with transformers or other electrical devices therein.

Rule 31. All persons employed in manholes shall be furnished with insulated platforms so as to protect the workmen while at work in the manholes: Provided, that this paragraph shall not apply to manholes containing only telephone, telegraph or signal wires or cables.

Rule 32. No work shall be permitted to be done on any live wire, cable or appliance carrying more than seven hundred fifty (750) volts of electricity by less than two competent and experienced persons, who, at all times while performing such work shall be in the same room, chamber, manhole or other place in which, or on the same pole on which, such work is being done: Provided, that in districts where only one competent and experienced person is regularly employed, and a second competent and experienced person cannot be obtained without delay at prevailing rate of pay in said district, such work shall be permitted to be done by one competent and experienced per-

son and a helper who need not be on the same pole on which said work is being done.

No work shall be permitted to be done in any manhole or subway on any live wire, cable or appliance carrying more than three hundred volts of electricity by less than two competent and experienced persons, who at all times while performing such work shall be in the same manhole or subway in which such work is being done.

Rule 33. The grounding provided for in these rules shall be done in the following manner: by connecting a wire or wires not less than No. 6 B. & S. gauge to a water-pipe of a metallic system outside of the meter, if there is one, or to a copper plate one-sixteenth inch thick and not less than three feet by six feet area buried in coke below the permanent moisture level, or to other device equally as efficient. The ground wire or wires of a direct current system of three or more wires shall not be smaller than the neutral wire at the central station, and not smaller than a No. 6 B. & S. gauge elsewhere: Provided, that the maximum cross-section area of any ground wire or wires at the central station need not exceed one million circular mils. The ground wires shall be carried in as nearly a straight line as possible, and kinks, coils and short bends shall be avoided: Provided, that the provisions of this rule shall not apply as to size to ground wires run from instrument transformers or meters. [L. '13, p. 397, § 1.]

§ 4976–2. **Copy of Act to be Posted.**—A copy of this act printed in a legible manner shall be kept posted in a conspicuous place in all electric plants, stations and storerooms. [L. '13, p. 407, § 2.]

§ 4976–3. **Time to Comply.**—All wires, cables, poles, electric fixtures or appliances of every kind or nature being used or operated at the time of the passage of this act shall be changed, and made to conform with the provisions of this act on or before five (5) years from the date of its passage.

Provided, however, that the public service commission of Washington shall have power, upon notice and hearing, to order and require the erection of all guards, protective devices, and methods of protection which in the judgment of the commission are necessary and should be constructed previous to the expiration of the time fixed in this section: Provided, however, that it shall be lawful to place additions, wires, cables, electrical fixtures or appliances upon existing poles or cross-arms so long as the new construction shall be made to conform to the provisions of this act.

Provided, further, that nothing in this act shall apply to manholes already constructed, except the provisions for guards, sanitary conditions, drainage and safety appliances specified in Rules 20, 24, 26, 29, 30, 31 and 32. [L. '13, p. 407, § 3.]

§ 4976–4. Change of Rules—Violations.—It shall be the duty of the public service commission of Washington to enforce all the provisions and rules of this act and it is hereby empowered upon hearing to amend, alter and change any and all rules herein contained, or any part thereof, and to supplement the same by additional rules and requirements, after first giving reasonable public notice and a reasonable opportunity to be heard to all affected thereby: Provided, that no rule amending, altering or changing any rule supplementary to the rules herein contained shall provide a less measure of safety than that provided by the rule amended, altered or changed.

A violation of any rule herein contained or of any rule or requirement made by the commission which it is hereby permitted to make shall be deemed a violation of this act. [L. '13, p. 408, § 4.]

§ 4976–5. Rules of Public Service Commission — Effect.— Every public service company, county, city, or other political subdivision of the state of Washington, and all officers, agents and employees of any public service company, county, city, or other political subdivision of the state of Washington, shall obey, observe and comply with every order, rule, direction or requirement made by the commission under authority of this act, so long as the same shall be and remain in force. Any public service company, county, city, or other political subdivision of the state of Washington, which shall violate or fail to comply with any provision of this act, or which fails, omits or neglects to obey, observe or comply with any order, rule, or any direction, demand or requirement of the commission, pursuant to this act, shall be subject to a penalty of not to exceed the sum of one thousand dollars for each and every offense. Every violation of any such order, direction or requirement of this act shall be a separate and distinct offense, and in case of a continued violation every day's continuance thereof shall be and be deemed to be a separate and distinct offense. [L. '13, p. 408, § 5.]

§ 4976–6. Penalty.—Every officer, agent or employee of any public service company, the state of Washington, or any county, city, or other political subdivision of the state of Washington, who shall violate or fail to comply with, or who procures, aids or abets any violation by any public service company, the state of Washington, or any county, city or other political subdivision of the state of Washington, of any provision of this act, or who shall fail to obey, observe or comply with any order of the commission, pursuant to this act, or any provision of any order of the commission, or who procures, aids or abets any such public service company, the state of Washington, or any county, city, or other political subdivision of the state of Washington, in its failure to obey, observe and comply with any such

order or provision, shall be guilty of a gross misdemeanor. [L. '13, p. 409, § 6.]

Cited in 87 Wash. 283.

Electric Railways. See "Street and Electric Railways."

Embalmers. See "Licenses," § 7036.

Eminent Domain. See §§ 891–936; "Electric Light and Power Companies," § 4974; "Street and Electric Railways," § 9081; "Logs," §§7109–7120; "Mines and Mining," § 7344; "Railroads," §§ 8736–8740; "Water and Water Power Companies," §§ 9504–9510.

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By diking districts, see "Dikes and Drains," § 4097.

By drainage districts, see "Dikes and Drains," § 4143.

By telegraph and telephone companies, see "Telephone and Telegraph Companies," § 9300.

For irrigation purposes, see "Irrigation and Water Rights," § 6359.

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Employees. Liens of, see §§ 1149–1158.

Preference rights in cases of insolvency, etc., see § 1304–1206.

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Exemptions. See §§ 528–572.

From taxation, see "Taxation," § 9091.

In probate proceedings, see § 1465.

Express Companies. See "Railroads."

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Feeble-minded. See "Education," § 4396.

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Of officers, witnesses, etc., see §§ 497–509.

Of jurors, see "Counties," § 4084.

Of justices of the peace, see §§ 1864–1866; "Justices of the Peace and Constables," § 6541.

Of salaried officers, see "Counties," § 4068.

TITLE XXXI.

FENCES.

See "Railroads," §§ 8729–8732.

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4996. Auditor may issue permit, when.
4997. Continuance after expiration of license—Penalty.

§ 4977. Lawful Fence Defined.—The following shall be considered lawful fences in this state: Post and rail or plank fences, five feet high, made of sound posts five inches in diameter, set substantially in the ground, not more than ten feet apart, with four planks not less than one inch thick and six inches wide, securely fastened by nails or otherwise, said planks not more than nine inches apart; post and rail fences, with posts not more than ten feet apart and rails not less than four inches wide (five of them), made in all other respects the same as the first described in this section; worm fences made in the usual way, of sound, substantial rails or poles, five feet high, including riders with stakes firmly set in the ground, and spaces no greater than in post and plank or rail fences, except the two lower spaces, which shall not be more than four inches, and the top spaces, between riders, not more than sixteen inches. Ditch and pole, or board or rail, fence, shall be made of a ditch not less than four feet wide on top and three feet deep, embankment thrown up on the inside of the ditch, with substantial posts set in the embankment not more than ten feet apart, and a plank, pole, or rail securely fastened to said posts at least seven feet high from the bottom of the ditch. [Cf. L. '69, p. 323, § 1; L. '71, p. 63, § 1; L. '73, p. 447, § 1; Cd. '81, § 2488; 1 H. C., § 2544.]

Cited in 64 Wash. 38.

See supra, § 720, injunction against "spite fences."

See infra, §§ 5620–5622, hedge fence along highway lawful.

See § 4992, infra, as to barbed-wire fences. For former laws relating to fences see L. '55, pp. 23, 24; L. '63, p. 480.

§ 4978. Other Fences Declared Lawful. — All other fences as strong and as well calculated to protect inclosures as either of those described in the preceding section shall be lawful fences. [Cf. L. '69, p. 324, § 2; L. '71, p. 64, § 2; L. '73, p. 447, § 2; Cd. '81, § 2489; 1 H. C., § 2545.]

Cited in 64 Wash. 38.

§ 4979. Trespass by Animals—Liability for.—Any person making and maintaining in good repair, around his or her inclosure or inclosures, any fence such as is described in the last two preceding sections may recover in a suit for trespass before the nearest court having competent jurisdiction, from the owner or owners of any animal or animals which shall break through such fence, in full for all damages sustained on account of such trespass, together with the costs of suits; and the animal or animals so trespassing may be taken and held as security for the payment of such damage and costs: Provided, that such person shall have such fences examined and the damages assessed by three reliable disinterested parties and practical farmers, within five days, next after the trespass has been committed: And provided further, that if before trial the owner of such trespassing animal or animals shall have tendered the person injured any costs which may have accrued, and also the amount in lieu of damages which shall equal or exceed the amount of damages afterward awarded by the court or jury, and the person injured shall refuse the same and cause the trial to proceed, such person shall pay all costs, and receive only the damages awarded. [L. '69, p. 324, § 3; L. '71, p. 64, § 3; L. '73, p. 447, § 3; Cd. '81, § 2490; 1 H. C., § 2546.]

See supra, § 3179, unnecessary to fence against swine.

§ 4980. Boundary Line Fences—Who Shall Support.—When any fence has been, or shall hereafter be, erected by any person on the boundary line of his land and the person owning land adjoining thereto shall make, or cause to be made, an inclosure, so that such fence may also answer the purpose of inclosing his ground, he shall pay the owner of such fence already erected one-half of the value of so much thereof as serves for a partition fence between them: Provided, that in case such fence has woven wire or other material known as hog fencing, then the adjoining owner shall not be required to pay the extra cost of such hog fencing over and above the cost of erecting a lawful fence, as by law defined, unless such adjoining owner has his land fenced with hog fencing and uses the partition fence to make a hog inclosure of his land then he shall pay to the owner who owns said hog fence one-half of the value thereof. [L. '07, p. 18, § 1. Cf. L. '69, p. 324, § 4; L. '71, p. 65, § 4; L. '73, p. 448, § 4; Cd. '81, § 2491; 1 H. C., § 2547.]

§ 4981. Partition Fence—Who Shall Erect.—When two or more persons own land adjoining which is inclosed by one fence, and it becomes necessary, for the protection of the interests of one party, said partition fence should be made between them, the other or others, when notified thereof, shall erect or cause to be erected one-half of such partition fence, said fence to be erected on, or as near as practicable, the line of said land. [L. '69, p. 325, § 5; L. '71, p. 65, § 5; L. '73, p. 448, § 5; Cd. '81, § 2492; 1 H. C., § 2548.]

§ 4982. Failure of One Owner to Build—Rights of Other Owner. If after notice has been given by either party, and a reasonable length of time has elapsed, the other party neglect or refuse to erect or cause to be erected the one-half of such fence, the party giving notice may proceed to erect or cause to be erected the entire partition fence, and collect by law one-half of the cost thereof from the other party. [L. '69, p. 325, § 6; L. '71, p. 65, § 6; L. '73, p. 448; § 6; Cd. '81, § 2493; 1 H. C., § 2549.]

§ 4983. Partition Fence, Who Shall Repair.—The respective owners of adjoining inclosures shall keep up and maintain in good repair all partition fences between such inclosures in equal shares, so long as they shall continue to occupy or improve the same; and in case either of the parties shall desire to make such fence capable of turning hogs and the other party does not desire to use it for such purpose, then the party desiring to use it shall have the right to attach hog-fencing material to the posts of such fence, which hog fencing shall remain the property of the party who put it up, and he may remove it at any time he desires: Provided, that he leaves the fence in as good condition as it was when the hog fencing was by him attached, the natural decay of the posts excepted. The attaching of such hog fencing shall not relieve the other party from the duty of keeping in repair his part of such fence, as to all materials used in said fence additional to said hog fencing. [L. '69, p. 325, § 7; L. '71, p. 65, § 7; L. '73, p. 449, § 7; Cd. '81, § 2494; 1 H. C., § 2550; L. '07, p. 18, § 2.]

§ 4984. Removal of Fences not in Line.—When any person shall unwittingly or by mistake erect any fence on the land of another, and when, by a line legally determined, that fact shall be ascertained, such person may enter upon the premises and remove such fence at any time within three months after such line has been run as aforesaid: Provided, that when the fence to be removed forms any part of a fence inclosing a field of the other party having a crop thereon, such first person shall not remove such fence until such crop might, with reasonable diligence, have been gathered and secured, although more than three months may have elapsed since

such division line was run. [L. '69, p. 325, § 8; L. '71, p. 65, § 8; L. '73, p. 449, § 8; Cd. '81, § 2495; 1 H. C., § 2551.]

Cited in 74 Wash. 76.

§ 4985. Owner may Remove Half of Line Fence—Notice.—When any party shall wish to lay open his inclosure he shall notify any person owning adjoining inclosures, and if such person shall not pay to the party giving notice one-half the value of any partition fence between such inclosures, within three months after receiving such notice, the party giving notice may proceed to remove one-half of such fence, as provided in the last preceding section. [L. '69, p. 325, § 9; L. '71, p. 65, § 9; L. '73, p. 449, § 9; Cd. '81, § 2496; 1 H. C., § 2552.]

§ 4986. Partition Fence, Assessment of.—In assessing the value of any partition fence, the parties shall proceed as provided for the assessment of damages in section 4980. [L. '69, p. 326, § 10; L. '71, p. 66, § 10; L. '73, p. 449, § 10; Cd. '81, § 2497; 1 H. C., § 2553.]

§ 4987. Impeachment of Assessment, and Recovery of Damages.—Upon the trial of any cause occurring under the provisions of this act the defendant may impeach any such assessment, and in that case the court or the jury shall determine the damages. [L. '69, p. 326, § 11; L. '71, p. 66, § 11; L. '73, p. 449, § 11; Cd. '81, § 2498; 1 H. C., § 2554.]

Sections 4977–4989, constitute "this act."

§ 4988. Owner of Unruly Animal Liable for Damages.—The owner of any animal that is unruly, and in the habit of breaking through or throwing down fences, if, after being notified that such animal is unruly and in the habit of breaking through or throwing down fences as aforesaid, he shall allow such animal to run at large, shall be liable for all damages caused by such animal, and any and all other animals that may be in company with such animal. [L. '69, p. 326, § 12; L. '71, p. 66, § 12; L. '73, p. 449, § 12; Cd. '81, § 2499; 1 H. C., § 2555.]

§ 4989. Sufficiency of Proof in Action for Damages.—In case of actions for damages under this act, it shall be sufficient to prove that the fence was lawful when the break was made. [L. '71, p. 66, § 13; L. '73, p. 450, § 13; Cd. '81, § 2500; 1 H. C., § 2556.]

See note to § 4987.

§ 4990. Barbed-wire Fence is Lawful Fence.—All fences constructed and maintained according to the provisions of section 4992 shall be lawful fences. [L. '86, p. 127, § 3; L. '88, p. 96, § 3; 1 H. C., § 2556a.]

§ 4991. Barbed-wire Fence Unlawful — Exception. — It shall be unlawful for any person or persons to construct, erect, or maintain any fence or portion of a fence of barbed wire, except as hereinafter provided. [L. '86, p. 126, § 1; L. '88, p. 95, § 1; 1 H. C., § 2557.]

Compare Code of 1881, §§ 1262–1265.

§ 4992. Barbed-wire Fences—How to be Constructed.—Any person desiring to construct, enact [erect], or maintain any fence of barbed wire shall construct the same in the following manner, and not otherwise: The posts shall be set not more than thirty feet apart, the first wire shall not be more than twenty-two inches from the ground, the second wire thirty-four inches, and the third wire forty-eight inches; each and every one of the wires shall be tightly stretched and securely fastened to said posts, and four light poles or strips shall be fastened between each two posts to said wires vertically, leaving no greater space than about six feet between said posts and poles or strips, or the said posts may be set not more than twelve feet apart, and two barbed wires and one pole, rail, or plank securely fastened to said posts, or one barbed wire and two rails, poles, or planks securely fastened to said posts. [Cf. L. '79, p. 146, § 1; L. '83, p. 57, § 1; L. '86, p. 127, § 2; L. '88, p. 95, § 2; 1 H. C., § 2558.]

§ 4993. Must be Kept in Repair—Penalty for Failure.—It shall be the duty of every person building, erecting, or maintaining, in whole or in part, any of the hereinbefore mentioned wire fences, to keep the same in good repair, and if upon five days' notice to any such person or persons, his or her agent, that his or her fence is not in good repair, and he or she shall neglect to repair the said fence for a period of five days after receiving such notice, such person shall be deemed guilty of a misdemeanor, and shall upon conviction thereof be fined in any sum not less than twenty-five nor more than fifty dollars. [Cf. L. '83, p. 58, § 2; L. '86, p. 127, § 4; L. '88, p. 95, § 4; 1 H. C., § 2559.]

Cited in 59 Wash. 687.

§ 4994. Violation of Provisions of Act—Penalty.—Any person violating any of the provisions of the four last preceding sections shall, upon conviction thereof, be deemed guilty of a misdemeanor, and shall be fined in any sum not less than twenty-five nor more than two hundred dollars: Provided, that nothing in this act shall prevent any person from using more wires, posts, or strips in the erection of any fence. [Cf. L. '79, p. 146, § 2; L. '86, p. 127, § 5; L. '88, p. 95, § 5; 1 H. C., § 2560.]

Sections 4990–4994, constitute "this act."

§ 4995. Highway may be Temporarily Fenced, When.—Whenever any inhabitant of this state shall have his fences removed by floods

or destroyed by fire, the county commissioners of the county in which he resides shall have power to grant a license or permit for him or her to put a convenient gate or gates across any highway for a limited period of time, to be named in their order, in order to secure him from the depredations upon his crops until he can repair his fences, and they shall grant such license or permit for no longer period than they may think absolutely necessary. [L. '71, p. 103, § 1; 1 H. C., § 2561.]

§ 4996. Auditor may Issue Permit, When.—It shall be lawful for the auditor of any county to grant such permit in vacation, but his license shall not extend past the next meeting of the commissioner's court. [L. '71, p. 104, § 2; 1 H. C., § 2562.]

§ 4997. Continuance After Expiration of License — Penalty. — Any person retaining a gate across the highway after his license shall expire shall be subject to a fine of one dollar for the first day and fifty cents for each subsequent day he shall retain the same, and it may be removed by the road supervisors as an obstruction, at the cost of the person placing or keeping it upon the highway. [L. '71, p. 104, § 3; 1 H. C., § 2563.]

TITLE XXXII.

FERRIES.

4998. Board may grant license for ferry.
4999. License fee.
5000. To whom license granted—Notice of application.
5001. Notice of proposed application.
5002. Bond of licensee—Conditions of.
5003. Duties of licensee.
5004. Duties of licensee, penalty for failure to perform.
5005. Rates of ferriage, how established—Unlawful rates.
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5012. City may construct ferry, etc.
5013. County may construct, purchase or condemn, etc.
5013–1. Interstate ferries—Construction by county.

§ 4998. Board may Grant License for Ferry.—The board of county commissioners of any county in this state may grant a license to any person entitled and applying therefor to keep a ferry across any lake or stream within its respective county, upon being satisfied that a ferry is necessary at the point applied for, which license shall continue in force for a term to be fixed by the commissioners not exceeding five years. [L. '54, p. 354, § 1; L. '63, p. 521, § 1; L. '69, p. 280, § 40; L. '79, p. 61, § 38; Cd. '81, § 3002; 1 H. C., § 2104.]

See infra, § 7612, second-class city may license.
See infra, § 5721, road company to maintain, when.

§ 4999. License Fee.—The board of county commissioners shall charge such sum as may appear reasonable—not less than one dollar nor more than one hundred dollars per annum—for such license, and the person to whom such license shall be granted shall pay to the county treasurer the tax for one year in advance, taking his receipt therefor; and upon the production of such receipt the county auditor shall issue such license under the seal of his office. [L. '54, p. 354, § 2; L. '63, p. 522, § 2; L. '69, p. 280, § 41; L. '79, p. 61, § 39; Cd. '81, § 3003; 1 H. C., § 2105.]

§ 5000. To Whom License Granted—Notice of Application.—No such license shall be granted to any person other than the owner of the land embracing or adjoining such lake or stream where the ferry is proposed to be kept, unless such owner shall neglect to apply for such license; and whenever application shall be made for a license by any person other than such owner, the board of county commissioners shall not grant the same, unless proof shall be made that the applicant caused notice, in writing, of his intention to make such

application to be given to such owner, if residing in the county, at least ten days before the session of the board of county commissioners at which application is made. [L. '54, p. 354, § 3; L. '63, p. 522, § 3; L. '69, p. 280, § 42; L. '79, p. 61, § 40; Cd. '81, § 3004; 1 H. C., § 2106.]

§ 5001. Notice of Proposed Application.—Every person intending to apply for a license to keep a ferry at any place shall give notice of such intention by posting up at least three notices in public places in the neighborhood where the ferry is proposed to be kept, twenty days prior to any regular session of the board of county commissioners at which the application shall be made. [L. '54, p. 354, § 4; L. '63, p. 522, § 4; L. '69, p. 281, § 43; L. '79, p. 61, § 41; Cd. '81, § 3005; 1 H. C., § 2107.]

§ 5002. Bond of Licensee—Conditions of.—Every person applying for a license to keep a ferry shall, before the same is issued, enter into a bond with one or more sureties, to be approved by the county auditor, in a sum not less than one hundred nor more than five hundred dollars, conditioned that such person will keep said ferry according to law; and if default shall at any time be made in the condition of such bond, damages, not exceeding the penalty, may be recovered by any person aggrieved, before any court having competent jurisdiction. [L. '54, p. 354, § 5; L. '63, p. 522, § 5; L. '69, p. 281, § 44; L. '79, p. 62, § 42; Cd. '81, § 3006; 1 H. C., § 2108.]

§ 5003. Duties of Licensee.—Every person obtaining a license to keep a ferry shall provide and keep in good and complete repair the necessary boat or boats for the safe conveyance of all persons and property, and furnish such boats at all times with suitable oars, setting poles, and other implements necessary for the service thereof, and shall keep a sufficient number of discreet and skillful men to attend and manage the same; and he shall also at all times keep the place of embarking and landing in good order and repair, by cutting away the bank of the stream so that person and property may be embarked and landed without danger or unnecessary delay. [L. '54, p. 354, § 6; L. '63, p. 522, § 6; L. '69, p. 281, § 45; L. '79, p. 62, § 43; Cd. '81, § 3007; 1 H. C., § 2109.]

§ 5004. Duties of Licensee, Penalty for Failure to Perform.—Every person obtaining a license as aforesaid shall give constant and diligent attention to such ferry from daylight in the morning until dark in the evening of each day, and shall, moreover, at any hour in the night, if required, except in cases of imminent danger, give passage to all persons requiring the same on the payment of double rate of ferriage allowed to be taken in the daytime; and if he shall at any time neglect or refuse to give passage to any person

or his property, he shall forfeit and pay to the party aggrieved for every such offense the sum of five dollars, to be recovered before any justice of the peace having jurisdiction; and he shall, moreover, be liable in an action at law for any special damage which such person may have sustained in consequence of such neglect or refusal; but no forfeiture or damages shall be recovered for a failure or refusal to convey any person or property across such stream when it is manifestly hazardous to do so, by reason of any storm, flood, or ice, nor shall any keeper of a ferry be compelled to give passage to any person or property until the fare or toll chargeable by law shall have been fully paid or tendered to such keeper. [L. '54, p. 355, § 7; L. '63, p. 523, § 7; L. '69, p. 281, § 46; L. '79, p. 62, § 44; Cd. '81, § 3008; 1 H. C., § 2110.]

§ 5005. Rates of Ferriage, How Established—Unlawful Rates.—Whenever the county commissioners of any county shall grant a license to keep a ferry across any lake or stream, such commissioners shall establish the rates of ferriage which may be lawfully demanded for the transportation of persons and property across the same, having due regard to the breadth and situation of the stream, and the dangers and difficulties incident thereto, and the publicity of the place at which the same shall have been established, and every keeper of a ferry who shall at any time demand and receive more than the amount so designated for ferrying shall forfeit and pay to the party aggrieved, for every such offense, the sum of five dollars, over and above the amount which shall have been illegally received, to be recovered before any justice of the peace having jurisdiction. [L. '54, p. 355, § 8; L. '63, p. 523, § 8; L. '69, p. 282, § 47; L. '79, p. 63, § 45; Cd. '81, § 3009; 1 H. C., § 2111.]

See supra, § 2715, extortion by ferryman.

§ 5006. Commissioners may Fix, Alter, and Establish Rates.—The county commissioners of the several counties are hereby authorized to fix, alter, and establish, from time to time, the rates of ferriage to be levied and collected at all ferries now established, or hereafter to be established by law, within or bordering upon the county lines of any of the counties in this state. [L. '69, p. 282, § 48; L. '79, p. 63, § 46; Cd. '81, § 3010; 1 H. C., § 2112.]

§ 5007. Posting List of Rates.—Every person licensed to keep a ferry shall post up, in some conspicuous place near his ferry landing, a written or printed list of the rates of ferriage which are chargeable by law at such ferry, which list of rates shall at all times be written or printed in a plain, legible manner, and posted up so near the place where persons shall pass across such ferry that the same may be easily read; and if at any time such keeper shall neglect

or refuse to post and keep up such list, it shall not be lawful to charge or take any ferriage or compensation at such ferry, during the time of such delinquency. [L. '54, p. 355, § 9; L. '63, p. 523, § 9; L. '69, p. 283, § 49; L. '79, p. 63, § 47; Cd. '81, § 3011; 1 H. C., § 2113.]

§ 5008. Order of Carriage—Penalty.—All persons shall be received into the ferry-boats and conveyed across the stream over which such ferry shall be established according to their arrival at the same, and if any keeper of a ferry shall act contrary to this regulation, he shall forfeit and pay the sum of ten dollars for every such offense to the party aggrieved, to be recovered before any justice of the peace, having jurisdiction: Provided, that public officers on urgent business, post-riders, couriers, physicians, surgeons, and midwives shall in all cases be first carried over, when all cannot go at the same time. [L. '54, p. 356, § 10; L. '63, p. 524, § 10; L. '69, p. 283, § 50; L. '79, p. 63, § 48; Cd. '81, § 3012; 1 H. C., § 2114.]

See supra, § 3211, bill of health of stock required, when.

§ 5009. Privilege is Exclusive.—Every person licensed to keep a ferry, according to the provisions of this article, shall have the exclusive privilege of transporting all persons and property over and across the stream where such ferry is established, and shall be entitled to all the fare arising by law therefrom: Provided, that nothing herein contained shall be construed to prevent any person from crossing over such stream at such ferry in his own boat, or to take in and carry over his neighbor, when the same is done without fee or charge, and not with intent to injure any person licensed to keep a ferry. [L. '54, p. 356, § 11; L. '63, p. 524, § 11; L. '69, p. 283, § 51; L. '79, p. 63, § 49; Cd. '81, § 3013; 1 H. C., § 2115.]

§ 5010. Revocation of License.—If any person licensed to keep a ferry shall fail to pay the tax assessed thereon when due, or shall not provide and keep in good and complete repair the necessary boat or boats, with the oars, setting poles, and other necessary implements for the service thereof, or shall neglect to employ a sufficient number of skilled and discreet ferrymen, as provided in section 5003, within three months from the time license shall be granted, or if such ferry shall not at any time be kept in good condition and repair, agreeably to the provisions of this title, or if the same shall be abandoned, disused, or unfrequented for the space of six months at any one time, if [it] shall be lawful for the board of county commissioners of the proper county, on complaint being made in writing, to summon the person licensed to keep such ferry, to show cause why such license should not be revoked, and to decide thereon according to the testimony adduced and the laws of this state, which decision, when made, shall be valid to all intents and purposes, subject to be reviewed by the superior court: Provided, that if any ferry shall be disused by

reason of the stream over which the same is established being fordable at certain seasons of the year, or by reason of the travel being subject to periodical fluctuations, it shall not work a forfeiture within the meaning of this section. [L. '54, p. 356, § 12; L. '63, p. 524, § 12; L. '69, p. 283, § 52; L. '79, p. 64, § 50; Cd. '81, § 3014; 1 H. C., § 2116.]

§ 5011. Maintaining Ferry Without License.—Any person who shall maintain any ferry and receive ferriage without first obtaining a license for the same shall pay a fine of ten dollars for each offense, to be collected for the use of the county, by suit before any justice of the peace having jurisdiction, and any person is hereby authorized to bring such suit: Provided, that it shall not be considered unlawful for any person to transport any other person or his property over any other stream for hire, when it shall be made evident that there is no ferry, or that the ferry established at such place was not in actual operation at the time, or in sufficient repair to have afforded to such person or his property a safe and speedy passage. [L. '54, p. 356, § 13; L. '63, p. 525, § 13; L. '69, p. 284, § 53; L. '79, p. 64, § 51; Cd. '81, § 3015; 1 H. C., § 2117.]

§ 5012. City may Construct Ferry, etc.—Any incorporated city or town within this state be and is hereby authorized to construct, or condemn and purchase, or purchase and to maintain, a ferry across any unfordable stream adjoining and within one mile of the limits of such city or town, together with all necessary grounds, roads, approaches and landings necessary or appertaining thereto located within one mile of the limits of such city or town, with full jurisdiction and authority to manage, regulate and control the same beyond the limits of the corporation, and to operate the same free or for toll. [L. '95, p. 341, § 1.]

Cited in 75 Wash. 211.

See infra, § 7612, second class city may license.

§ 5013. County may Construct, Purchase or Condemn, etc.—Any county within the state be and is hereby authorized to construct, or condemn and purchase, or purchase, operate and maintain a ferry across or wharf at any unfordable stream, lake, estuary or bay within or bordering on said county, together with all the necessary boats, grounds, roads, approaches and landings necessary or appertaining thereto, with full jurisdiction and authority to operate and maintain the same free or for toll, by and under the direction and control of the board of county commissioners of such county and as said board shall by resolution determine. [L. '95, p. 341, § 2; L. '99, p. 39, § 1.]

Cited in 84 Wash. 377.

§ 5013-1. Interstate Ferries — Construction by County. — That whenever the board of county commissioners of any county shall

determine that the construction or maintenance of a ferry in a state adjoining such county or connecting such county with such adjoining state is of necessity or convenience to the citizens of such county, the board shall have power to enter into a contract for the construction or maintenance of such ferry, or to make such contribution as may be deemed advisable toward the construction or maintenance thereof. [L. '15, p. 59, § 1.]

TITLE XXXIII.

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CHAPTER I.

State Fiscal Agent.

§ 5015. State Treasurer is Fiscal Agent of State.—The state treasurer shall be ex officio the fiscal agent of the state. [L. '91, p. 278, § 1; 1 H. C., § 2564.]

§ 5016. Duty of Fiscal Agent of State.—It shall be the duty of the fiscal agent of the state to receive all moneys due the state from any other state or from the general government, to take all necessary steps for the collection of such sums, and to apply the same to the funds to which they may by law belong. [L. '91, p. 278, § 2; 1 H. C., § 2565.]

§ 5017. Particular Duties as to Issuing Receipts.—It shall be the duty of the fiscal agent to issue the necessary receipts for all moneys

collected under the provisions of this chapter and such receipts shall show the date when paid, the amount, from whom received, and on what account the same was collected; one or more copies of such receipt shall be given to the person or persons from whom the money was received, and one copy shall be given to the state auditor. [L. '91, p. 278, § 3; 1 H. C., § 2566.]

§ 5018. Must Collect Money Due the State by Virtue of Enabling Act.—The fiscal agent of the state shall proceed at once to collect from the general government the money now due the state by virtue of section 13 of the act of congress enabling this state into the Union, and which reads as follows: "Five per centum of the proceeds of the sales of public lands lying within said states which shall be sold by the United States subsequent to the admission of said states into the Union, after deducting all of the expenses incident to the same, shall be paid to said states, to be used as a permanent fund, the interest of which only shall be expended, for the support of common schools within said states respectively"; and said agent shall continue to collect from time to time all moneys that may accrue to the state by virtue of the act above quoted, or from any other source not otherwise provided for by law. [L. '91, p. 278, § 4; 1 H. C., § 2567.]

CHAPTER II.

State Fiscal Agency in New York.

§ 5019. Fiscal Agency.—There is hereby established in the city of New York a fiscal agency of the state of Washington, and of the counties, townships, school districts, cities and towns, therein, for the payment through such agency of all bonds and coupons hereafter to be issued by this state, or by any county, township, school district, city or town therein, as shall be by their terms made payable in the city of New York. Such agency shall be known as the fiscal agency of the state of Washington in the city of New York. [L. '95, p. 353, § 1.]

§ 5020. Governor to Appoint.—The governor of this state is hereby authorized and directed, within thirty days after this act shall take effect, to designate some well-known and responsible bank or trust company in the city of New York having a paid-up capital amounting, with its surplus, to not less than one million dollars, to act as the fiscal agency established by the last section, and to make duplicate certificates of such designation and cause the same to be attested under the seal of the state, and to file one of such duplicate certificates in the office of the secretary of the state and to transmit the other to such bank or trust company designated; and such bank or trust company shall become and is hereby declared to be a fiscal agency

established by this chapter, and shall continue to be such fiscal agency for the term of four years from and after the filing of the certificate of its designation as such, and thereafter until the designation of another bank or trust company as such fiscal agency. No bank or trust company that buys or sells municipal bonds as dealers shall be eligible to the appointment of fiscal agents. [L. '95, p. 354, § 2.]

§ 5021. Fiscal Agency, Duty of.—It shall be the duty of the fiscal agency established by this chapter on the receipt of any moneys transmitted to such agency by or for this state, or for any county, township, school district, city or town therein, for the purpose of paying therewith any of its bonds or coupons hereafter to be issued and by their terms made payable in the city of New York, to transmit forthwith to the sender of such moneys a proper receipt therefor; to pay such bonds or coupons upon presentation thereof for payment at the office of such agency in the city of New York at or after the maturity thereof, in the order of their presentation, so far as the moneys received for that purpose suffice for such payment; and to cancel all such bonds and coupons upon payment thereof, and thereupon forthwith to return the same to the proper officers of this state, or any county, township, school district, city or town therein which shall have issued such bonds or coupons. [L. '95, p. 354, § 3.]

§ 5022. Compensation.—The fiscal agency established by this chapter shall receive no compensation for the performance of the duties prescribed by this chapter. [L. 95, p. 354, § 4.]

§ 5023. Bonds, Where Payable.—No bonds which shall be hereafter issued by this state, or by any county, township, school district, city or town therein, after this act shall take effect, shall be by their terms made payable in the city of New York at the specific place other than at the office of the fiscal agency hereby established. [L. '95, p. 355, § 5.]

§ 5024. Treasurers, Duty of.—It shall be the duty of the state treasurer, and the duty of the treasurer or other proper officer of every county, township, school district, city or town in this state, to transmit to the fiscal agency hereby established, not less than twelve days before the maturity of any bonds or coupons that shall hereafter be issued by the state, or by any county, township, school district, city or town therein, and that shall be by their terms made payable in the city of New York, sufficient moneys out of any funds in the hands of any such treasurer or other officer applicable to such purpose for the payment of such bonds and coupons. [L. '95, p. 355, § 6.]

CHAPTER II–A.

Registration of Municipal Bonds.

§ 5024–1. Registration—Payment—Assignments.—Upon the presentation at the office of the officer or agent hereinafter provided for any bond that has heretofore been or may hereafter be issued by any county, city, town, port or school district in this state, the same may be registered as to principal in the name of the owner upon the books of such municipality to be kept in said office, such registration to be noted on the reverse of the bond by such officer or agent. The principal of any bond so registered shall be payable only to the payee, his legal representative, successors or assigns, and such bond shall be transferable to another registered holder or back to bearer only upon presentation to such officer or agent, with a written assignment duly acknowledged or proved. The name of the assignee shall be written upon any bond so transferred and in the books so kept in the office of such officer or agent. [L. '15, p. 270, § 1.]

§ 5024–2. Payment of Interest Coupons.—If, upon the registration of any such bond, or at any time thereafter, the coupons thereto attached, evidencing all interest to be paid thereon to the date of maturity, shall be surrendered, such coupons shall be canceled by such officer or agent, who shall sign a statement indorsed upon such bond of the cancellation of all unmatured coupons and the registration of such bond. Thereafter the interest evidenced by such canceled coupons shall be paid at the times provided therein to the registered holder of such bond in New York exchange mailed to his address. [L. '15, p. 270, § 2.]

§ 5024–3. Registration Officers—Fiscal Agency in New York.—The duties herein prescribed as to the registration of bonds of any city or town shall be performed by the treasurer thereof, and as to those of any county, port or school district by the county treasurer of the county in which such port or school district lies; but any county, city, town, port or school district may designate by resolution any other officer for the performance of such duties, and any county, city, town, port or school district may designate by resolution the fiscal agency of the state of Washington in New York for the performance of such duties, after making arrangements with such fiscal agency therefor, which arrangements may include provision for the payment by the bondholder of a fee not exceeding twenty-five cents for each registration. [L. '15, p. 270, § 3.]

CHAPTER III.

Deficiencies in Public Institutions.

§ 5025. Deficiencies Unlawful.—It shall be unlawful for any of the state officers or trustees, managers, directors, superintendents or boards of commissioners of any of the public institutions of the state of Washington, or for the officers of any of the departments of the state of Washington, to create a deficiency, incur liability, or to expend a greater sum of money than is appropriated by the legislature for the use of said public institution or department. [L. '95, p. 58, § 1.]

Cited in 17 Wash. 485; 42 Wash. 654.

§ 5026. Individual Liability—Penalty.—Any officer, trustee, manager, director, superintendent or commissioner, enumerated in the last preceding section, who shall violate the provisions of this chapter by creating a deficiency, incurring a liability, or expending a greater sum than is appropriated by the legislature for any public institution or department of this state in any one year, shall be individually liable for the same, and shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding one thousand dollars. [L. '95, p. 58, § 2.]

Cited in 17 Wash. 485.

§ 5027. Liability on Bond.—Any person, copartnership or corporation with whom a liability is attempted to be incurred or debt contracted by such officers, trustees, managers, directors, superintendents or commissioners in violation of the provisions of this chapter, shall have a cause of action against such officers, trustees, managers, directors, superintendents or commissioners so violating the provisions of this chapter, and against the sureties on their official bonds for the full amount of such liability incurred or debt contracted. [L. '95, p. 58, § 3.]

§ 5028. Exceptions.—In case of an emergency requiring an expenditure of a greater sum than the amount appropriated by the legislature for the insane asylum, reform school, soldiers' home, school for defective youth, and penitentiary in any one year, the trustees, managers, directors, superintendents or commissioners of said institutions may, on written advice and consent of the governor, state auditor, secretary of state, treasurer and attorney general, incur such liability for maintenance only, as circumstances may require. [L. '95, p. 58, § 4.]

Cited in 42 Wash. 654.

This section appears to be in conflict with § 4 of Art. VIII of the constitution.

See infra, § 8933, state board of audit and control, which supplants part of the boards of trustees mentioned in this section.

CHAPTER III–A.

Budget System for State Officers.

§ 5028–1. Filing Itemized Estimates.—On or before the fifteenth day of October of every even-numbered year the several departments, institutions, commissions and officers of the state shall report to the state board of finance on forms prescribed and according to the classification adopted by the state auditor through the bureau of inspection and supervision of public offices, an estimate in itemized form, stating the amount of money required for the conduct of such department, institution, commission or office for the biennial period beginning on the first day of April thereafter. [L. '15, p. 350, § 1.]

§ 5028–2. Compilation of State Budget.—The state auditor, through the bureau of inspection and supervision of public offices, shall assemble said statements in proper form and show opposite each request the amount of appropriation made for the current biennium and the amount expended from each to and including September 30th, immediately preceding, also a statement showing the actual revenues of the state for the twenty-four months ending September 30th, and the estimated receipts from all sources for the next fiscal biennium. This statement shall be submitted to the board of finance, which shall make such recommendations as it may deem proper opposite the requests of the several departments, institutions, boards and commissions. This consolidated statement shall be known as the State Budget. [L. '15, p. 350, § 2.]

§ 5028–3. Information to Board of Finance.—The departments, institutions, commissions and officers of the state, upon request, shall forthwith furnish to the state board of finance, any information desired in relation to the affairs of their respective departments, institutions, commissions or offices. [L. '15, p. 351, § 3.]

§ 5028–4. Submission of Budget to Legislature.—Upon the convening of each regular session of the legislature, the state board of finance shall submit to the legislature said state budget, and shall cause such budget to be printed and mailed to each member of the legislature at least fifteen days before the convening thereof. [L. '15, p. 351, § 4.]

§ 5028–5. Investigation of Offices and Departments.—Said board may make such investigation of the affairs of any department, institution, commission or office as it may deem proper; may visit and inspect any department, institution, commission or office; administer oaths; examine such persons as it may deem necessary and compel the production of books, papers and records of such department, institution, commission or office pertaining to its expenditures. Any

necessary expense incurred in carrying out the provisions of this act shall be paid out of the appropriation made by the legislature for the executive department. [L. '15, p. 351, § 5.]

CHAPTER IV.

State Funds.

§ 5029. Payment of Public Moneys into State Treasury.—It shall be the duty of each state officer or other person (other than county treasurers) who is authorized by law to collect or receive moneys belonging to the state or to any department or institution thereof, to transmit to the treasurer of the state each day, all moneys collected by him on the preceding day, together with a statement of the source from which each item of said money was derived, and to transmit to the state auditor a duplicate of said statement: Provided, that the provisions of this section shall apply to the office of commissioner of public lands in so far only as to require said officer to transmit all moneys received in payment in principal and interest under outstanding contracts and leases where no question is raised as to the right of the state to receive payment; and as to all cases where the right of the state to receive such moneys is in doubt the commissioner shall transmit the same to the treasurer within five days after the determination of the commissioner of the board of state land commissioners that the money is due to the state: Provided, further, that money shall not be deemed to have been paid to the state of Washington upon any sale or lease of land until the money shall have been paid to the state treasurer: And provided further, that this act shall not apply to the educational institutions of the state, but each of such educational institutions shall, at the end of every three months, file with the state auditor an itemized statement showing all moneys received by it from sources other than state legislative appropriations, the particular source from which the same was received, the purpose for which the same or any part thereof, has been expended, and the balance on hand. [L. '07, p. 179, § 1; L. '09, p. 433, § 1.]

"Act" refers to the first three sections of this chapter.

See infra, § 5049, as to moneys of State College.

See infra, § 9037, moneys received by attorney general to be paid into.

§ 5030. Treasurer to Notify Governor.—It shall be the duty of the state treasurer to inform the governor of any failure on the part of any officer to comply with the provisions of this act. [L. '07, p. 180, § 2.]

"Act" refers to the first three sections of this chapter.

§ 5031. Liability of Officers.—If any officer shall fail to comply with the provisions of this act he shall be liable to the state of Wash-

ington upon his official bond in a sum equal to ten per centum annual interest for such time as such officer shall have retained such funds. [L. '07, p. 180, § 3.]

"Act" refers to the first three sections of this chapter.
See supra, § 2569, failure to pay over moneys received.

§ 5032. Duplicate Receipts for Moneys Paid.—All persons who are required by law to pay any moneys into the state treasury, or to transmit any public funds to the state treasurer on state accounts, shall, at the time of making such payments or transmissions, notify the state auditor thereof, specifying the amount and date of such payment, and for what particular fund or account. For all sums of money so paid into the treasury, the state treasurer shall forthwith give duplicate receipts under his seal of office, one of which he shall deposit with the state auditor, who shall credit such person or county accordingly, and charge the treasurer with the amount; the other receipt the treasurer shall transmit to the person or party paying the money. [L. '54, p. 414, § 5; L. '64, p. 53, § 5; L. '71, p. 78, § 4; L. '86, p. 134, § 4; L. '90, p. 643, § 4; 1 H. C., § 108.]

This section may be superseded, in part at least, by § 5029, supra.

§ 5032a. Shore Land Improvement Fund.—There is hereby created a state shore land improvement fund, and all warrants drawn upon said fund pursuant to this act, including interest thereon, shall be paid in the same manner as the state's general fund warrants are paid. [L. '09, p. 746, § 1.]

Cited in 60 Wash. 454.

This act refers to appropriations for the Lake Washington canal, King county, Washington.

§ 5032b. General Fund not Liable.—Indebtedness incurred or warrants issued hereunder shall be payable only from the state shore land improvement fund, and it shall never be nor become general indebtedness against the state. [L. '09, p. 748, § 4.]

Other provisions of this act are omitted as relating to an appropriation of a local nature. See note to last section.

§ 5032c. Loans from One Fund to Another.—Whenever there shall be in any fund or funds in the state treasury insufficient moneys to meet the current expenditures properly payable from such funds, and there shall be in any other fund or funds, moneys in excess of the amount required to meet the current expenditures therefrom, the state treasurer may, with the consent of the state board of finance, make temporary loans from the funds having excess moneys to those having insufficient moneys, of such sum or sums as may be necessary to meet the demands upon such funds: Provided, that this act shall not authorize the loan of any moneys from the permanent school fund, nor from any of the funds of the permanent irreducible educational,

charitable, penal or reformatory institutions of the state, nor to exceed seventy-five per cent of the taxes levied and uncollected. [L. '15, p. 32, § 1.]

§ 5032d. Interest on Inter-fund Loans — Notice of Transfer. — In the event any such loan is made, the state treasurer shall charge the fund receiving such temporary loan with the loan and with interest thereon at the depositary interest rate as fixed by the state board of finance, and shall repay such loan to the funds from which the same is borrowed, at such times and at such amounts as there shall be moneys in the borrowing funds not required to meet the current expenditures payable therefrom, sufficient to repay the same or a part thereof, and shall credit the loaning fund with their deposit interest, as required by law, the same as if no such loans had been made. And the state treasurer is hereby specifically directed and authorized to transfer from the borrowing funds to the credit of the deposit interest fund for the credit of the loaning funds such amounts of unearned deposit interest, at the then prevailing depositary interest rate, occasioned by the withdrawal of the state funds from deposit because of the loans herein provided for. And it shall be the duty of the state treasurer to forthwith notify the state auditor in writing of any such transfer or transfers of deposit interest. [L. '15, p. 32, § 2.]

CHAPTER V.

General Fund and Disbursements Therefrom.

§ 5033. Moneys Payable into General Fund.—All moneys now in or that may be paid into the state treasury from any and all sources, except moneys received from taxes levied for specific purposes and excepting the several permanent and irreducible funds of the state, and the moneys derived therefrom, shall be paid into and become a part of the general fund of the state. [L. '07, p. 13, § 1.]

This section supersedes a number of former laws creating special funds.

§ 5034. Salaries Paid from General Fund.—All salaries and other expenses heretofore required to be paid from any of the funds affected by the last section shall hereafter be paid from the state general fund. [L. '07, p. 13, § 2.]

§ 5035. Itemized Vouchers must be Taken, etc. — All precinct, county, district, and state officers and all commissions of the state of Washington charged with the disbursement of public moneys or certifying indebtedness to the state auditor, or other disbursing officer, shall take fully itemized vouchers for such disbursements; said vouchers shall be taken in duplicate, one to be filed with the auditor of state, the other to be retained by the officer making the

disbursement or certifying the indebtedness. Said vouchers shall contain a certificate by the disbursing officer, certifying on honor that the materials furnished, labor performed, or services rendered, for which such disbursement is made, have been actually delivered, rendered, performed: Provided, that all county, district, or precinct officers shall file such vouchers with the county auditor. [L. '91, p. 235, § 1; 1 H. C., § 3131.]

§ 5036. Certificate must be Attached to Voucher, When. — All persons furnishing materials, rendering service, or performing labor, or receiving certificates of indebtedness from any disbursing or other officer of the state, or any county, district, or precinct officer or commission shall furnish a certificate, certifying on honor that he has furnished materials, rendered services, or performed labor, as described in said voucher, which said certificate shall be a part of such voucher or attached to the same. [L. '91, p. 236, § 2; 1 H. C., § 3132.]

§ 5037. Unlawful to Issue Warrants Except on Voucher.—It shall be unlawful for the state auditor to issue any warrant or warrants except upon vouchers for services rendered or material furnished duly certified and authenticated: Provided, however, that if any officer or department of the state shall file with the auditor a surety company bond satisfactory to said auditor, and conditioned upon the proper accounting for and legal expenditure of any moneys to be advanced, the auditor may from time to time advance to such officer or department, out of the appropriation for the expenses of such officer or department, such amounts as he may deem advisable, not exceeding the principal of said bond and in no event exceeding two thousand dollars ($2,000). [L. '15, p. 247, § 1. Cf., L. '95, p. 191, § 1.]

§ 5038. Punishment for Violation of Provisions of this Chapter. Any officer or person violating any of the provisions of sections 5035 and 5036 shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred dollars, or more than five hundred dollars, and may be imprisoned in the county jail not less than ten days or more than six months. [L. '91, p. 236, § 3; 1 H. C., § 3133.]

§ 5039. Indorsement of Warrants not Paid for Want of Funds.—Upon the presentation of any state warrant or warrants to the state treasurer, it shall be his duty, if there be no funds in the state treasury, to indorse on said warrant or warrants, "Not paid for want of funds," with the day and date of such presentation, and said warrant or warrants shall from said date draw legal interest till paid. [L. '69, p. 408, § 2.]

See infra, § 9031, payment in order of issuance.

§ 5040. Call for Warrants.—The state treasurer shall, when he has sufficient money on hand to pay warrants exceeding three thou-

sand dollars, and said warrants are not presented for payment, advertise in some weekly newspaper at the seat of government having the largest circulation in the state, for two weeks, stating the amount of money on hand, and the number of warrants he is prepared to pay; and if such warrants are not presented for payment within ten days after the publication of such notice, such warrants shall not draw interest after such date. [L. '71, p. 79, § 9; L. '86, p. 135, § 9; L. '90, p. 644, § 8; 1 H. C., § 112.]

See infra, § 6895, payment of warrants for legislative expenses.
See infra, § 9014, limitation for presentation for payment.

CHAPTER VI.

State Educational Funds.

§ 5041. State University Permanent Fund.—There is hereby created in the state treasury a permanent and irreducible fund to be known as the "State University Permanent Fund," into which fund shall be paid all moneys now in the state treasury in either the "University of Washington Fund," the "University Fund," or the "State University Fund," and into which shall also be paid all moneys derived from the sales of lands granted, held or devoted to State University purposes. [L. '07, p. 394, § 1. Cf. L. '90, p. 398, § 16; 1 H. C., § 954; L. '93, p. 299, § 1.]

§ 5042. State University Current Fund.—There is hereby created in the state treasury a fund to be known as the "State University Current Fund," into which shall be paid all the interest and earnings of the State University permanent fund, and the rentals of all lands granted, held or devoted to State University purposes, and which shall be subjected to appropriation for State University purposes. [L. '07, p. 394, § 2.]

§ 5043. Agricultural College Current Fund.—There is hereby created in the state treasury a fund to be known as "The Current Fund of the Agricultural College and School of Science." [L. '05, p. 73, § 1.]

§ 5044. Same, Payment of Money into.—There shall be paid into said fund for the use and support of the Agricultural College and School of Science: First—All moneys heretofore collected or hereafter to be collected from the lease or rental of lands set apart by the Enabling Act or otherwise for the Agricultural College and School of Science; Second—All interest or income arising from the proceeds of the sale of any of said lands; Third—All moneys received or collected as interest on deferred payments on contracts for the sale of such lands. [L. '05, p. 73, § 2.]

§ 5045. Normal School.—There is hereby created in the state treasury a fund to be known as "The Normal School Current Fund." [L. '05, p. 73, § 3.]

§ 5046. What Moneys Payable into Fund.—There shall be paid into said "The Normal School Current Fund" for the use and support of the normal schools of the state: First—All moneys heretofore collected or hereafter to be collected from the lease or rental of lands set apart by the Enabling Act or otherwise for the state normal schools; Second—All interest or income arising from the proceeds of the sale of said lands; Third—All moneys received or collected as interest on deferred payments on contracts for the sale of such lands. [L. '05, p. 73, § 4.]

§ 5047. Disposition of Lands for Scientific School—Vested in Regents.—The board of regents of the Agricultural College, Experiment Station and School of Science of the state of Washington is hereby authorized and directed to select and set aside for the purposes hereinafter described four full sections of land in lots of not less than forty acres each from the lands granted to the state of Washington for the establishment and maintenance of a scientific school and belonging to the Agricultural College and School of Science. The entire management, control and power of disposition of said four sections of land be and hereby are vested in the board of Regents of the Agricultural College, Experiment Station and School of Science and subject to the provisions of this act. [L. '01, p. 170, § 1.]

This act refers to this and the next section.

§ 5048. Scientific School Fund.—There shall be kept by the state treasurer a separate fund to be known as the scientific school fund, into which shall be paid all moneys received from the sale of the lands, or valuable material thereon, belonging to the Agricultural College and School of Science, which fund shall be paid out by the state treasurer only upon warrants drawn by the state auditor, which warrants shall be based upon proper vouchers of the board of regents of the Agricultural College and School of Science. [L. '01, p. 172, § 4.]

§ 5049. Funds of State College—Duties of State Treasurer and State Auditor.—The state treasurer shall hereafter constitute and be the treasurer of all funds belonging to the State College, Experiment Station and School of Science of the state of Washington, known as the State College of Washington. All moneys or funds received from the United States or from any other source whatsoever for the benefit of said State College or from the products or property of said college, or for the use of or belonging to said college shall be

paid to and deposited with the state treasurer; when so deposited the same shall be held as special funds for said college, and are hereby appropriated to the uses and purposes for which the same are received. Upon receipt of any funds belonging to said college by the state treasurer, he shall issue duplicate receipts therefor and deposit one of such receipts with the state auditor, who shall keep the accounts of said college as other accounts are kept, and shall draw warrants against said accounts upon the presentation of properly executed vouchers therefor, but no warrant shall be drawn on any such fund for an amount in excess of the amount remaining in such fund. [L. '09, Ex. Sess., p. 36, § 1.]

§ 5049–1. Higher Educational Institutions Defined. — The terms "State Institutions of Higher Education" as used in this act shall include the University of Washington, the Washington State College, the State Normal School at Cheney, the State Normal School at Ellensburg, and the State Normal School at Bellingham. [L. '11, p. 340, § 1.]

§ 5049–2. Funds Created.—There is hereby created a fund to be known as the "University Fund"; a fund to be known as the "Washington State College Fund"; a fund to be known as the "Cheney Normal School Fund"; a fund to be known as the "Ellensburg Normal School Fund"; and a fund to be known as the "Bellingham Normal School Fund." [L. '11, p. 340, § 2.]

§ 5049–3. Payments.—All moneys arising from the tax herein directed to be levied for the said several institutions of higher education shall be paid into the respective funds hereby created. [L. '11, p. 340, § 3.]

§ 5049–4. Tax Levy.—The state board of equalization shall, beginning with the fiscal year 1912 and annually thereafter, at the time of levying taxes for state purposes, levy upon all property subject to taxation a tax of forty-seven and one-half one-hundredths (47½–100) of one mill for the State University Fund; thirty-two and one-half one-hundredths (32½–100) of one mill for the Washington State College Fund; nine one-hundredths (9–100) of one mill for the Cheney Normal School Fund; seven one-hundredths (7–100) of one mill for the Ellensburg Normal School Fund; and nine one-hundredths (9–100) of one mill for the Bellingham Normal School Fund. After January 1, 1916, it shall be the duty of the governor upon request of the president of any of the institutions of higher learning to appoint a commission of five members to investigate reasons for changing the levy herein provided for, and to report to him in time for action, if any is necessary, by the legislature of 1917. [L. '11, p. 340, § 4.]

§ 5049–5. Use of Funds.—All sums of money produced by said tax shall be placed in said several funds and hereby set apart for the use of the several institutions herein provided for, for the purpose of maintenance, repairs and construction of buildings, and equipment thereof. [L. '11, p. 341, § 5.]

§ 5049–6. University of Washington Building Fund.—There is hereby created in the state treasury a fund which shall be known and designated as the "University of Washington Building Fund." [L. '15, p. 239, § 1.]

§ 5049–7. Student's Tuition Fees.—The University of Washington shall charge to and collect from each of the students matriculating and registering therein, the following fees:

(a) A matriculation fee of ten dollars.

(b) A tuition fee of ten dollars per semester.

(c) A tuition fee of ten dollars for Summer Session, Short Course and Marine Station students. The students mentioned in this subdivision shall not be charged for such work any fees mentioned in subdivisions (a) and (b) of this section, but may in proper cases, be charged the fees mentioned in subdivisions (d) and (e); but upon subsequent matriculation and registration for regular semester work such students must pay the matriculation fee and also such fees as are required for the work for which they register.

(d) An additional tuition fee of twelve and one-half dollars per semester for law, for the law library.

(e) Student deposit, disciplinary and special or individual instruction fees and fees for extension work and fees for night work, shall be as determined by the board of regents. The board of regents is hereby empowered to return unused or unearned portions of the fees collected under the terms of this subdivision. [L. '15, p. 239, § 2.]

§ 5049–8. Fees Credited to Building Fund.—All fees mentioned in subdivision (a) of section 5049–7 shall be paid into the state treasury within five days from the collection thereof, and all fees mentioned in subdivision (b) of said section except such as shall be returned as provided in section 5049–10 shall be paid into the state treasury within sixty-five days from the collection thereof, and by the state treasurer shall be credited to the "University of Washington Building Fund," to be used exclusively for the purpose of erecting, maintaining, equipping and furnishing new buildings, and altering, repairing, equipping and furnishing existing buildings for the University of Washington. [L. '15, p. 240, § 3.]

§ 5049–9. Revolving Fund.—All fees paid in accordance with subdivisions (c) (d) and (e) of said section 5049–7 shall be held by the board of regents as a revolving fund and expended by it for the pur-

poses for which collected and be accounted for in accordance with existing law. [L. '15, p. 240, § 4.]

§ 5049-10. Refund of Fees.—Fees paid in accordance with subdivision (a) of section 5049-7 are not returnable to the student in whole or in part. Fees paid in accordance with subdivision (b) of said section 5049-7 are not returnable except in case of sickness or causes entirely beyond the control of the student. No portion of the fees shall be returned for voluntary or enforced withdrawal after sixty days from the date of registration of the student. Students withdrawing under discipline forfeit all rights to the return of any portion of the fees. In no case shall more than one-half the fee be refunded. [L. '15, p. 240, § 5.]

§ 5049-11. Free Scholarships.—The board of regents may appoint to free scholarships those deserving students who after a semester in residence have shown a marked capacity for the work done by them in school. The number of free scholarships shall not in any semester exceed ten per centum of the attendance. The appointment of a free scholarship shall release the student appointed from the payment of the fees mentioned in subdivision (b) of section 5049-7. [L. '15, p. 240, § 6.]

§ 5049-12. Rentals Credited to Building Fund.—On and after March 1, 1916, all rentals received on account of that certain lease of the former university site in the city of Seattle, known as the "Old University Grounds," made and entered into on the first day of February, 1907, by and between the state of Washington, lessor, and James A. Moore, lessee, and thereafter assigned by said lessee to the Metropolitan Building Company, a corporation, shall be paid into and credited to said "University of Washington Building Fund," to be used exclusively for the purposes mentioned in section 5049-8. [L. '15, p. 241, § 7.]

§ 5049-13. Voluntary Student Fees.—This act shall not apply to or affect any student fee or charge which the students voluntarily maintain upon themselves for student purposes only. [L. '15, p. 241, § 8.]

§ 5049-14. Appropriation from General Fund.—There is hereby appropriated out of any moneys in the general fund the sum of one hundred and fifty thousand dollars ($150,000) to be used in the construction of a class "A" building for the University of Washington and for furnishing and equipment therefor. [L. '15, p. 241, § 9.]

§ 5049-15. Appropriation from University Building Fund.—There is hereby appropriated from the said "University of Washington Building Fund" the sum of one hundred fifty thousand dollars ($150,000), or so much thereof as may be necessary, for the erection,

equipment and furnishing of one class "A" building upon the campus for the use of the University of Washington. Said building to be built by and under the supervision of the board of regents of the university. [L. '15, p. 241, § 10.]

§ 5049–16. Repealing Clause.—All acts and parts of acts in any way in conflict with this act be and the same are hereby, repealed. [L. '15, p. 241, § 11.]

CHAPTER VII.

Investment of State Educational Funds.

§ 5053. Board of Finance.—There is hereby created a board which shall be known and designated as the "State Board of Finance." Said board shall be composed of the governor, state treasurer and state auditor: Provided, however, that the governor may designate and appoint some state officer as his representative. [L. '07, p. 16, § 1.]

See supra, § 4598, sources of school revenues.

§ 5054. Records—Office.—Said board shall keep a full and complete record of all their proceedings in appropriate books of record, and a clerk in the office of the state auditor shall act as the secretary of the said board. Their office shall be in the office of the state auditor, and all records and correspondence relating to the said board shall be kept in the office of the state auditor, and shall be subject to public inspection. [L. '07, p. 17, § 2.]

§ 5055. Rules—Treasurer Chairman of Board.—Said state board of finance shall make appropriate rules and regulations for the carrying out of the provisions of this act, not inconsistent with law, and the state treasurer shall act as chairman of said state board of finance. [L. '07, p. 17, § 3.]

"This act" refers to the first four sections of this chapter.

§ 5056. Investment, in What Bonds Lawful—School District Bonds Preferred.—Whenever there shall be in the permanent school funds of the state, or in the permanent funds of the normal school, State University, Scientific School, Agricultural College, or the charitable, educational, penal and reformatory institutions, one thousand dollars or more available for investment, said state board of finance shall invest the same in national, state, county, municipal or school district bonds, bearing not less than three and three-fourths per cent interest per annum, paying therefor not more than the par value thereof: Provided, the word bonds in this section shall not be interpreted to mean or include any special, or assessment district bonds or bonds other than those found to be within the limit of indebtedness prescribed by law, or regularly created and issued as general

indebtedness bonds: Provided, further, that school district bonds, regularly created and issued, shall be given preference in said investments. Upon such investment being made, the state auditor shall draw his warrant on said fund for the amount so invested, and the bonds so purchased shall be deposited with the state treasurer, whose duty it shall be to collect all interest payments falling due thereon, and the principal at maturity. [L. '07, p. 17, § 4. Cf. L. '90, p. 399, § 17; L. '93, p. 407, § 25; L. '95, p. 547, § 44; L. '97, p. 262, § 69; L. '03, p. 143, § 1.]

Cited in 74 Wash. 17.

This section seems to supersede L. '03, c. 95, p. 143, authorizing the state board of land commissioners to invest the school funds.

§ 5057. Investment of the Permanent School Fund in State Bonds. Whenever there shall be in the hands of the state treasurer, belonging to the state permanent school fund, money to the amount of five thousand dollars or more, of which no investment can be made in the securities now or hereafter authorized by law, and the state shall have an outstanding general fund warrant indebtedness in amount equal to or greater than the amount of five thousand dollars ($5,000), the governor of the state and the state auditor are hereby authorized, and it shall be their duty, to issue the bonds of the state of Washington in amount equal to that amount, and sell and deliver such bond to the state treasurer for the account of the state permanent school fund at the face or par value thereof. [L. '99, p. 67, § 1.]

It is expressly provided that this section is not affected by the act of 1903, superseded by the preceding section: See L. '03, p. 144, § 2.

§ 5058. Bonds — Description of, Interest, Maturity, etc.—Such bonds shall bear date of issue and be issued in denominations of five thousand dollars ($5,000), and shall bear interest at the rate of three and one-half per cent per annum, payable semi-annually on the first day of May and November of each year until paid, payable out of the state general fund, and the state treasurer is hereby authorized and directed to transfer from the said state general fund to the said current school fund sufficient money to pay said interest as the same falls due, and certify the same to the state auditor, which certificate shall be authority to said auditor to make the necessary and proper entries in the books and records of his office to show such transfer. The principal of said bonds shall be payable, any or all of them, on or before twenty years from the date of issue, to the state treasurer for the account of the state permanent school fund, out of the state general fund, to which the proceeds thereof shall have been credited, and when paid the principal thereof shall be credited to the state permanent school fund. [L. '99, p. 68, § 2; L. '01, p. 388, § 1.]

§ 5059. Bonds — Printing, Signing, etc.—Said bonds shall be printed on good bond paper and shall each be signed by the governor and personally attested by the state auditor, and sealed with the seal of the state auditor, but no coupon need be attached thereto. [L. '99, p. 68, § 3.]

§ 5060. Proceeds of Bonds Used to Call General Fund Warrants.—It shall be the duty of the state treasurer, whenever any such bonds are executed and presented to him to invest the state permanent school fund in such bonds to the amount of the face or par value thereof at par, and receipt to the state auditor therefor, and at once transfer from the state permanent school fund to the state general fund money to the amount of the face or par value of such bonds so delivered to him, and the money so transferred to the general fund shall be at once used in the redemption of outstanding general fund warrants. [L. '99, p. 68, § 4.]

§ 5061. Interest, to Current School Fund.—All interest paid on such bonds shall be credited to the current common school fund of the state on the day it falls due. [L. '99, p. 69, § 5.]

§ 5062. Redemption.—It shall be the duty of the state treasurer to redeem any of said bonds on any interest pay day whenever, and to the extent that he shall have in his hands money belonging to the state general fund equal to one or more of such bonds in excess of all outstanding general fund warrants. [L. '99, p. 69, § 6.]

CHAPTER VIII.

Bonding University Lands.

§ 5063. Appropriation from University Fund.—For the purpose of refunding to the state of Washington the moneys appropriated for the erection and support of the said university there is hereby appropriated from this said "University of Washington Fund," to be paid into the general fund of the state, the following sums, to wit: One hundred and fifty thousand dollars, appropriated by the legislative session of eighteen hundred and ninety-three for the erection of buildings and the preparation of the new grounds; fifty thousand dollars, appropriated by the legislative session of eighteen hundred and ninety-five for the same or similar purposes; twenty-five thousand dollars, being a portion of the sum appropriated by the legislative session of eighteen hundred and ninety-five for the support or maintenance of the said university; making a total appropriation herein of two hundred and twenty-five thousand dollars. [L. '95, p. 108, § 2.]

The "University of Washington fund" was transferred to the "State University permanent fund" by § 5041, supra.

§ 5064. Bonds Authorized.—For the purpose of anticipating the fund out of which the foregoing appropriation is provided to be paid, the governor, state auditor, and state treasurer are hereby authorized to make a loan of two hundred and twenty-five thousand dollars upon the bonds of the state, to be signed by the governor and attested by the secretary of state, under the seal of the state, and countersigned and registered by the state auditor. Said bonds shall be of denomination of not less than one thousand dollars each, and shall, on their face, be made payable at any time after five years and within fifteen years from their date, at the option of the state, at the office of the state treasurer; shall bear interest at the rate of four per cent per annum, which interest shall be payable semi-annually out of the fund provided for in section 5041, and no primary or secondary application for the payment of said bonds, except out of the aforesaid fund, is intended to be created by this chapter. Said bonds shall not be sold for less than par. If at any time there is not sufficient money in the aforesaid fund to defray the interest charges when due, the state shall pay said interest out of the general fund, which general fund shall be repaid such interest payments out of the first moneys paid into the said "University of Washington Fund." [L. '95, p. 108, § 3.]

"Section 5041" substituted for Bal. Code, § 2500.

CHAPTER IX.

State Depositaries.

§ 5065. State Funds in State Depositaries Only.—Any national or state banking corporation which shall be approved by the state board of finance, may, upon filing a bond, or depositing the security as hereinafter provided, and upon the compliance with all other requirements of law, become a state depositary; and no state funds shall be deposited in any institution other than a state depositary. The record of the proceedings of said board shall be kept by the state auditor, and a duly certified copy thereof, or any part thereof, shall be admissible in evidence in any action or proceeding in any court of this state. [L. '07, p. 50, § 1.]

§ 5066. Surety or Securities Required—Investigation of Depositary.—Every state depositary, before it shall be entitled to receive any state moneys, shall file with the state treasurer a good and sufficient bond of a surety company authorized to do business in this state, to be approved by said board as security and pledge for the payment on demand to him or his order, free of exchange, at any place in this state designated by him, of all such moneys deposited with it, and of interest thereon at the rate fixed by said board, which bond shall be at least equal to the amount of the moneys to be re-

ceived by said depositary of said state, and shall, before deposit, be approved by said board. The state board of finance may require the state auditor or the state bank examiner to thoroughly investigate and report to it concerning the condition of any bank which makes application to become a state depositary, and may also as often as it deems necessary require such investigation and report concerning the condition of any bank which may have been designated as such depositary, the expense of such investigation to be borne by the depositary examined: Provided, that said depositary may deposit with the state treasurer good and sufficient municipal, school district, county or state bonds or warrants or United States bonds, first mortgage railroad bonds listed on the New York Stock Exchange, local improvement bonds or warrants whose legality have been passed upon favorably by the supreme court, or public utility bonds or warrants issued by or under the authority of any municipality of the state for water, power or light plants or the maintenance thereof upon which principal or interest is not in default at the time of such deposit, the aggregate market value of which shall not be less than the amount required in said deposit, in lieu of the surety bond herein provided for. [L. '07, p. 50, § 2; L. '09, p. 588, § 1.]

§ 5067. Rate of Interest.—The state board of finance shall from time to time fix the rate of interest to be paid by said depositaries upon said moneys deposited with them, and cause notice thereof to be published in such newspapers as the board may direct. The rate of interest, until changed by said board, shall be not less than two per cent per annum. [L. '07, p. 51, § 3.]

§ 5068. Deposits—Deemed to be in Treasury—Limit of.—The state treasurer may deposit with any depositary which has fully complied with all requirements of law any state moneys in his hands or under his official control not exceeding the limit herein prescribed, and any sum so on deposit shall be deemed to be in the state treasury, and such treasurer shall not be liable for any loss thereof resulting from the failure or default of any such depositary without fault or neglect on his part or on the part of his assistants or clerks. The amount at any time on deposit with any depositary shall not exceed the actual paid-up capital and surplus, nor the penalty of the bond filed by it, nor three-fourths of the value of the bonds deposited by it, nor the amount prescribed by the state board of finance, if any be prescribed. [L. '07, p. 51, § 4.]

§ 5069. Approval of State Board of Finance—Revocation.—The state board of finance shall not approve the bonds and warrants above mentioned, or in lieu thereof the bond of a surety company of any such depositary until fully satisfied that said bond or bonds

are good and sufficient, and that the depositary is prosperous and financially sound and has unimpared the paid-up capital and surplus claimed by it. Said board may at any time require any state depositary to furnish a new or additional bond or bonds, and upon failure so to do may after fifteen (15) days' notice to said depositary revoke their designation and approval thereof, and immediately upon such revocation such corporation shall cease to be a state depositary. [L. '07, p. 51, § 5; L. '09, p. 589, § 2.]

§ 5070. Monthly and Quarterly Statements—Affidavit by President and Cashier.—Every state depositary shall, on the first day of each calendar month, and oftener when required, file with the state auditor a sworn statement of the amount of state moneys on deposit with it, and shall, within ten days after the first day of January, April, July and October in each year make a full statement of all deposits and payments of state moneys during the preceding quarter, together with a computation and statement of the interest earned thereon, computed upon the daily balance on deposit, to the state board of finance, which interest shall thereupon be remitted to the state treasurer and placed to the credit of the general fund and deposit interest funds; such statement shall be upon such forms as may be prescribed by the state board of finance and be accompanied by an affidavit of the president and cashier of such depositary to the effect that it is in all respects true and correct, and that, except for the interest therein credited, neither said depositary nor any officer, agent or employee thereof, nor any person in its behalf has in any way whatsoever given, paid, or rendered, or promised to give, pay or render to any member of the state board of finance, or to any other person, or corporation whatever any money, credit, service or benefit whatsoever by reason or in consideration of a deposit with it of any portion of the state moneys. Any person who shall make any false statement in any affidavit required by this section shall be guilty of perjury. The total interest paid by all depositaries shall be by the state treasurer placed to the credit of the deposit interest fund, and upon the fifteenth (15) day of January of each year, the state treasurer shall divide the deposit interest fund among the various funds from which such deposits are made, in proportion to the respective amounts thereof. [L. '07, p. 52, § 6.]

§ 5071. "Bank" Includes Trust Companies.—The word "bank" as used in this chapter shall be construed to include any trust company organized under the laws of the state of Washington engaged in the banking business. [L. '07, p. 53, § 7.]

§ 5071-1. Daily Deposits by Commissioner of Public Lands.—It shall be the duty of the commissioner of public lands of this state, and he is hereby required to deposit daily all moneys and fees col-

lected or received by him as such commissioner under the existing land laws of the state, including all moneys and fees received by him which remain in his custody and control for a greater or less time awaiting disposition under the provisions of the land laws of the state or the action of the board of land commissioners, as provided by law; and all moneys and fees from all sources received by him in the discharge of his official duties or acting for or in behalf of the state board of land commissioners: Provided, however, that all moneys collected or received by the commissioner of public lands, belonging to the state at the time, or to any department or institution thereof, in payment of principal and interest under outstanding contracts and leases where no question is raised as to the right of the state to receive payment, shall be paid to the state treasurer daily in the manner provided by existing laws. [L. '11, p. 299, § 1.]

§ 5071–2. Board of Finance Designate Depositaries.—The deposit of all moneys other than the moneys paid to the state treasurer as by law required, provided for in section 5071–1, shall be made in state depositaries only and in no other institution. The depositary or depositaries shall be designated and selected by the state board of finance in the manner provided by existing laws for the designation of state depositaries, and after such selection and designation by the state board of finance notice thereof shall be given to the commissioner of public lands, and the commissioner shall thereupon make daily deposits of the moneys in his official custody and control as provided in section 5071–1, and such deposit shall be made in the depositary designated by the state board of finance and in no other institution. [L. '11, p. 300, § 2.]

§ 5071–3. Bond—Approval.—Every state depositary selected by the state board of finance as provided in this act for the purposes herein, and for the receipt and deposit of all moneys in the custody, possession and control of the commissioner of public lands, other than the moneys transmitted daily to the state treasurer, shall file with the state treasurer a good and sufficient bond or collateral securities, or bonds of the United States, or bonds or warrants of the state of Washington, or of any county or school district in this state, to be approved by the state board of finance, as a security and pledge for the payment on demand of the commissioner of public lands, or his order or his successor, free of exchange, at any place in this state designated by the commissioner, of all moneys so deposited by him with said depositary, and the interest thereon at the rate fixed by the state board of finance. Such bond or securities shall be at least equal to the amount of the moneys to be received by said depositary, conditioned as hereinbefore provided, and shall, before any deposit by the commissioner of public lands, be approved

by the state board of finance. Such depositary may be examined from time to time as by existing laws provided in relation to state depositaries. [L. '11, p. 300, § 3.]

§ 5071–4. Rate of Interest.—The state board of finance shall from time to time fix the rate of interest to be paid by said depositary or depositaries upon said moneys deposited with it or them by the commissioner of public lands, as provided in section 5071–1. The rate of interest shall be not less than two (2) per cent per annum on all such deposits made by the commissioner of public lands. [L. '11, p. 301, § 4.]

§ 5071–5. Quarterly Statement.—Every state depositary selected as hereinbefore provided for the receipt and deposit of moneys by the commissioner of public lands, shall quarterly on the first of January, April, July and October file with the state auditor a sworn statement of the amount of moneys on deposit with it to the credit of the commissioner of public lands, together with a computation of the interest earned thereon at the rate fixed by the state board of finance, said computation and statement of interest to be computed upon the daily balance on deposit by the commissioner, and said statement or computation shall also be made to the state board of finance. The interest shall thereupon be forthwith remitted by the depositary to the state treasurer and by him placed in and credited to the general fund. [L. '11, p. 301, § 5.]

§ 5071–6. Report.—The statements required of the depositaries shall be upon such forms as may be prescribed by the state board of finance, and shall be accompanied by the affidavit of the president and cashier of such depositary, to the effect that it is in all respects true and correct, and that except for the interest therein credited, neither said depositary nor any officer, agent or employees thereof, nor any person in its behalf, has in any way whatsoever given, paid or rendered, or promised to give, pay or render to any member of the state board of finance, or to any person or corporation whatever, any money, credit, service or benefit whatsoever by reason or in consideration of a deposit with it of any portion of the moneys in the custody, possession or control of the commissioner of public lands. Any person who shall make any false statement in any affidavit required by this section shall be guilty of perjury. [L. '11, p. 301, § 6.]

§ 5071–7. Designation and Deposit of Moneys.—Upon the taking effect of this act the state board of finance shall forthwith designate a state depositary, or depositaries for the purposes herein mentioned, and upon notice of such selection to the commissioner of public lands the commissioner shall at once deposit in such deposi-

tary or depositaries, all moneys in his possession and under his official custody and control; and all moneys deposited in banks or other institutions at the time of the taking effect of this act, which have been deposited by the commissioner of public lands awaiting final action of the state board of land commissioners, or awaiting the further operation of the land laws, or for any other purpose, shall at once be transferred to the state depositary or depositaries selected by the state board of finance, and be subject to all the provisions, requirements and conditions of this act. [L. '11, p. 302, § 7.]

CHAPTER X.

County Depositaries.

§ 5072. Designation of Depositary by County Treasurer.—Each county treasurer in this state shall on the first day of July, 1907, and annually on the second Monday in January thereafter, and at such other times as he may deem necessary, designate one or more banks in the state as depositary or depositaries of all public funds held and required to be kept by him as such treasurer, and such designation or designations shall be in writing, and the same shall be filed with the board of county commissioners of his county, and no county treasurer shall deposit any public money in banks except as herein provided. [L. '07, p. 74, § 1.]

§ 5073. Bond—Approval of—Securities in Lieu of.—Before any such designation or designations shall become effectual and entitle the said treasurer to make deposits in such bank or banks, the bank or banks so designated shall within ten days after such designation or designations have been filed, file with the county clerk of such county a surety bond to such county treasurer, properly executed by some reliable surety company qualified under the laws of this state to do business therein, in the maximum amount of deposits designated by said treasurer to be carried in such bank or banks, conditioned for the prompt and faithful payment thereof on checks drawn by such treasurer, which bond must be approved by the chairman of the board of county commissioners, the prosecuting attorney and the county treasurer, or any two of such officers of said county, before being filed with the county clerk, and unless so approved the same shall not be received or filed by the county clerk: Provided, that said depositary or depositaries may deposit with the county treasurer good and sufficient municipal, school district, county or state bonds or warrants, United States bonds, first mortgage railroad bonds listed on the New York stock exchange, or local improvement bonds or warrants whose legality have been passed upon favorably by the supreme court, or public utility bonds or warrants issued by or under the authority of any municipality of the

state for water, power or light plants or maintenance thereof upon which principal or interest is not in default at the time of such deposit, the aggregate market value of which shall not be less than the amount required in said deposit, in lieu of the surety bond herein provided for. [L. '07, p. 75, § 2; L. '09, p. 17, § 1.]

§ 5074. Contract as to Interest.—Before any such designation or designations shall become effectual and entitle said treasurer to make deposits as hereinabove provided, the bank or banks so designated shall also enter into a written contract with the county whose treasurer is to make such deposits, to pay to said county, to be credited to the county expense fund thereof two per centum per annum on the average daily balances of all moneys so deposited by such county treasurer in said bank while acting as such depositary; such payments to be made monthly to said county while such deposits continue in such depositary; said contract shall be in such form as shall be approved by the board of county commissioners and the prosecuting attorney of said county. [L. '07, p. 75, § 3.]

§ 5075. Funds on Deposit Deemed to be in Treasury.—The county treasurer shall deposit with any depositary or depositaries which have fully complied with all requirements as herein provided, any county moneys in his hands or under his official control, and for the purpose of making the quarterly settlement and counting funds in the hands of the treasurer any such sums so on deposit shall be deemed to be in the county treasury. [L. '07, p. 75, § 4.]

§ 5076. Liability of Treasurer.—The provisions of this chapter shall in no way relieve or release the county treasurer from any liability upon his official bond as such treasurer, or any surety upon such bond, and shall in no way affect the duty of the several county treasurers of this state to give the bond as such treasurer now required by law. [L. '07, p. 76, § 5.]

§ 5077. Bank Defined.—The word bank whenever it occurs in this chapter shall be construed to include all national, foreign, state and private banks and trust companies doing business in the state. [L. '07, p. 76, § 6.]

CHAPTER XI.

City Depositaries.

§ 5078. Cities of Over Seventy-five Thousand Inhabitants.—It shall be the duty of the city treasurer, in all cities of the state of Washington having a population of seventy-five thousand (75,000) inhabitants and over to, immediately upon this bill becoming a law and annually thereafter at the end of each fiscal year, designate one or more banks in such city as depositary or depositaries of the moneys required to be kept by said treasurer, and such designation

shall be subject to the approval of the mayor, and filed with the comptroller. [L. '05, p. 207, § 1.]

§ 5079. Surety Bond of Bank—Contract as to Interest.—Before any such designation shall become effectual and entitle the treasurer to make deposits in such bank or banks, the bank or banks so designated shall, within ten (10) days after the same is filed with the comptroller, file with the comptroller of such city a contract with said city wherein said bank shall agree to pay not less than one and one-half per centum on the cash daily balances of all municipal funds kept by such treasurer in said bank, while acting as such depositary; such payments to be made monthly to said city while said deposit continues in said depositary; said contract shall run to said city and be in such form as shall be approved by the mayor and corporation counsel; and such bank shall also file with the comptroller of such city a surety bond or bonds to such city to the amount of the deposits of such city that may be carried in such bank, conditioned for the prompt payment thereof on checks duly drawn by the said treasurer; or in lieu thereof shall deposit with the said comptroller good and sufficient municipal, school district, county or state bonds or warrants, United States bonds, first mortgage railroad bonds listed on the New York Stock Exchange, or local improvement bonds or warrants, or public utility bonds or warrants, issued by or under the authority of any municipality of the state for water, power or light plants or maintenance thereof upon which principal or interest is not in default at the time of such deposits. Such surety bonds or securities shall be in such form as shall be approved by the corporation counsel of such city and the sufficiency of such surety bonds or such securities shall be approved by the mayor and comptroller of such city. When such bonds have been duly approved and filed with the comptroller of said city, he shall immediately certify to the city treasurer the amount of bonds or securities filed by such bank or banks, whereupon the city treasurer shall be authorized to make deposits in such bank up to the amount of surety bonds or securities, so filed. [L. '13, p. 353, § 1. Cf. L. '05, p. 207, § 2; L. '09, Ex. Sess., p. 37, § 1.]

§ 5080. Bond of City Treasurer not Affected.—The provisions of this act shall in no way affect the duty of the city treasurer to give bond to such city for the faithful performance of his duties in such amount as may be fixed by the city council by ordinance. [L. '05, p. 207, § 3.]

"This act," refers to the first three sections of this chapter.

§ 5081. Cities of Less than Seventy-five Thousand Inhabitants.—Any city or town in the state of Washington having a population of less than seventy-five thousand (75,000) inhabitants, shall upon a

majority vote of its city council instruct its city or town treasurer upon this bill becoming a law and annually thereafter at the end of each fiscal year or at such other times as may be deemed necessary by the treasurer, to designate one or more banks in the county wherein such city or town is located as depositary or depositaries of the moneys required to be kept by said treasurer. [L. '07, p. 27, § 1.]

§ 5082. Surety Bond — Securities in Lieu of Bond—Interest.—Before any such designation shall entitle the treasurer to make deposits in such bank or banks, the bank or banks so designated shall within ten (10) days after the same is filed with the comptroller or town clerk, file with the comptroller or town clerk of such city or town a surety bond to such city or town in the maximum amount of deposits designated by said treasurer to be carried in such bank, or in lieu thereof shall deposit with the treasurer good and sufficient municipal, school district, county or state bonds, or warrants, or United States bonds, or local improvement bonds, or warrants, or public utility bonds, or warrants issued by or under authority of any municipality of this state upon which interest or principal is not in default at the time of such deposit, or first mortgage railroad bonds listed on New York stock exchange, conditioned for the prompt payment thereof on checks duly drawn by the treasurer, which surety bonds or security shall be approved by the mayor and comptroller or town clerk of said city or town, and such banks shall also at the same time file with said comptroller or town clerk a contract with said city or town wherein said bank shall agree to pay not less than two per centum on the average daily balances where such balances exceed one thousand ($1,000) dollars of all municipal funds kept by such treasurer in said bank, while acting as such depositary; such payments to be made monthly to said city or town while said deposits continue in said depositary; said contracts shall run to said city or town and be in such form as shall be approved by the treasurer, mayor and corporation counsel. [L. '07, p. 27, § 2; L. '09, p. 65, § 1.]

§ 5083. Duty of Treasurer to Give Bond not Affected.—The provisions of this act shall in no way affect the duty of the city or town treasurer to give bond to such city or town for the faithful performance of his duties in such amount as may be fixed by the city or town council by ordinance. [L. '07, p. 28, § 3.]

"This act" refers to the last four sections of this chapter.

§ 5084. Trust Company Included.—The word bank as used in this act shall be construed to include any trust company organized under the laws of the state of Washington and engaged in the banking business. [L. '07, p. 28, § 4.]

"This act" refers to the last four sections of this chapter.

CHAPTER XII.

Bonds for County Purposes.

§ 5085. Limitation of County Indebtedness. — Each and every organized county of this state, and each and every county that may hereafter be organized in this state, is hereby authorized and empowered by and through its board of county commissioners to contract indebtedness for general county purposes in any manner when they deem it advisable, not exceeding an amount, together with the existing indebtedness of such county, of one and one-half per centum of the taxable property in such county, to be ascertained by the last assessment for the state and county purposes previous to the incurring of such indebtedness. [Cf. L. '88, pp. 10–12; L. '90, p. 37, § 1; 1 H. C., § 2674.]

Cited in 2 Wash. 354, 355, 356, 678; 8 Wash. 398, 401, 402, 405; 12 Wash. 523; 23 Wash. 463; 25 Wash. 645; 68 Wash. 233; 82 Wash. 140.

See Const., Art. VIII, § 6, limitation on county indebtedness.

§ 5086. County may Contract Further Indebtedness, When—Election.—Each and every organized or hereafter to be organized county of this state may contract indebtedness for strictly county purposes in excess of the amount named in the last preceding section, but not exceeding in amount, together with the existing indebtedness, five per centum of the taxable property, to be ascertained as provided in the preceding section, whenever three-fifths of the voters of such county assent thereto, at an election to be held for that purpose, consistent with the general election laws, which election may be either a special or general election. [L. '90, p. 37, § 2; 1 H. C., § 2675.]

Cited in 2 Wash. 355; 8 Wash. 398, 401, 402, 405; 25 Wash. 582; 45 Wash. 523–525; 68 Wash. 234; 82 Wash. 140.

§ 5087. Commissioners may Issue Bonds, When, and to What Amount.—Whenever any debt is incurred under the provisions of the first or second sections of this chapter, or whenever the board of commissioners of any county shall submit to the voters of this county, at an election to be held under the provisions of the last preceding section, the question of issuing bonds to procure money for strictly county purposes, and three-fifths of the voters of such county having assented thereto, and the amount of said bonds, together with the already existing county indebtedness, not exceeding five per centum of the taxable property of said county, to be ascertained as provided in the last preceding section of this chapter, then the board of commissioners of such county is authorized and empowered to issue its negotiable bonds in the name of the county for the purposes for which such election was held. [L. '90, p. 38, § 3; 1 H. C., § 2676.]

Cited in 2 Wash. 356, 678; 8 Wash. 398, 401, 402, 405; 68 Wash. 234, 235.

§ 5088. Requisites of Bonds, and Where Payable.—Said bonds shall be in denominations of not less than one hundred nor more than one thousand dollars. They shall bear the date of issue, shall be made payable to the bearer in not more than twenty years from date of issue, and bear interest at a rate not exceeding seven per cent per annum, payable annually, with coupons attached, for each interest payment. The bonds and each coupon shall be signed by the chairman of the board of county commissioners, and shall be attested by the clerk of said board, and the seal of such board shall be fixed to each bond, but not to the coupon. Said bond shall be printed, engraved, or lithographed on good bond paper, and the bond shall state on its face that it is issued in accordance and in strict compliance with an act of the legislature of the state of Washington, entitled "An act authorizing and empowering the organized counties of the state of Washington to contract indebtedness, and to issue bonds for funding the same, and declaring an emergency," approved on the —— day of ——, 18— (inserting the date of approval of this act), and a copy of this chapter shall be printed on the back of each bond. Said bonds shall be payable in any city containing a bank of the United States. [L. '90, p. 38, § 4; 1 H. C., § 2677.]

See supra, § 5023, bonds payable at "Fiscal Agency."

§ 5089. Bonds may be Sold or Exchanged for Warrants.—Said bonds may be exchanged at not less than their par value for an equal amount of the county warrants of the county issuing such bonds. The said bonds may be sold by the county commissioners at not less than their par value, and the proceeds shall be applied only for the purpose for which said bonds were issued. [L. '90, p. 39, § 5; 1 H. C., § 2678.]

Cited in 8 Wash. 404.

§ 5090. Commissioners Shall Levy Bond Tax, When—Use of Fund. Ten years before said bonds shall become due, the county commissioners of the county issuing them are hereby authorized and required annually to levy a tax sufficient to liquidate the said bonds at maturity. Such tax shall be collected and kept as a separate fund for the sole purpose of liquidating the said bonds, in accordance with the following section. [L. '90, p. 39, § 6; 1 H. C., § 2679.]

§ 5091. County Treasurer Shall Advertise What—Interest.—It shall be the duty of the treasurer of any county issuing bonds under the provisions of this chapter, whenever he has upon hand two thousand dollars of the special fund for the payment of said bonds, to advertise in the newspaper doing the county printing, for the presentation to him for payment of as many of the bonds issued under the provisions of this chapter as he may be able to pay with the funds in his hands, to be paid in numerical order of said bonds, beginning

with bond number one, until all of said bonds are paid: Provided, that thirty days after the first publication of said notice of the treasurer calling in any of said bonds by their number, said bonds shall cease to be at interest, which shall be stated in the notice. [L. '90, p. 39, § 7; 1 H. C., § 2680.]

§ 5092. Coupons Shall be Deemed Warrants—Presentation of.—The coupons hereinbefore mentioned for the payment of interest on said bonds shall be considered for all purposes as warrants drawn upon the general fund of the county issuing bonds under the provisions of this chapter, and when presented to the treasurer of the county issuing such bonds, and no funds are in the treasury to pay the said coupons, it shall be the duty of the treasurer to indorse said coupons as presented for payment, in the same manner as county warrants are indorsed, and thereafter said coupons shall bear interest at the same rate as county warrants so presented and unpaid. [L. '90, p. 39, § 8; 1 H. C., § 2681.]

Cited in 15 Wash. 322; 17 Wash. 141.

See supra, § 3945, presentation of county warrants.

§ 5093. Registry of Bonds—Compensation of County Treasurer.—Before the bonds are delivered to the purchaser they shall be presented to the county treasurer, who shall register them in a book kept for that purpose and known as the "Bond register," in which register he shall enter the number of each bond, the date of issue and maturity, amount, rate of interest, to whom and when payable: Provided, the county treasurer shall be allowed a commission of one per cent upon the par value of said bonds for receiving and disbursing all funds arising from the sale or exchange of said bonds, and the commission therein provided for shall be in lieu of all other commissions allowed him by law: Provided further, that when the county treasurer receives a salary he shall receive no commissions for receiving or disbursing funds arising from the sale or exchange of said bonds. [L. '90, p. 40, § 9; 1 H. C., § 2682.]

CHAPTER XIII.

County Road and Bridge Bonds.

§ 5094. Election to Authorize Issuance of Bonds for Bridges, etc. The board of county commissioners for any county may, whenever a majority thereof shall so decide (provided, the county commissioners of any county may, when deemed for the best interest of their county, order a special election during the year eighteen hundred and ninety), submit to the bona fide voters of their county the question whether the said board shall be authorized to issue coupon bonds to the amount not to exceed five per centum of the taxable property in said

county, bearing a rate of interest not exceeding six per cent per annum, and payable and redeemable at a time fixed by the said board of county commissioners, for the purpose of making a new road or roads, or bridge or bridges, or improving established roads within said county. [L. '90, p. 40, § 1; 7 H. C., § 2683.]

Cited in 68 Wash. 234, 235; 79 Wash. 154.

§ 5095. How to be Held—Ballots—Bonds, When to Issue, and Requisites of.—Such election may be held at the times and in the manner provided for holding general elections in this state, and it may be held as a special election at such time as the board of county commissioners may designate. The ballots used must contain the words "Bonds, Yes," and "Bonds, No." If three-fifths of the legal ballots cast on the question of issuing bonds for the improvement contemplated in the last section shall be in favor of bonds, the said commissioners must issue said bonds in due and legal form, and negotiate or float the same to the best advantage for the county, at not less than par value. Such bonds must bear the signature of the chairman of such board of commissioners, and be countersigned by the county auditor of the county in whose name they are issued, with the seal of the county thereunto attached; and the coupons must be signed by said chairman and said county auditor, and each bond so issued must be registered in the office of the county treasurer, in a book provided for that purpose, which must show the date, number and amount of the bond, and the name, and address of the person to whom the same is issued. [L. '13, p. 475, § 1. Cf. L. '90, p. 41, § 2; L. '91, p. 174, § 1; 1 H. C., § 2684.]

See infra, § 5590, funds for maintaining county roads.

§ 5096. Notice of Election to State What.—The commissioners must give notice in some newspaper, having a general circulation in said county for a period of at least four weeks next preceding the date of the election, setting forth the proposition as to amount, duration, and terms of the bonds to be issued, and state in such notice the roads or bridges to be built or improved. [L. '90, p. 41, § 3; 1 H. C., § 2685.]

Cited in 68 Wash. 234.

§ 5097. Proceeds of Bonds—How Disbursed.—When such bonds are sold, the money arising therefrom shall be immediately paid into the treasury of the county, and shall be drawn only for the improvement for which they were issued. [L. '90, p. 41, § 4; 1 H. C., § 2686.]

§ 5098. Interest and Redemption of Bonds—Lien.—The commissioners must ascertain and levy annually the tax necessary to pay the interest on said bonds whenever the same becomes due, and a sinking fund to redeem the bonds at their maturity, and the said tax is a lien

upon all property within the county, and must be collected in the same manner as other taxes are collected. [L. '90, p. 42, § 5; 1 H. C., § 2687.]

§ 5099. Redemption of Bonds—Notice to be Mailed, When.—When the amount in the sinking fund equals or exceeds the interest and amount of any bond then due, the county treasurer shall post in his office a notice that he will, within thirty days from the date of such notice, redeem the bonds then payable, giving the numbers thereof; and preference must be given to the oldest issue: Provided, if the county treasurer is advised of the postoffice address of the holder of any such bonds, then he shall mail a written notice to such holder, and if, after expiration of said thirty days, the holder or holders of said bonds shall fail or neglect to present the same for payment, interest thereon must cease, but the treasurer shall at all times thereafter be ready to redeem the same on presentation, and when any bonds are purchased or redeemed, the county treasurer must cancel the same by writing across the face of each bond, in red ink, the word "Redeemed." and date of such redemption. [L. '90, p. 42, § 6; 1 H. C., § 2688.]

Cited in 8 Wash. 457; 11 Wash. 430.

§ 5100. Payment of Interest Coupons.—The county treasurer must pay out of any moneys belonging to the road fund so created the interest upon any bonds issued under this chapter, by such commissioners when the same becomes due, upon the presentation at his office of the proper coupon, which must show the amount due and the number of the bond to which it belongs; and all coupons so paid must be reported to the commissioners at their first meeting thereafter. [L. '90, p. 42, § 7; 1 H. C., § 2689.]

§ 5101. Copy of Act to be Printed on Bonds.—A copy of this act, together with all amendments hereafter made, shall be printed upon the reverse side of all bonds issued under the provisions hereof. [L. '90, p. 42, § 9; 1 H. C., § 2690.]

Cited in 79 Wash. 154.

"This act": The preceding sections in this chapter constitute "this act."

§ 5101-1. Coupon County Road Bonds—Limitation—Manner of Voting.—The board of county commissioners of any county may, whenever a majority thereof shall so decide, submit to the voters of their county at an election the question whether the said board shall be authorized to issue negotiable coupon road bonds of the county to the amount not to exceed five per centum of the taxable property in said county for the purpose of constructing a new road or roads, or improving established roads within said county, or for aiding in so doing, as prescribed in this act. The word "improvement" wherever

employed in this act shall be deemed to embrace any undertaking for any or all of said purposes. The word "road" wherever employed in this act shall be deemed to embrace all highways, roads, streets, avenues, bridges, and other public ways. The provisions of this act shall apply not only to roads which are or shall be under the general control of the county, but also to all parts of state roads in such county and to all roads which are situated or are to be constructed wholly or partly within the limits of any incorporated city or town therein, provided the board of county commissioners finds that the same form or will become a part of the public highway system of such county, and will connect with existing roads in such county. Such finding may be made by the board of county commissioners at any stage of the proceedings before the actual delivery of the bonds. The constructing or improving of any and all such roads, or the aiding therein, is hereby declared to be a county purpose. The question of the issuance of bonds for any undertaking which relates to a number of different roads or parts thereof, whether intended to supply the whole expenditure or to aid therein, may be submitted to the voters as a single proposition in all cases where such course is consistent with the provisions of the state constitution. If the county commissioners in submitting any such proposition relating to different roads or parts thereof find that such proposition has for its object the furtherance and accomplishment of the construction of a system of public and county highways in such county, and constitutes and has for its object a single purpose, such finding shall be presumed to be correct, and upon the issuance of the bonds such presumption shall become conclusive. No proposition for bonds shall be submitted which proposes that more than forty per cent of the proceeds thereof shall be expended within any city or town or within any number of cities and towns. [L. '13, p. 62, § 1.]

§ 5101–2. Time of Election—Form of Ballots—Bonds—Form.—Such election may be held at the times and in the manner provided for holding general elections in this state, or it may be held as a special election at such time as the board of county commissioners may designate. The ballots used must contain the words, "Bonds, Yes," and "Bonds, No." If three-fifths of the legal ballots cast on the question of issuing bonds for the improvement contemplated in the last section shall be in favor of bonds, the said commissioners must issue such negotiable bonds in due and legal form, and negotiate or float the same in such manner as they may deem to the best advantage for the county, at not less than par value. The bonds authorized by this act shall be issued in the name of the county, in denominations of not less than one hundred nor more than one thousand dollars; they shall be payable either (1) to some person or cor-

poration (named therein) or the bearer, or (2) simply to the bearer, at such time as shall be stated therein, not more than twenty years after the date of issue, and bear interest at a rate not exceeding six per cent per annum, payable semi-annually; they may be made payable in any city in the United States containing a national bank; they shall bear the signature of the chairman of the board of county commissioners, and be countersigned by the county auditor of the county with the seal of county thereunto attached; and the interest coupons shall be signed by said chairman and said county auditor, and each bond so issued must be registered in the office of the county treasurer in a book provided for that purpose, which must show the date, number and amount of the bond, date of maturity, rate of interest, and the name and address of the person to whom the same is issued: Provided, that it shall be lawful, in case the county commissioners shall so order, for the coupons to bear lithographed or engraved facsimiles of the signatures of the chairman and county auditor instead of their original signatures. The county seal need not be affixed to the coupons. Each coupon must show the number of the bond to which it belongs. Such bonds and coupons shall be printed, engraved or lithographed on good bond paper. [L. '13, p. 63, § 2.]

§ 5101–3. Tax Levy for Interest—Sinking Fund—Investment.—The county commissioners must ascertain and levy annually a tax sufficient to pay the interest on all such bonds whenever the same becomes due. At least five years prior to the maturity of such bonds and thenceforward in each year until their maturity, the county commissioners must ascertain and levy a tax sufficient to accumulate during such series of years a fund equal to the principal sum of all such bonds then remaining outstanding and unpaid, and the amount of such tax as collected shall be by the county treasurer credited to a special fund for the payment of the principal of such bonds, which shall be designated "Road Bonds of —— Sinking Fund," (the blank to be filled by inserting the year in which the bonds are issued), and no part of said fund shall be diverted to any other purpose than the payment of such principal. But such fund or any accumulated part thereof may be invested at any time or times in such manner and under such safeguards as may hereafter be provided by the statutes of this state, in which case all interest or premiums that may be realized on any such investment, as well as the principal thereof, shall be credited to such fund. All such taxes levied either for interest or for the sinking fund shall be a lien upon all property within the county and must be collected in the same manner as other taxes are collected. The county treasurer must pay out of any money belonging to the fund accumulated from the taxes levied to pay the interest as aforesaid, the interest upon all such bonds when the same

becomes due upon presentation at the place of payment of the proper coupon; all coupons so paid must be reported to the county commissioners at their first meeting thereafter. Whenever the coupons are payable at any place other than the city in which the county treasurer keeps his office, it shall be the duty of the county treasurer seasonably to remit to a suitable fiscal agent (which shall be either a fiscal agent appointed by the state of Washington or some responsible fiscal agent approved by the county commissioners) at the place of payment the amount of money required for the payment of any coupons which are about to fall due. When any such bonds or coupons are paid, the county treasurer shall suitably and indelibly cancel the same. [L. '13, p. 64, § 3.]

Tax levy and funds for general county road and bridge fund: See infra, §§ 5590–1 to 5590–10.

§ 5101–4. Notice of Election.—The commissioners must give notice in some newspaper having a general circulation in said county for a period of at least four (4) weeks next preceding the date of the election, setting forth the proposition as to amount and duration of the bonds to be issued, and the rate of interest thereon which is not to be exceeded, and stating in such notice the road or roads to be built or improved. Such notice need not describe the road or roads with particularity, but it shall be sufficient either to describe the same by termini and with a general statement as to the course of the same, or to use any other appropriate language sufficient to show the purpose intended to be accomplished. The commissioners may, at their option, give such other or further notice as they may deem advisable. When the bonds are issued they may be made to bear the rate of interest stated in the notice or any less rate. [L. '13, p. 65, § 4.]

§ 5101–5. Proceeds of Bonds—City Assistance—Limitation of Expenses.—When such bonds are sold, the money arising therefrom shall be immediately paid into the treasury of the county, and shall be drawn only for the improvement for which they were issued, under the general direction of the county commissioners: Provided, that if such improvement includes in whole or in part the constructing or improving of one or more roads, or any part or parts thereof, within the limits of any incorporated city or town and if the county commissioners shall find that the amount of the proceeds of such bonds intended to be expended for any such improvements within such corporate limits will probably not be sufficient to defray the entire expense of such improvement therein, and if they further find it to be equitable that such city or town should bear the remainder of such expense, they shall have power to postpone any expenditure therefor from the proceeds of such bonds until such city or town

shall have made provision by ordinance for proceeding with such improvement within its corporate limits at its own expense so far as concerns the cost thereof over and above the amount of such bond proceeds available therefor. In such case it shall be lawful for the county commissioners to consent, under such general directions as they shall impose, that the proper authorities of such city or town shall have actual charge of making the proposed improvement within such corporate limits, such city or town acquiring any needed property or rights and doing the work by contract or otherwise in accordance with the charter or laws governing such city or town, but the same shall be subject to the approval of the county commissioners so far as concerns any payment therefor from the proceeds of such bonds. In such case, as the work progresses and money is needed to pay therefor, the county commissioners shall, from time to time, by proper order or orders, specifying the amount and purpose, direct the county treasurer to turn over to the city or town treasurer such part or parts of the proceeds of the bonds as may be justly applicable to such improvement or part thereof within such city or town, and any money so received by such city or town treasurer shall be inviolably applied to the purpose so specified. When that portion of the entire improvement which lies within any such city or town can readily be separated into parts, the procedure authorized by this section may be pursued separately as to any one or more of such parts of the general improvement. Nothing contained in this act shall be construed to render the county liable for any greater part of the expense of any improvement or part thereof within any city or town than the proper amount of the proceeds of such bonds, or to prevent such city or town from raising any part of the cost of any such improvement or part of improvement, over and above the amount arising from the proceeds of such bonds, by assessment upon property benefited, or by contribution from any of its general or special funds in accordance with the provisions of the charter or laws governing such city or town. The provisions of this section, other than the direction for the payment into the county treasury of the money arising from the sale of the bonds, need not be complied with until after the issuance of the bonds and the validity of the bonds shall not be dependent upon such compliance. [L. '13, p. 66, § 5.]

§ 5101–6. Validating Provisions.—In case at any election in any county the question of incurring any such indebtedness or issuing any such bonds has been submitted to the voters of such county by the county commissioners at any time within one year next prior to the day when this act shall take effect, and substantially in conformity herewith, and the vote at such election was such as would have authorized, by sufficient majority of votes, the incurring of such

indebtedness and the issuance of such bonds had this act been in force, and had such vote been taken pursuant to the provisions of this act, then in that case such election and vote and all the proceedings in connection therewith had or taken in manner and form aforesaid, and the bond issue intended to be authorized by such proceedings and vote, be and the same are hereby validated and confirmed, with the same effect as if this act had been in force during all such time, and the county commissioners of such county are authorized and empowered to proceed with the matter of incurring such indebtedness and issuing such bonds by sale thereof and completing all proceedings in the manner provided by this act, and to expend the money arising from such bonds and to proceed with the improvement, whether within or without the limits of any city or town, in the manner provided by this act. [L. '13, p. 67, § 6.]

§ 5101-7. Act Concurrent.—This act shall not be construed as repealing or affecting any other act relating to the issuance of bonds for road or other purposes, but shall be construed as conferring additional power and authority: Provided, that any proceedings which may have been begun under any other act but which are in substantial conformity with the provisions of this act may be completed under the provisions of this act, with the same effect as if this act had been in force when such other proceedings were begun. [L. '13, p. 68, § 7.]

CHAPTER XIV.

Bonds to Refund County or City Indebtedness.

§ 5102. Bonds may be Refunded, When.—All bonds heretofore issued by any county or city may be refunded in the discretion of the county commissioners of the county or common council of the city, in the manner hereinafter provided, whenever there is not sufficient money in the treasury of such county or city to pay such bonds and legally applicable thereto. [L. '88, p. 12, § 1; 1 H. C., § 2691.]

§ 5103. Requisites of Bonds—When Payable, Interest, etc.—Said bonds shall be in denominations of not less than one hundred nor more than one thousand dollars, shall be numbered from one up consecutively, shall bear the date of their issue, shall be made payable not more than twenty years from date, and shall bear interest at a rate not exceeding seven per cent per annum, payable semi-annually, with interest coupons attached, and the principal and interest shall be made payable at such place as may be designated. The bonds and each coupon shall be signed by the chairman of the board of county commissioners, and attested by the clerk under the seal of the commissioners, or in case of cities, by the mayor, and

attested by the city clerk under the seal of the city. [L. '88, p. 13, § 2; 1 H. C., § 2692.]

See supra, § 5023, bonds payable at "Fiscal Agency."

§ 5104. Tax to Pay Interest and Principal.—There shall be levied each year a tax upon the taxable property of such county or city, as the case may be, sufficient to pay the interest on said bonds as the same accrues, and before five years prior to the maturity thereof an annual sinking fund tax sufficient for the payment of said bonds at maturity, which taxes shall become due and collectible as other taxes. [L. '88, p. 13, § 3; 1 H. C., § 2693.]

§ 5105. How Bonds Shall be Printed and Indorsed.—Said bonds shall be printed or engraved or lithographed on good bond paper, and a duly authenticated copy of this chapter, together with the resolution of the board of county commissioners or common council of the city, authorizing and directing the issuance of the same, shall be printed on the back of each bond. [L. '88, p. 13, § 4; 1 H. C., § 2694.]

§ 5106. Sale of Bonds and Application of Proceeds.—The bonds issued under and by virtue of this chapter shall not be sold or exchanged at less than their par value, and all moneys derived from the sale of such bonds shall be immediately applied to the redemption of outstanding bonds, so far as such moneys can be applied, and after such outstanding bonds shall have been so refunded, they shall be so indorsed in red ink, with the words "Refunded bond," and filed and preserved for one year, and shall then be destroyed in the presence of witnesses, and the clerk of the commissioners or city shall keep a record of such bonds so refunded, and shall note therein the date of the refunding and destruction of the same, and in whose presence they were destroyed. [L. '88, p. 13, § 5; 1 H. C., § 2695.]

§ 5107. Bond Register to be Kept, and to Show What.—A register shall be kept of all bonds, which register shall show the number, date, amount, interest, name of payee, and when and where payable, of each and every bond executed, issued, or sold under the provisions of this chapter. [L. '88, p. 13, § 6; 1 H. C., § 2696.]

CHAPTER XV.

Validating Indebtedness in Counties, Cities and Towns.

§ 5108a. Manner of Ratifying Indebtedness.—Any county, city or town in this state other than any county or city of the first class may ratify in the manner prescribed by this act, the attempted incurring of any indebtedness of such county, city or town, by the issuing of warrants, making of contracts, or creations of other evidences of indebtedness on the part of such county, city or town, by

the corporate authorities thereof at any time prior to the passage of this act, when the only ground of the invalidity of such indebtedness so to be ratified is that, at the time of such attempted incurring thereof, the same, together with all other then existing indebtedness of such county, city or town, exceeding one and one-half per centum of the taxable property in such county, city or town, ascertained by the last assessment for state and county purposes previous to the attempted incurring of such indebtedness, except that in incorporated cities the assessment shall be taken from the last assessment for city purposes, and that such indebtedness was so attempted to be incurred without the assent of three-fifths of the voters therein voting at an election held for that purpose. [L. '15, p. 354, § 1. Cf. L. '11, p. 614, § 1; L. '13, p. 480, § 1; L. '09, p. 103, § 1; L. '88, pp. 74, 75; L. '91, pp. 267–270; 1 H. C., §§ 719–723; L. '93, pp. 181–183; L. '95, p. 44, § 1; L. '01, p. 61, § 1; L. '05, p. 213, § 1; L. '07, p. 512, § 1.]

Cited in 2 Wash. 578, 579, 588, 590–592; 4 Wash. 133; 7 Wash. 71, 73; 8 Wash. 397, 399, 400; 12 Wash. 366, 371; 13 Wash. 510; 14 Wash. 8; 15 Wash. 89.

This act is the same as the act of 1911, except that the latter covered "any" county, city, or town.

See infra, § 8035 et seq.

See infra, § 8054, validation in consolidated cities.

§ 5109a. Notice of Election.—Whenever the corporate authorities of any such county, city or town shall deem it advisable that the ratification authorized by this act shall be obtained, they shall provide therefor by ordinance or resolution, which shall specify separately the amount of each distinct class of such indebtedness so to be ratified, the date or period of the attempted incurring by the corporate authorities of each separate class thereof, and the general nature of the indebtedness composed in each distinct class and shall provide for the holding of an election for that purpose, at which the attempted incurring of such indebtedness shall be submitted to the voters in such county, city or town for ratification or approval, of which election notice, to be provided for in such ordinance or resolution, shall be given by publishing the same in a newspaper published in such county, city or town once a week for at least four successive weeks, and if no newspaper is published in such city or town, then by publishing such notice for the same period in a newspaper published in the county wherein such city or town is situate and of general circulation therein. Each distinct class of such indebtedness so specified shall be the subject of a distinct vote in favor of or against the ratification thereof, and such vote shall designate the class of indebtedness referred to by the description thereof used and the amount specified in the ordinance or resolution. [L. '15, p. 354, § 2. Cf. L. '11, p. 615, § 2; L. '13, p. 480, § 2, and notes to § 5108a.]

§ 5110a. Vote Necessary to Ratify.—If at an election held as provided for in section 5109a, three-fifths of the voters of such county, city or town, voting at such election, shall vote in favor of the ratification of any distinct class of such indebtedness, specified in the ordinance or resolution providing for such election, then such indebtedness shall thereby become and is hereby declared to be validated and a binding obligation upon such county, city or town, when the only ground of the previous invalidity of such indebtedness is that at the time of the incurring thereof so ratified, the same, together with all other then existing indebtedness of such county, city or town, exceeding one and one-half per centum of the taxable property in such county, city or town ascertained by the last previous assessment for state and county purposes (except that in incorporated cities the assessment shall be taken from the last assessment for city purposes): Provided, that neither anything in this act contained nor the vote cast at any such election shall be deemed to validate or authorize any indebtedness, which, together with all other indebtedness of such county, city or town existing at the time of the attempted incurring of the same exceeded any constitutional limitation of indebtedness which might be incurred with the assent of three-fifths of the voters in such county, city or town voting at an election to be held for that purpose: And provided further, that this act shall apply only to indebtedness attempted to be incurred prior to the passage hereof. [L. '15, p. 355, § 3. Cf. L. '11, p. 615, § 3; L. '13, p. 481, § 3, and notes to § 5108a.]

§ 5111a. Construction.—The words "corporate authorities," used in this act, shall be held to mean the legislative or managing body of any county, city or town. [L. '15, p. 356, § 4. Cf. L. '11, p. 616, § 4; L. '13, p. 482, § 4, and notes to § 5108a.]

CHAPTER XVI.

Funding Indebtedness in Counties, Cities, and Towns.

See, also, "Municipal Corporations," § 8041, etc.

§ 5112. Funding Bonds, When and How Issued.—Any county city or town in the state of Washington which now has or may hereafter have an outstanding indebtedness evidenced by warrants or bonds, whether issued originally within the limitations of the constitution of this state, or of any law thereof, or whether such outstanding indebtedness has been or may hereafter be validated or legalized in the manner prescribed by law, may, by its corporate authorities, provide by ordinance or resolution for the issuance of funding bonds with which to take up and cancel such outstanding indebtedness in the manner hereinafter described: Provided, however, that nothing

in this chapter shall be so construed as to prevent any such county, city or town from funding its indebtedness as now provided by law. [L. '95, p. 465, § 1.]

Cited in 13 Wash. 424, 511; 15 Wash. 89; 23 Wash. 463.

§ 5113. Bonds, Denomination of, and How Issued. — Funding bonds authorized to be issued by this chapter shall be in denominations of not less than one hundred dollars, nor more than one thousand dollars, and shall be signed by the following corporate authorities: When issued by a county, the chairman of the board of county commissioners, countersigned by the county treasurer and attested by the county auditor, who shall affix his official seal; when issued by a city or town, by its mayor, countersigned by its treasurer and attested by its clerk, who shall affix his official seal. They shall bear interest at a rate not to exceed seven per centum per annum, payable semi-annually, which interest shall be evidenced by proper coupons attached to each bond. Such corporate authorities shall, by ordinance or resolution, provide for the manner of issuing and the form of said bonds, and the time or times when the same shall be made payable; but no bonds issued under this chapter shall be issued for a longer period than twenty years, and when they shall be made payable at different periods within said twenty years, they shall be divided into series not to exceed twenty in number, but there shall be as many series as there are different times of payment, and all bonds included in each series shall be made payable at the same time. The principal and interest may be made payable at any place in the United States designated by the corporate authorities of such county, city or town. Such bonds shall not be issued to an aggregate amount in excess of the warrants or other outstanding indebtedness proposed to be funded thereby. They may be exchanged at not less than their par value for such warrants or other outstanding indebtedness, or may be sold at not less than their par value, and the proceeds used exclusively for the purpose of retiring and canceling such warrants and interest thereon or other indebtedness; Provided, that nothing in this chapter contained shall be deemed to authorize the issuing of any funding bonds which, other than that proposed to be funded under the provisions of this chapter, shall exceed any constitutional limitation of indebtedness, or any indebtedness, which might be incurred with the assent of three-fifths of the voters of such county, city or town voting at an election to be held for that purpose. [L. '95, p. 466, § 2.]

Cited in 18 Wash. 62.

See supra, § 5023, place of payment.

§ 5114. Bond Issue—Notice—Publication.—Bonds may be issued without notice under the provisions of this chapter for the purpose

of funding or refunding outstanding warrants in cases where the issuance of such bonds shall have been previously authorized by the voters of such county, city or town, when exchanged at not less than par value, or for the purpose of funding or refunding outstanding bonds, when exchanged at not less than par value, but before any other bonds shall be issued under the provisions of this chapter, such corporate authorities shall cause a notice of the proposed issuance of such bonds to be given by publication in a daily or weekly newspaper of general circulation published in the county proposing to issue such bonds, or in which county such city or town is situated, at least once a week for four consecutive weeks. Such notice shall state for what purpose and the total amount for which it is so proposed to issue bonds, and if to be divided into series, then into how many series the same are to be divided, and the amount of and period for which each series is to run, also the hour and day for considering bids for such bonds, and asking bidders to name the price and rate of interest at which they will purchase such bonds, and if such bonds are to be divided into series, then to name such price and rate for each series of such bonds, separately; and at the time named in such notice it shall be the duty of the corporate authorities to meet with the treasurer of the county, city or town proposing to issue such bonds, at his office, and with him open said bids, and shall sell said bonds to the person or persons making the most advantageous offer therefor: Provided, however, that said bonds shall never be sold or disposed of below par, and such corporate authorities shall have the right to reject any and all bids, and if all said bids shall be rejected, such corporate authorities shall proceed to readvertise the sale of said bonds in the manner herein provided. [L. '09, p. 713, § 1. Cf. L. '95, p. 467, § 3; L. '01, p. 66, § 1.]

Cited in 18 Wash. 56, 62.

§ 5115. Levy, How Provided for. — The corporate authorities of any such county, city or town shall provide annually by ordinance or resolution for the levy and extension on the tax-rolls of such county, city or town, and for the collection thereof, of a direct annual tax in addition to all other county, city or town taxes to be levied according to law, which shall be sufficient to meet the interest on all of said bonds promptly as the same matures, and also sufficient to fully pay each series of bonds as the same matures: Provided, that such ordinance or resolution shall not be repealed until the levy therein provided for shall be fully paid, or the bonds both principal and interest shall be paid or canceled. [L. '95, p. 467, § 4.]

§ 5116. Treasurer to Register Bonds Issued.—The treasurer shall keep a register of the bonds issued under the provisions of this chapter, wherein he shall enter the series of each bond, its number, date

of issuance, amount, date of maturity, name and postoffice address of purchaser and date of cancellation. [L. '95, p. 468, § 5.]

§ 5117. **Corporate Authorities Defined.** — The words "corporate authorities," used in this chapter, shall be held to mean the county commissioners, common council or other managing body of any county, city or town. [L. '95, p. 468, § 6.]

CHAPTER XVII.

Funds for Current Expenses in Counties, Cities, Towns and School Districts.

§ 5118. **Anticipated Revenue.**—Any county, city, town or school district in this state may borrow money or issue warrants in anticipation of its revenue, to meet its current general expenses, as hereinafter provided: Provided, however, that no county, city, town or school district now or hereafter having an outstanding warrant or floating indebtedness, not funded, shall be permitted to take advantage of the provisions of this chapter until said indebtedness shall be paid, funded, canceled or exchanged as provided in section 5123, or otherwise paid. [L. "95, p. 297, § 1.]

This chapter (the act of March 20, 1895) is attempted to be repealed by § 257 of Laws of 1897, page 448, but the title of the act of 1897 omits mention thereof, and consequently the chapter is retained as in force at least as applicable to all corporations except schools districts.

§ 5119. **Deficiency Reported by Treasurer.**—Whenever any tax shall have been actually levied, and it shall appear to the treasurer of any such county, city, town or school district that there are no funds in his hands, as such treasurer, with which to meet the current general expenses of such county, city, town or school district for which such tax has been levied, he shall report such fact to the board of county commissioners, the common council, the board of trustees or education, or other managing body of such county, city, town or school district, and if in the opinion of a majority of said board, council or other managing body, as is necessary to provide temporary funds for such purposes, such necessity shall be declared by proper order, ordinance or resolution, specifying the amount of such proposed loan or loans, and shall give notice of such proposed loan or loans, by publication once a week for two consecutive weeks in some newspaper of general circulation in the county, calling for bids for such loan or loans, to be submitted within five days from the last publication of such notice, and shall award the same to such bidder as shall offer the lowest rate of interest and the most satisfactory terms, and thereupon the treasurer shall be authorized, and it shall be his duty to proceed to make such loan or loans in the manner and according to the terms of such order, ordinance or reso-

lution and award: Provided, however, that the notes or warrants authorized to be issued under the provisions of this chapter shall not be discounted or disposed of for less than the par value thereof. [L. '95, p. 297, § 2.]

§ 5120. Temporary Loans, How Made.—Whenever such temporary loan or loans shall be made, as provided in the foregoing section, and the total indebtedness of such county, city, town or school district, including such proposed loan or loans, shall not exceed any constitutional or statutory limitation of indebtedness, a note or notes shall be issued and signed, as provided in this section, such note or notes to be in denominations of not less than one hundred dollars and not more than one thousand dollars, and shall draw interest at not to exceed eight per centum per annum, and shall be payable within a period not to exceed one year: Provided, however, that if any such note or notes shall not be paid at maturity the same may be renewed for such further period, or periods, as shall be necessary. All notes issued under the provisions of this section shall be substantially in the following form:—

TEMPORARY LOAN.

(Insert name of municipality), State of Washington.

$ (insert amount.) Loan No. (insert No.)

(Insert name of place), Washington, (insert date),

For value received (insert time of payment) after date, the treasurer of the (insert name of county, city, town or school district) will pay out of any delinquent or anticipated revenues from all sources, when collected, to the order of (insert name of payee) the sum of (insert amount) dollars, lawful money of the United States, with interest from date at the rate of (insert rate) per centum per annum.

Countersignature: ——— ———,

——— ———, (Signature and title of officer.)

(Title of countersigning officer.)

Attest: ——— ———,

(Seal, if any.) (Attestation and title of attesting officer.)

[L. '95, p. 298, § 3.]

§ 5121. Limitation Exceeded.—Whenever the indebtedness of any such county, city, town or school district shall have reached the limitation or limitations prescribed by the constitution or general laws of this state, note, or notes issued for the purpose of this chapter shall be in denominations of not less than one hundred dollars and not more than one thousand dollars, and shall draw interest at not to exceed eight per centum per annum, and shall be payable within a period not to exceed one year, and shall be substantially in the following form:—

TEMPORARY LOAN.

(Insert name of municipality), State of Washington.

$ (insert amount.) Loan No. (insert No.)

(Insert name of place), Washington, (insert date),

For value received (insert time of payment) after date, the treasurer of the (insert name of county, city, town or school district) will pay out of any delinquent or anticipated revenues of said (insert name of county, city, town or school district) for the year (insert year of levy), when collected, to the order of (insert name of payee) the sum of (insert amount) dollars, lawful money of the United States, with interest from date at the rate of (insert rate) per centum per annum.

This note shall not be construed to be a debt or obligation of the (insert name of county, city, town or school district). It is secured by an assignment of sufficient of the revenues of said (insert name of county, city, town or school district) to be received under and by virtue of the tax levy for the year (insert year of levy), and payment hereof is restricted to such revenues, and the treasurer is authorized and directed to set aside and reserve such revenues, when collected, or so much thereof as shall be necessary for the payment hereof at maturity. This note is issued under and is within all the limitations prescribed by and is payable in the manner specified in an act entitled (insert title of this act), approved (insert date of approval of this act).

Countersignature: ——— ———,

(Signature and title of officer.)

——— ———,

(Title of countersigning officer.)

Attest: ——— ———,

(Seal, if any.) (Attestation and title of attesting officer.)

Provided, however, that if any such note or notes shall not be paid at maturity, the same may be renewed for such period or periods as shall be necessary: Provided further, that in no case when the total amount of taxes paid in on any levy, together with all outstanding loans, or warrants issued against said levy, shall be equal to seventy-five per centum of said levy, shall it be lawful to make any additional loan or loans, but in such case warrants may be issued as hereinafter provided: And provided also, that it shall not be lawful to make any temporary loan or loans, nor to issue any warrants against said levy during any one month when the total amount of outstanding loans and warrants made and issued against said levy during said month (exclusive of warrants issued for interest payments and outstanding loans maturing during said month) shall be equal to one-eighth of the total amount of such levy. [L. '95, p. 297, § 4.]

§ 5122. Warrants to Contain What.—Whenever any such county, city, town or school district shall have reached its limit of indebtedness as specified in the preceding section, and shall desire to issue warrants, such warrants shall be in manner and form as now required by law, except that each shall contain a clause declaring that the same is not a debt or obligation of such county, city, town or school district, and distinctly limiting the payment thereof, and the payment of interest accruing thereon, to the revenues to be derived from the levy then actually made, and against which the same is drawn; and in case any such warrant shall be presented for payment and there shall be no funds on hand with which to pay the same, it shall be indorsed, "Presented for payment and not paid for want of funds," together with the date of presentation, and shall thereafter draw interest at the legal rate, but such indorsement shall in no case operate to make such warrant a debt or obligation of said county, city, town or school district, or in any manner extend the payment thereof to any revenue or revenues than that or those against which the same was originally drawn. [L. '95, p. 300, § 5.]

§ 5123. Treasurer Authorized to Borrow, When.—When any warrants shall have been issued, as now provided by law, or as provided in this chapter, and shall be outstanding and not called for payment, and the board, council or other managing body of any county, city, town or school district shall deem it necessary or advisable to cancel or exchange the same, and there shall be no funds on hand with which to effect such cancellation, then, in such case, said board, council or other managing body shall, by a majority vote, duly authorize the treasurer to make a temporary loan or loans in the manner hereinbefore provided with which to take up and cancel such warrants, or may cause to be issued, in the manner hereinbefore provided, note or notes in exchange therefor; but in all cases, before any such note or notes shall be issued, said treasurer shall publish a notice calling for the warrants it is proposed to so cancel or exchange, said notice to be so published once a week for two consecutive weeks in some newspaper of general circulation in the county; and interest on such warrants shall cease ten days after the date of the last publication of such notice (if said warrants are not sooner presented); and when warrants aggregating an amount not less than five hundred dollars shall be so presented a note or notes may be issued in exchange therefor, or with which to obtain funds to cancel the same. [L. '95, p. 300, § 6.]

§ 5124. Reserve Fund.—In all cases where any temporary loan or loans shall have been made and any note or notes shall have been issued as provided in this chapter, it shall be the duty of the treasurer of such county, city, town or school district, to set aside and

reserve out of all revenues, when collected, an amount sufficient to meet the payment of such note or notes at maturity, and said revenues so set aside and reserved shall not be diverted to any other purpose so long as such loan or loans shall remain outstanding and unpaid: Provided, that when any temporary loan or loans shall have been made, as provided in section 5121, and any note or notes shall have been issued as therein provided, or when any warrant shall have been issued as provided in section 5122, then, and in such case, such treasurer shall set aside, and reserve when collected, for the payment of such note or notes, or warrants, only such revenues as shall be derived from the levy against which said note or notes, or warrant, is drawn, and such revenues shall not be diverted to any other purpose so long as such note or notes, or warrants, shall remain outstanding and unpaid: Provided, that when any such treasurer may have five hundred dollars on hand applicable to the payment of any such warrants, he shall publish a call for such warrants in the manner prescribed in the last preceding section, and shall redeem the same in the order of their issuance: Provided, however, that no such warrants shall be paid while any note or notes issued against said levy under the provisions of section 5121 remains outstanding and unpaid, unless there shall be funds on hand with which to pay such note or notes at maturity. [L. '95, p. 301, § 7.]

§ 5125. Notes, Signed by Whom.—All notes issued under the provisions of this chapter shall be signed by the following officers before the same shall be delivered to the purchaser: When issued by a county, the chairman of the board of county commissioners, countersigned by the county treasurer and attested by the county auditor, who shall affix thereto his official seal; when issued by a city or town, by its mayor, countersigned by its treasurer (and comptroller, if any), and attested by its clerk, who shall affix thereto its corporate seal; when issued by a school district, by the chairman of its board of education or directors, countersigned by the county treasurer and attested by the clerk of said district, who shall affix thereto his official seal, if he have any. [L. '95, p. 302, § 8.]

§ 5126. Notes to be Registered.—The treasurer of such county, city, town or school district shall keep separate registers of all notes and of all warrants issued under the provisions of this chapter. The register of notes shall at least contain the number of each note, date when issued, to whom issued, where payable, rate of interest, when payable, whether issued generally against such revenue or specially against a specific tax levy, date when paid or renewed, to whom paid or renewed, and shall be kept substantially according to the following form:

REGISTER OF NOTES.

No.....	When issued.....	To whom issued.....	When payable.....	Where payable.....	Rate of interest.....	Amount issued generally against revenue.....	Amount issued against tax levy for year——.....	Date paid or renewed.....	Amount paid.....	To whom paid.....	Canceled by note number.....

Such register of warrants shall at least contain the number of such warrant, date when issued, to whom issued, the tax levy against which it is issued, when presented or indorsed, amount, date called for redemption, when paid, amount paid, to whom paid, whether canceled or exchanged by the issuance of notes, and shall be kept substantially in the following form:—

REGISTER OF SPECIAL WARRANTS.

No.....	When issued.....	To whom issued.....	Issued against tax levy for year——.....	Date presented or indorsed.....	Amount.....	Date called for redemption.....	When paid.....	Amount paid.....	To whom paid.....	Canceled by note number.....

[L. '95, p. 302, § 9.]

See note to p. 303, L. '95.

§ 5127. Interest not Compounded.—Whenever any note or notes shall have been issued according to the provisions of this chapter, and shall become due and payable, and there shall be no funds on hand with which to pay the same, or any interest thereon, and it shall be deemed desirable to renew said note or notes, as provided in this chapter, the interest due upon said note or notes shall not be included in the sum for which said note or notes shall be renewed, but warrant or warrants may be issued therefor; and said warrant or warrants shall be noninterest bearing, and shall so state upon their face, and shall be paid only when there shall be sufficient funds on hand, received from the revenues against which the original note or notes was issued. [L. '95, p. 303, § 10.]

§ 5128. Construction.—This chapter shall not be construed to prevent any county, city, town or school district from issuing warrants, as heretofore provided by law, but it shall be optional with such county, city, town or school district to issue such warrant, or issue warrants or make temporary loans, as provided by this chapter. [L. '95, p. 303, § 11.]

CHAPTER XVIII.

Funds and Tax Levies in Certain Cities.

Assessment of taxes in first class cities: See § 9280 et seq.
Assessment of taxes in other cities: See § 9290 et seq.
Tax levies under budget system: See infra, §§ 5208–1 to 5208–24.

§ 5129. Creating Current Expense and Indebtedness Funds.—In all municipal corporations, having less than twenty thousand inhabitants, there shall be maintained a fund to be designated as "Current Expense Fund," and, after the first day of February, eighteen hundred and ninety-eight, a fund to be designated as "Indebtedness Fund." [L. '97, p. 222, § 1.]

Cited in 24 Wash. 472; 31 Wash. 542; 68 Wash. 549, 552.

§ 5130. License Moneys, Disposition of.—All moneys collected by such corporations from licenses for the sale of intoxicating liquors and from all other licenses shall be credited and applied by the treasurer to said "Current Expense Fund": Provided, that this chapter shall not exempt such corporations from paying ten per cent of all money collected for liquor licenses, to the state. [L. '97, p. 222, § 2.]

§ 5131. Levies.—Such municipal corporations shall levy and collect annually a property tax for the payment of current expenses, not exceeding ten mills on the dollar; a tax for the payment of indebtedness (if any indebtedness exist) not exceeding six mills on the dollar, and all moneys collected from the taxes levied for payment of current expenses shall be credited and applied by the treasurer to "Current Expense Fund"; and all moneys collected from the taxes levied for the payment of indebtedness shall be credited and applied to a fund to be designated as the "Indebtedness Fund": Provided, that any such municipal corporation having at present an existing indebtedness it may levy and collect annually a property tax for the payment of current expenses, not exceeding fifteen mills on the dollar. [L. '13, p. 274, § 1. Cf. L. '97, p. 222, § 3.]

Cited in 39 Wash. 626; 78 Wash. 258.

§ 5132. Basis for Tax Levy.—The levy of tax for current expenses shall be based upon an estimate of the expenses for the ensuing year, which estimate shall be adopted by a majority vote of the councilmen present at the meeting at which the levy is made, and shall be entered in the record of the proceedings of the council, and in making such estimate, the probable revenues from licenses and from all sources, other than from taxes shall be taken into consideration and the levy shall not exceed, by more than twenty per cent, the amount of such estimate. Current expenses shall be deemed to include all salaries, the expenses of the various departments of the city government, the making, improvement and repairs of streets and sidewalks

(excepting such improvements, the cost of which is to be assessed against any specific property), the making and improvement of sewers, and any and all other expenses necessary to be incurred in maintaining the corporation and in its government in accordance with its charter and the needs of its inhabitants. [L. '97, p. 222, § 4.]

§ 5133. Tax for Indebtedness to be Fixed by Council.—The tax for payment of indebtedness shall be based upon a statement of such indebtedness, which shall be prepared by the clerk and approved by the council by a majority vote, at the meeting at which the levy is made, which statement shall be entered in the record of the proceedings of the council. In making the levy, consideration shall be taken of all outstanding warrants, certificates and all other obligations and indebtedness of the city, with the interest thereon, for the payment of which no provision is made by law, by the levy of a special tax, or otherwise than by a general tax, and this chapter shall not affect existing laws relating to the levy or collection of any tax, or the maintenance of any fund, for the payment of any bonded or funded indebtedness, or of the interest thereon. [L. '97, p. 223, § 5.]

Cited in 24 Wash. 473; 39 Wash. 626.

See supra, §§ 5104, 5115, tax for funding bonds.

§ 5134. Surplus in Street and Sewer Funds Go to Current Expense Fund.—On the first day of February, 1898, or as soon thereafter as practicable, all moneys in the hands of the treasurer to the credit of the street fund, or the sewer fund, in excess of the amount necessary to pay any and all warrants outstanding against said funds, shall be transferred and credited and applied to the credit of the current expense fund. [L. '97, p. 223, § 6.]

§ 5135. Certain Moneys Belong to Indebtedness Fund. — All moneys collected on and after the first day of February, 1898, from taxes of the year 1896, and previous years, and from penalty and interest thereon, shall be paid into the indebtedness fund. [L. '97, p. 223, § 7.]

Cited in 39 Wash. 627.

§ 5136. Certain Moneys Belong to Current Expense Fund.—From and after the first day of February, 1898, any and all moneys which, by any law enacted prior hereto, are payable into the general fund, except taxes, shall be credited and applied to the current expense fund. [L. '97, p. 223, § 8.]

§ 5137. How Applied.—All moneys in the current expense fund shall be paid and applied upon current expenses and from and after the first day of February, 1898, all current expenses shall be paid out of said current expense fund. [L. '97, p. 224, § 9.]

§ 5138. Separate Funds Maintained, When.—Any such municipal corporation maintaining waterworks, lighting plants, cemetery or other public works or institutions, from which rents or other revenues or income are derived, shall maintain separate funds for each of said public works or institutions, designated as "Waterworks Fund," "Lighting Fund," "Cemetery Fund," or otherwise as the case may be. No special tax shall be levied for the maintenance of such waterworks, electric lighting plant, cemetery or other public works or institutions, but the expense of such public works or institutions, less the rents or other revenues or income therefrom, shall be considered in levying taxes for payment of current expenses, and any deficit in the maintenance of such public works or institutions shall be paid out of the current expense fund, and any surplus in said "Waterworks Fund," "Lighting Fund," "Cemetery Fund," or other like funds, shall, at the end of each fiscal year, be paid and transferred to the current expense fund: Provided, that this chapter shall not affect existing laws relating to any funded or bonded indebtedness incurred in the construction or purchase of such public works or institutions, or to the levy and collection of taxes for the payment of such funded or bonded indebtedness: Provided, that if the council shall find, and enter such finding in the record of their proceedings, that it is necessary to retain such surplus, or any part thereof, in such fund, for the purpose of extending or repairing such public works or institutions, or for the purpose of paying interest or principal of any indebtedness incurred in the construction or purchase of such public works or institutions, or for the purpose of creating or adding to a sinking fund for the payment of such indebtedness, then such surplus, or any part thereof, may be so retained or paid upon such indebtedness or interest thereon, or may be transferred to such sinking fund. [L. '97, p. 224, § 10.]

§ 5139. Proceedings Where Corporate Limits Changed.—In all cases where the limits of such corporations have been or shall be extended, and additional territory annexed, it shall be the duty of the council and officers of the corporation to arrange and keep and maintain the accounts and funds of the corporation in such a manner that the interests of the inhabitants and taxpayers of the several districts of the corporation in the various funds and property of the city shall be clearly shown, and in all transactions these different interests shall be considered and protected. [L. '97, p. 225, § 11.]

§ 5140. Vote by Ballot.—All elections for the validation of any debt created by any city, which has since become consolidated with any other city, shall be by [ballot], and the vote shall be taken in the new consolidated city as the same is constituted at the time of any such election. [L. '97, p. 225, § 12.]

See infra, § 7455, consolidation, etc.

An identical section (L. '97, p. 193, § 121; Bal. Code, § 1801) in the general revenue law of 1897, relating to all cities, was expressly repealed by Laws of 1899, page 305, § 32; but this section probably remains unaffected, as it refers only to cities of less than twenty thousand inhabitants.

§ 5140–1. Funds and Tax Levies in Third-class Cities.—Every city of the third class having an outstanding indebtedness at the time of levying its taxes for the year 1916 shall levy for said year, and each year thereafter until all outstanding indebtedness has been paid shall levy, a tax of six mills on the dollar of the assessed valuation of property in such city, unless in any year a lesser levy will be sufficient to pay all outstanding indebtedness, in which event such lesser levy sufficient for such purpose shall be made. The proceeds of such tax together with all moneys received from licenses, street poll tax, fines, penalties and forfeitures and together with all taxes levied for the year 1915 or any previous year for the current expense fund, old indebtedness fund, general fund, street fund, sewer fund, library fund, park fund or other like fund and paid on or subsequent to January 1, 1916, shall be paid into a fund to be known as the "Indebtedness Fund": Provided, that all tax levies and validated tax levies and all parts of each thereof made for the payment of the current expenses of any such city for the fiscal years 1914 and 1915 shall when collected be paid into a separate fund to be known as the 1914 and 1915 current expense fund and applied primarily to the payment of the current expenses of such city for the fiscal year for which the same were levied or validated. In computing such outstanding indebtedness all indebtedness of every character shall be included excepting indebtedness for the payment of which special provision is made by law and by said city and bonded indebtedness for the payment of which an adequate sinking fund is provided. [L. '15, p. 668, § 1.]

§ 5140–2. Payment of Outstanding Indebtedness—Apportionment of Funds.—Except as otherwise provided in section 5140–1, all indebtedness outstanding upon January 1, 1916, shall be paid out of said indebtedness fund, all outstanding warrants to be paid out of said indebtedness fund in the order of their issuance and if issued upon the same day and the order of issuance does not appear they shall be paid in the order of their presentation: Provided, that if there be outstanding on said date a general fund indebtedness and a current expense fund indebtedness of any such city the moneys derived from the six mill levy herein provided for shall, so long as any indebtedness remains against both said funds, be apportioned between said funds and applied to the payment of the outstanding warrants against the same in proportion to the outstanding indebtedness

against said funds in the order above provided. Whenever all indebtedness of such city which was outstanding upon January 1, 1916, has been paid, any surplus remaining in said indebtedness fund shall be paid into the "Current Expense Fund" of such city, and thereafter all receipts of said city which would theretofore have been paid into said indebtedness fund shall be paid into said current expense fund. [L. '15, p. 669, § 2.]

§ 5140–3. "Current Expense Fund" Created—Tax Levy.—There shall be in each city of the third class a fund to be known as the "Current Expense Fund." Each such city shall levy for the year 1916 and for each year thereafter a tax upon the property in such city for the payment of current expenses in an amount equal to the estimate by the city council of the current expenses for the ensuing year less the amount of revenues from all other sources payable into such current expense fund, the proceeds of which tax shall be paid into such current expense fund except as otherwise provided in this act. All moneys in the general fund, old indebtedness fund, old "Current Expense Fund" if such shall have been continued, street fund, sewer fund, library fund, park fund or other like fund upon January 1, 1916, which were paid into any such fund prior to said day, shall be transferred to the current expense fund created by this act and thereafter every such general fund, old indebtedness fund, old "Current Expense Fund," street fund, sewer fund, library fund, park fund or other like fund shall be discontinued and abolished. [L. '15, p. 669, § 3.]

§ 5140–4. Validating Tax Levies by Cities of Third Class.—The tax levies made by cities of the third class for the years 1913, 1914 and prior years are hereby ratified and validated wherever the only reason of the invalidity of such tax levy or levies is that the same were made in excess of the limitation prescribed by statute, or were not apportioned according to the provisions of chapter 108, Laws of 1913; and upon the taking effect of this act, the proper officers are hereby authorized and directed to proceed with the extension, collection and enforcement of the lien of such taxes; and collections heretofore made are hereby ratified: Provided, this act shall not apply to such cities as did not attempt to collect such levies or which canceled the same. [L. '15, p. 587, § 1.]

Fertilizers. See "Agriculture," § 3045.
Fines. See "Justices of the Peace and Constables," § 6541.
Actions on, see §§ 963–966.
Fire Drills. See "Education," § 4748.
Fire-escapes. See "Inspection," § 6031.
Firemen. Pensions, see "Municipal Corporations," § 8061.

TITLE XXXIV.

FIRES.

5141. Damages for negligently permitting fire to spread.
5142. Lumbermen, when liable for kindling fires.
5143. Common-law rights not abrogated.
5144. Maliciously setting fire to prairie and other grounds.
5145. Kindling fire with intent to injure another's property.
5146. Kindling fire on another's land without malice.
5147. Setting fire to lumber, produce, etc.
5148. Kindling fire on another's land while hunting, etc.
5149. Destruction of forests by fire.

§ 5141. Damages for Negligently Permitting Fire to Spread.—If any person shall for any lawful purpose kindle a fire upon his own land, he shall do it at such time and in such manner, and shall take such care of it to prevent it from spreading and doing damage to other persons' property, as a prudent and careful man would do, and if he fail so to do he shall be liable in an action to any person suffering damage thereby to the full amount of such damage. [L. '77, p. 300, § 3; Cd. '81, § 1226.]

Cited in 42 Wash. 534; 61 Wash. 573.

§ 5142. Lumbermen, When Liable for Kindling Fires.—Persons engaged in driving lumber upon any waters or streams of this state may kindle fires when necessary for the purposes in which they are engaged, but shall be bound to use the utmost caution to prevent the same from spreading and doing damage; and if they fail so to do, they shall be subject to all the liabilities and penalties of this act in the same manner as if the privilege granted by this section had not been allowed. [L. '77, p. 300, § 5; Cd. '81, § 1228.]

"This act" includes this chapter, except §§ 5144, 5149.

§ 5143. Common-law Rights not Abrogated.—The common-law right to an action for damages done by fires is not taken away or diminished by this act, but it may be pursued notwithstanding the fines and penalties set forth in sections 5145 and 5146; but any person availing himself of the provisions of section 5141 shall be barred of his action at common law for the damage so sued for and no action shall be brought at common law for kindling fires in the manner described in the last section; but if any such fires shall spread and do damage, the person who kindled the same and any person present and concerned in driving such lumber, by whose act or neglect such fire is suffered to spread and do damage, shall be liable in an action on the case for the amount of damages thereby sustained. [L. '77, p. 300, § 6; Cd. '81, § 1229.]

"This act": See note to last section.

Sections 5145, 5146, are amendments. See L. '91, pp. 122, 123, §§ 13, 14. See repealing clause to L. '91, p. 133, § 46, which saves the foregoing three sections of the L. '77, p. 300.

§ 5144. Maliciously Setting Fire to Prairie and Other Grounds. If any person shall maliciously or wantonly set on fire any prairie or other grounds other than his own or those of which he is in the lawful possession, or shall willfully or negligently permit or suffer the fire to pass from his own grounds or premises to the injury of another, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than fifty nor more than five hundred dollars. [Cf. Cd. '81, § 847; L. '90, p. 127, § 9; 2 H. P. C., § 81.]

See supra, § 2522, setting without permit of fire warden.
See infra, § 5283, permits.

§ 5145. Kindling Fire With Intent to Injure Another's Property. If any person shall maliciously, with intent to injure any other person, by himself or any other person, kindle a fire on his own land or the land of another person, and by means of such fire the buildings, fences, crops, or other personal property or wooded timber lands of any other person shall be destroyed or injured, he shall, on conviction, be punished by a fine not less than twenty dollars nor more than one thousand dollars, or by imprisonment in the county jail not less than three months nor more than twelve months, according to the aggravation of the offense. [L. '77, p. 300, § 2; Cd. '81, § 1225; L. '91, p. 122, § 13; 2 H. P. C., § 82.]

See supra, § 2523, refusing to extinguish.

§ 5146. Kindling Fire on Another's Land Without Malice.—If any person shall, without malice, kindle a fire in any field, pasture, inclosure, forest, prairie, or timber land, not his own, without the consent of the owner, and the same shall spread and do damage to any buildings, fences, crops, cordwood, bark, or other personal property, not his own, or to any wood or timber land, not his own, he shall, on conviction, be punished by a fine of not less than ten nor more than five hundred dollars, and costs, according to the aggravation of the offense, and shall stand committed till the fine and costs are paid. [Cf. L. '77, p. 300, § 1; Cd. '81, § 1224; L. '91, p. 123, § 14; 2 H. P. C., § 83.]

See supra, § 2523, penalty for negligently setting.

§ 5147. Setting Fire to Lumber, Produce, etc.—Every person who shall willfully and maliciously set fire to any pile or parcel of boards, timber, piles, or other lumber, cordwood, ricks, stacks, or shocks of grain, hay, or other vegetable products, or vegetable products severed from the soil not in ricks, stacks, or shocks, or any standing

grass or grain, or other cultivated vegetable products of the soil, shall, upon conviction thereof, be imprisoned in the county jail not more than one year nor less than one month, and be fined in any sum not exceeding five hundred dollars. [L. '54, p. 83, § 41; Cd. '81, § 824; 2 H. P. C., § 41.]

See supra, § 2784 et seq., arson generally.

§ 5148. Kindling Fire on Another's Land While Hunting, etc.—Any person who shall enter upon the lands of another person for the purposes of hunting or fishing, and shall, by the use of firearms, or other means, kindle any fire thereon, shall be punished by a fine not less than ten nor more than five hundred dollars, if such fire be kindled without malice; if such fire be kindled maliciously, and with intent to injure any other person, such offender shall be punished by a fine not less than twenty nor more than one thousand dollars, or by imprisonment in the county jail not less than three months nor more than twelve months. [Cf. L. '77, p. 300, § 4; Cd. '81, § 1227; L. '91, p. 123, § 15; 2 H. P. C., § 84.]

§ 5149. Destruction of Forests by Fire.—Any person or persons who shall willfully and deliberately set fire to any wooded county or forest belonging to the state or the United States, within this state, or to any place from which fire shall be communicated to any such wooded county or forest, or who shall accidentally set fire to any such wooded county or forest, or to any place from which fire shall be communicated to any such wooded county or forest, and shall not extinguish the same or use every effort to that end, or who shall build any fire for lawful purposes or otherwise in or near any such wooded county or forest, and through carelessness or neglect shall permit said fire to extend to and burn through such wooded county or forest, shall be deemed guilty of a misdemeanor, and on conviction before a court of competent jurisdiction shall be punishable by fine not exceeding one thousand dollars or imprisonment not exceeding one year, or by both such fine and imprisonment: Provided, that nothing herein contained shall apply to any person who in good faith shall set a back-fire to prevent the extension of a fire already burning. All fines collected under this section shall be paid into the county treasury for the benefit of the common school fund of the county in which they are collected. [L. '91, p. 226, § 1; 2 H. P. C., § 84a.]

See supra, § 2522, setting without permit of fire-warden.
See infra, § 5283, permits.

Fire-warden. See "Forest and Forest Fires," § 5277.

Fiscal Agency. See "Finance," § 5015.

TITLE XXXV.

FISH AND OYSTERS.

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CHAPTER I.

Fisheries Code.

§ 5150-1. Short Title.—This act shall be known as the "Fisheries Code of Washington." [L. '15, p. 67, § 1.]

§ 5150-2. Fish Commission.—The governor, state treasurer, and commissioner shall constitute a board to be known as the state fish commission of which the governor shall be chairman and the state fish commissioner secretary. [L. '15, p. 67, § 2.]

§ 5150-3. Duties of Commission.—It shall be the duty of said commission:

To establish and maintain such state fish hatcheries and cultural stations as in its judgment may be necessary for the propagation, protection and preservation of fish and shell-fish.

To cause the commissioner to examine all oyster reserves and to do or cause to be done such things as may be deemed advisable to conserve, protect and develop said reserves.

To examine the clam and mussel beds located on lands belonging to the state, and with the approval of the state board of land commissioners to withdraw such lands from sale and lease and make reserves thereof.

To take such steps as are advisable for the conservation, protection and development of such reserves; also to do those things that may be necessary for the protection and development of the shrimp, clam and mussel beds on state lands.

The members of such board shall receive no compensation as such board, but shall be allowed actual traveling expenses. [L. '15, p. 67, § 3.]

§ 5150-4. State Fish Commissioner.—There shall be appointed by the governor, by and with the advice and consent of the senate,

an officer to be known as the state fish commissioner and who shall be ex-officio state game warden, who shall hold office for four years from and after the first day in April following his appointment, and until his successor is appointed and qualified.

He shall receive a yearly salary of three thousand dollars ($3,000), and actual expenses of travel, two-thirds of which salary shall be paid from the fisheries fund and one-third from the state game fund.

The term "commissioner" when used in this act shall mean the state fish commissioner. [L. '15, p. 68, § 4.]

§ 5150-5. Bond of Commissioner.—The commissioner shall give a bond to the state, with a surety company authorized to do business in this state as surety, in the sum of five thousand dollars ($5,000), conditioned for the faithful performance of his duties. [L. '15, p. 68, § 5.]

§ 5150-6. Duties of Commissioner.—The commissioner shall devote his time to the duties of his office and shall enforce the laws for the propagation, protection and preservation of food, shell, game and commercial fishes. He shall purchase, construct, charter and operate the boats necessary to properly patrol the waters of the state in the enforcement of the laws. He shall have charge and control of and operate and maintain the fish hatcheries now or that may hereafter be owned by the state. He shall select and purchase suitable lands for hatchery purposes and build hatcheries thereon when so directed by the fish commission. He shall make an annual typewritten and a biennial printed report on the first day of December of each year to the governor, containing a detailed statement of his actions under this act, of the operation and results of the laws pertaining to the fish industry, the methods of taking the fish, the number of fish hatched and where distributed, the amount of expense incurred by his department, and full and complete statistics of the fishing business and suggestions as to needed legislation. He shall designate which are the food, shell, game and commercial varieties, when such designations are not specifically made by the laws of this state. [L. '15, p. 68, § 6.]

§ 5150-7. Power to Inspect.—The commissioner shall have power to inspect all canneries, boats, nets, wheels, traps and all other appliances, and all property used in catching, packing, curing, preparing or storing food or shell fish, or in the fish industry, and may enter on any property at any time for any such purpose. [L. '15, p. 69, § 7.]

§ 5150-8. Authority to Arrest.—The commissioner and those authorized by him shall have authority to arrest, without writ, order or process, any person in the act of violating any of the provisions of this act, and they are hereby made peace officers for such purpose.

If any person knowingly or willfully resists or opposes such officer in the discharge of his said duties, he shall be guilty of a gross misdemeanor. [L. '15, p. 69, § 8.]

§ 5150-9. Commissioner may Administer Oaths.—The commissioner may administer oaths in any matter connected with the duties of his office, and may require any report, statement or application made or submitted to him to be made under oath. [L. '15, p. 69, § 9.]

§ 5150-10. Commission may Prohibit Fishing.—The commission may prohibit fishing for both food and game fish in any river or stream, or any part thereof, should they consider it necessary for the protection of the food and game fishes mentioned in this act. When the commission shall desire to close any river or stream to fishing they shall publish in a weekly newspaper in such county or counties through which such stream or river flows for not less than two successive issues a notice stating that from a certain date, which shall not be less than fifteen days from the date of said notice, to a date also to be fixed in said notice, said stream or river, or the portion thereof therein described, shall be closed to fishing. It shall be unlawful to take any of the food and game fishes mentioned in this act, by any means whatever, from any stream or river during the closed period defined in such notice, except the Columbia River where the same forms a state boundary. [L. '15, p. 70, § 10.]

§ 5150-11. To Designate Mouths of Rivers.—The commissioner shall designate the mouths of rivers by driving piles or establishing monuments. In the designation of the mouths of the rivers of this state the commissioner shall be guided by the shore headlands on either side of the river and his designation shall be final. He shall designate by the erection of monuments and signs the fishing limits of rivers, and when the mouth of a river has been so designated the commissioner shall cause a plat of the same, showing its location, to be filed in his office for public inspection, and shall also furnish the auditor of the county in which the mouth of said river or stream is located with a copy of said plat, which the auditor shall keep on file for public inspection. [L. '15, p. 70, § 11.]

§ 5150-12. Commissioner to Employ Assistants.—The commissioner may employ the following assistants to serve under his direction and during his pleasure:

(1) A general superintendent of hatcheries, who shall receive a yearly salary of eighteen hundred dollars ($1,800).

(2) One fishery inspector, who shall be designated as deputy fish commissioner, at a salary of eighteen hundred dollars ($1,800) yearly, and other necessary inspectors who shall receive a compensation of not to exceed four dollars ($4) per day for each day actually employed.

(3) The necessary employees for the conduct of the commissioner's office; for the operation of the department's patrol boats; for the maintenance and operation of the hatcheries, fish cultural and experimental stations; the patrolmen necessary for the protection of the state oyster, clam and shrimp reserves; and the employees necessary, in the judgment of the commissioner, to conduct the business of the fisheries department.

(4) The employees of the commissioner shall be reimbursed their necessary traveling expenses, and the salaries and compensation of all employees not specifically designated shall be fixed by the commissioner. [L. '15, p. 70, § 12.]

§ 5150-13. Bonds of Employees of Commissioner.—Each employee, if required by the commissioner, shall give a bond to the state with a surety company authorized to do business in this state as surety in the sum of two thousand dollars ($2,000) conditioned for the faithful performance of his duties, subject to the approval of the commissioner, the cost of bond to be paid by the state. [L. '15, p. 71, § 13.]

§ 5150-14. Duties of Inspectors.—Each inspector shall perform the duties to which he may be assigned by the commissioner, and shall have the power to perform each and every act and thing permitted, provided or directed to be done by law by the commissioner in the enforcement of the laws relating to the duties of his office. [L. '15, p. 71, § 14.]

§ 5150-15. Terms Defined.—Wherever the word "salmon" occurs in this act it shall be construed to include and apply to the sockeye, silver, chinook, steelhead, chum and humpback salmon, and the so-called salmon trout and each and every species of the genus oncorhynchus commonly known as salmon. [L. '15, p. 71, § 15.]

§ 5150-16. Definitions.—The term "person or persons" when used in this act shall be taken to include partnerships, associations and corporations. The term "seine" in this act is intended to cover all forms of nets known as seines, purse-seines or purse-nets, trawls, beam trawls, stow-nets, drag-nets, smelt drag bag-nets, bag-nets, draw-nets, reef-nets and dredge-nets. [L. '15, p. 72, § 16.]

§ 5150-17. Puget Sound Defined.—Wherever the term "Puget Sound" occurs in this act it shall be construed to include all tide waters of the Strait of Juan de Fuca, the tide waters of Georgia Strait, the tide waters of Washington Sound, the tide waters of Puget Sound, and all other tide waters emptying into the same, and all the bays, inlets and estuaries thereof. [L. '15, p. 72, § 17.]

§ 5150–18. Districts Defined.—For all purposes necessary for the administration of this act, the several portions of the state shall be divided into four districts, as follows:

(1) The Puget Sound district, which shall consist of Puget Sound, as by this act defined, and its tributaries.

(2) The Columbia River district, which shall consist of all the waters of the Columbia River and its tributaries within the confines of this state.

(3) The Grays Harbor district, which shall consist of all the waters of Grays Harbor and its tributaries, and the Pacific Ocean within three miles of the shore line north of the south entrance of Grays Harbor and south of Cape Flattery, and all the rivers and streams emptying therein.

(4) The Willapa Harbor district, which shall consist of the waters of Willapa Harbor and its tributaries, the Pacific Ocean within three miles of the shore line between the south entrance of Grays Harbor and North Head, and all the rivers and streams emptying therein. [L. '15, p. 72, § 18.]

§ 5150–19. Fishing—Where Permitted.—The use of pound-nets, traps, traps fished at both ends of lead, fish-wheels and other fixed appliances, purse-nets, drag seines and other seines for catching salmon, and the use of set-nets and gill-nets is hereby authorized in all the waters of this state, except as prohibited by this act. [L. '15, p. 72, § 19.]

§ 5150–20. Fishing—Where Prohibited—Puget Sound.—It shall be unlawful to construct, own, operate or maintain any pound-net, trap, fish-wheel, or other fixed appliance for the purpose of catching salmon or other food fishes within any river or stream flowing into Puget Sound, or within Puget Sound within a distance of three miles of the mouth of any river, measured by the most direct watercourse, or within the part of Puget Sound known as Deception Pass, or within one-half mile of the western entrance thereof, or within any salt water at a greater depth than sixty-five feet at low tide.

It shall be unlawful to use any purse-net, purse seine, drag seine or other like seine or net within two miles of the mouth of any such river, measured by the most direct watercourse, or within any such river.

It shall be unlawful, except with hook and line, to take any of the food fishes mentioned in this act in the Skagit River above the Great Northern Railway bridge across the same at Mount Vernon, and in the Snohomish River above the Snohomish wagon bridge, or above the wagon bridge at Riverton in the Duwamish River, and in all other rivers and streams flowing into Puget Sound. [L. '15, p. 73, § 20.]

§ 5150-21. Chambers Creek.—It shall be unlawful at any time to take any fish with any appliance whatsoever, except with hook and line, in Chambers Creek, in the county of Pierce, and within fifteen hundred feet of the Northern Pacific Railway bridge located across the mouth of said creek. [L. '15, p. 73, § 21.]

§ 5150-22. Waters of Thurston and Mason Counties and Oyster-beds.—It shall be unlawful at any time to take any fish with any fishing appliance whatsoever, except with hook and line and smelt drag bag-nets, within the limits of Eld Inlet, Budd Inlet, Henderson Inlet and Totten Inlet situated in Thurston and Mason counties: Provided, within that part of Budd Inlet lying in township eighteen (18), north of range two (2) west, Willamette Meridian, and sections thirty-three (33), thirty-four (34) and thirty-five (35) of township nineteen (19), north of range two (2) west of the Willamette Meridian, or over any oyster-beds of the state no fishing appliance whatsoever shall be used except hook and line: Provided, further, that if any salmon shall be caught by an appliance other than hook and line within said waters the same shall be immediately liberated and turned alive into the water. [L. '15, p. 73, § 22.]

§ 5150-23. Willapa Harbor.—It shall be unlawful to take or fish for salmon, except with hook and line, in any of the following tributaries of Willapa Harbor above tide water in said rivers, viz.:

North River, Willapa River, south fork of Willapa River, Nasel River, Palix River, Nema River, Bear River, Cedar River, and Smith Creek, and for the purposes of this act the head of tide water shall be:

On North River, where the north boundary line of section 23, of township 15 north, range 10 west of the Willamette Meridian crosses said river.

On Willapa River where Louderback's Slough empties into the said Willapa River in the eastern portion of section 20, township 14 north, range 8 west of Willamette Meridian.

On the south fork of the Willapa River, the drawbridge of the Northern Pacific Railway Company, being the center of lots 8 and 11 of section 24, township 14 north, range 9 west of the Willamette Meridian.

On the Nasel River, at the gap in the main log boom.

On Cedar River, the mouth of said river, or the line between townships 14 and 15 north, ranges 10 and 11 west, of the Willamette Meridian.

On Palix River, where the south line of section 22, township 15 north, range 10 west of the Willamette Meridian crosses said river.

On North Nema River, at the schoolhouse on lot 3 of section 22, township 12 north, range 10 west of the Willamette Meridian.

On South Nema River, at what is known as Carruther's Landing, being on the east and west half section line extending through section 27, township 12 north, range 10 west of the Willamette Meridian.

On Bear River, at Masny's Landing, or the half section line extending east and west through sections 7 and 8 of township 10 north, range 10 west of the Willamette Meridian.

On Smith Creek, at the mouth thereof, being where lots 1 and 2 of section 35, township 15 north, of range 10 west of the Willamette Meridian abut upon the entrance of Willapa Harbor. [L. '15, p. 74, § 23.]

§ 5150–24. Grays Harbor.—It shall be unlawful to take or fish for salmon, except with hook and line, in the following tributaries of Grays Harbor:

In Chehalis River, above point one-half mile below the mouth of Wynooche River, and one-half mile above the mouth of the Humptulips River, and one-half mile above the mouth of the Elk River, and one-half mile above the mouth of Johns River.

From and after the passage of this act it shall be unlawful to erect any fish-trap, pound-net or fish-wheel in any of the streams emptying into Grays Harbor, Willapa Harbor, or any of the streams of these districts, as by this act defined: Provided, however, the right to erect fish-traps, pound-nets or fish-wheels on locations existing in said district in 1914 is hereby recognized. [L. '15, p. 75, § 24.]

§ 5150–25. Columbia River.—It shall be unlawful to take or fish for salmon, except with hook and line, in the Kalama River, Lewis River, Wind River, Little White Salmon River, Big White Salmon River, Wenatchee River, Methow River, Little Spokane River, Colville River, and Yakima River, and in the Columbia River, within one mile below the mouths of the above-named rivers. No fish-trap shall be located on or within three miles below the mouth of Lewis River, but fishing with gill-nets is permitted in the Columbia River to a point within one mile below the mouth of said rivers and a quarter of a mile out from where the same empties into the Columbia River. [L. '15, p. 75, § 25.]

§ 5150–26. Set-net not Fixed Appliance.—A set-net is not a fixed appliance within the meaning of this act, but it shall be unlawful to erect or maintain any set-net within the limits of the end and lateral passageways prescribed in this act for fixed appliances. [L. '15, p. 76, § 26.]

§ 5150–27. Trap, Pound-net and Set-net Location—How Acquired.—Any person, firm or corporation occupying or desiring to occupy any fishing location where it may be lawful to construct a pound-net, trap or set-net in the waters of the state, shall cause such location to be accurately surveyed by a competent civil engineer,

unless a survey thereof has already been made, in which event such existing survey may be used, and shall cause a location map to be made of such location from the actual survey thereof, which shall contain a plat and description of said fishing location sufficient for its ascertainment and identification on the premises. It shall also contain a certificate by the claimant, or by his agent or attorney, stating that he claims the fishing location shown thereon, specifying the date and number of the license under which the same is held and containing the postoffice address of the claimant. Such map, with the certificate thereon, shall be filed in the office of the county auditor of the county in which such fishing location is situated, and a duplicate copy thereof in the office of the commissioner. From and after the date of filing in the office of the county auditor, such map shall constitute full and complete notice that such location is owned, held, occupied and claimed by the person, firm or corporation designated thereon as the claimant. It shall be the duty of the county auditor and the commissioner in whose offices any such map may be offered for filing to receive and keep the same on file. They shall also keep an index to all such maps, showing the hour and date of filing, names of the claimants and serial number of the maps, in the order filed, all of which shall be indorsed on the maps when filed. No informality or omission on the part of such public officers shall impair or prejudice the right of any claimant of such fishing location.

From and after filing such map the claimant of the location thereon shown, his heirs, administrators, successors and assigns shall have the exclusive right to hold, occupy and fish such location, to renew the license therefor, and to mortgage, sell and transfer the same during the time that he or they in other respects shall comply with the law pertaining thereto.

It shall not be necessary to file any map or plat of any location heretofore made under existing laws in any case where any map has heretofore been filed: Provided, that all pound-net, fish-trap, set-net or other fishing locations heretofore made by locators or owners thereof in accordance with existing laws shall be unaffected and unimpaired by any of the provisions of this section, and any location legal when established shall continue valid under the provisions of this act and the locators or owners of such previously established locations shall continue to occupy, own, hold and enjoy the same, and may mortgage, sell, transfer and lease the same, with the right to renew their licenses therefor in the same manner and with the same legal effect as though said locations had been established under the provisions of this act. Any person, firm or corporation being the owner, holder or occupant of any trap or pound-net location in the Columbia River, Grays Harbor, or Willapa Harbor, shall, within ninety days after this act takes effect, file with the auditor of the

county in which their said locations are situated, a location map as hereinbefore provided in this section, and a copy of the same in the office of the commissioner.

From and after filing such map the claimant of the location thereon shown, his heirs, administrators, successors and assigns shall have the exclusive right to hold, occupy and fish such location, to renew the license therefor, and to mortgage, sell, lease and transfer the same during the time that he or they in other respects shall comply with the law pertaining thereto. [L. '15, p. 76, § 27.]

§ 5150-28. Drag Seine Locations—How Acquired.—Locations for drag seines may be made by driving a substantial stake or erecting a permanent monument at each end of the location claimed, and posting thereon the number of the license under which the same is operated. No drag seine location the title to which is in the state shall occupy a greater length of the shore line than twice the length of the seine covered by the license therefor. [L. '15, p. 78, § 28.]

§ 5150-29. Set-net Locations—How Acquired.—Locations for set-nets may be made by erecting a permanent monument near, or securely anchoring a buoy on the location claimed, upon which shall be posted the number of the license under which such net is operated. There shall be a lateral passageway of at least three hundred feet and an end passageway of thirty feet between all set-nets. It shall be unlawful in the use and operation of a set-net to create any artificial eddy or erect any structure or obstruction for such purpose. [L. '15, p. 78, § 29.]

§ 5150-30. Failure to Renew License.—The failure to renew the license or to have made lawful application therefor for any fish-trap, pound-net, fish-wheel or other fixed appliance in any of the waters of this state on the first day of April of any year shall constitute abandonment of the location. [L. '15, p. 78, § 30.]

§ 5150-31. Fixed Appliances—Columbia River, Willapa Harbor and Grays Harbor—How Constructed.—No lead of any pound-net, trap, fish-wheel, or other fixed appliance used for catching salmon in the Columbia River and its tributaries, Willapa Harbor and its tributaries, and Grays Harbor and its tributaries shall exceed eight hundred feet in length, and there shall be an end passageway of at least thirty feet and a lateral passageway of at least nine hundred feet between all such pound-nets, traps, fish-wheels, or other fixed appliances. The lead of any pound-net or trap may be extended to high-water mark only on the tide-lands owned by the state, providing such extension does not exceed the length provided in this act. Should the locator or owner neglect to construct his appliances for two consecutive fishing seasons covered by this license, said location shall be deemed abandoned. [L. '15, p. 78, § 31.]

§ 5150–32. Fixed Appliances in Puget Sound—How Constructed. No lead of any pound-net or fish-trap in Puget Sound shall exceed twenty-five hundred feet in length, and there shall be an end passageway of at least six hundred feet and a lateral passageway of at least twenty-four hundred feet between all pound-nets, traps and other fixed appliances. The lead of any pound-net or trap may be extended to high-water mark on the tide-lands owned by the state, or on other tide-lands with the consent of the owners thereof: Provided, such extension shall not exceed the length of the lead provided in this act. Should the locator or owner of any pound-net or fish-trap location fail to construct a fishing appliance thereon for four consecutive years, his location shall be deemed abandoned, even though he shall have complied in other respects with the laws pertaining thereto. [L. '15, p. 79, § 32.]

§ 5150–33. Passageways—How Determined.—For the purpose of determining end passageways, base lines shall be drawn at right angles with the general course of locations first originally established and intersecting the ends thereof, and the end passageways shall be measured at right angles from such base lines: Provided, however, this section shall not affect any location lawfully existing under previous statutes, and any and all such fishing appliances may be maintained upon such existing locations as though this act had not been passed, or they may be changed to conform to the provisions hereof as to end passageways at the option of the location owner and holder thereof. [L. '15, p. 79, § 33.]

§ 5150–34. Set-nets, Puget Sound—How Constructed.—It shall be unlawful to fish for salmon in Puget Sound with any set-net of greater length than five hundred feet, or in the form of a pound-net, or with pots or hearts connected therewith, or that is used or held in any other way than in a substantially straight line. [L. '15, p. 79, § 34.]

§ 5150–35. Length of Appliances in Rivers Limited.—No fishing appliance or device of any kind whatsoever, either by lead or any part thereof, shall occupy more than one-third the width of the waters of any stream or river. [L. '15, p. 80, § 35.]

§ 5150–36. Nets—Size Mesh.—It shall be unlawful to use any pound-net, trap, fish-wheel or other fixed appliance for catching salmon or other food fish with meshes under three inches, stretch measure. It shall be unlawful to operate in any of the waters of Puget Sound any purse seine, drag seine or other like seine or net of a greater length than five hundred feet with meshes less than two and one-half inches stretch measure, during the year 1915, and after January 1, 1916, with meshes less than three inches stretch measure. It shall also be unlawful to operate in any of the said waters any

gill-net of a greater length than five hundred feet with meshes less than five inches stretch measure.

It shall be unlawful to use any gill-net more than twelve hundred feet in length or more than thirty-six meshes deep in Willapa Harbor or any of its tributaries. [L. '15, p. 80, § 36.]

§ 5150–37. Closed Season for Smelt and Herring.—It shall be unlawful to catch or fish for smelt or herring with any purse, drag or like seine of less than 1¼ inch mesh, stretch measure between 8 P. M. and 6 A. M. of any day.

It shall be unlawful to catch or fish for smelt or herring in the waters of Puget Sound with any appliance between 4 o'clock P. M. Friday and 4 o'clock A. M. Sunday of each week. [L. '15, p. 80, § 37.]

§ 5150–38. Herring Spawning Grounds.—The commissioner shall immediately after this act takes effect proceed to definitely locate and chart at least five of the most productive of the herring spawning grounds in the waters of Puget Sound and its tributaries in the state of Washington and particularly at Hadlock, Holmes Harbor, Deception Pass, Jackson Cove, Hales Pass, and Birch Bay Point, and shall mark the boundary of not fewer than five of the most productive of such spawning grounds to be designated by the commissioner by driving at least one pile or erecting at least one monument at either side at right angles with the shore of such spawning grounds, and thereafter it shall be unlawful to take herring in, over or upon the spawning grounds thus marked during the spawning season of such fish upon such grounds, such spawning season to be ascertained by the commissioner and to be promulgated by the commissioner and notice thereof shall be given by posting a copy of such rule printed on cloth upon the pile or monument marking the boundaries of such spawning grounds. [L. '15, p. 80, § 38.]

§ 5150–39. Closed Season for Shrimp.—It shall be unlawful for any person to take shrimp between the first day of January and the last day of March of any year, both dates inclusive, by any means whatsoever in the waters of Puget Sound or its tributaries. [L. '15, p. 81, § 39.]

§ 5150–40. Appliances Used Unlawfully may be Confiscated.—Any fishing appliance or part thereof found in the waters of this state wherein the same are prohibited, the same being placed therein for the purpose of illegal fishing is hereby declared a public nuisance and shall be subject to abatement as a public nuisance, and it shall be the duty of the commissioner to enforce the provisions of this section; and any and all appliances used in violation of any of the provisions of this act, viz.: Boats, traps, nets, fish-wheels or other appliances, shall be subject to execution for the payment of any

fines imposed on the owner thereof. Such appliance may be seized by the commissioner and may be forfeited to the state, and the superior courts of the state of Washington shall have exclusive jurisdiction of all such cases. [L. '15, p. 81, § 40.]

§ 5150-41. Fishing Without License Prohibited.—It shall be unlawful to catch, take or fish for food fish with any appliance or by any means whatsoever except with hook and line commonly called angling or trolling unless license so to do has first been obtained from the commissioner.

The presence in any of the waters of this state of any craft of any nature whatever equipped with any of the appliances required to be licensed by the laws of this state for the taking of fish, or of any fishing appliance for which licenses are required shall be prima facie evidence that the owners thereof are engaged in fishing.

Any person who shall engage in fishing with any appliance whatsoever without having first obtained a license or made lawful application therefor shall be deemed guilty of a misdemeanor and the commissioner is hereby authorized to seize said appliance and the same shall be confiscated to the state. [L. '15, p. 81, § 41.]

§ 5150-42. Indians Fishing on Reservations.—Nothing in this act shall prevent any Indian from taking fish at any time without a license for the consumption of himself or family with a drag seine not more than three hundred feet in length or with a set-net, in any of the salt waters bordering any Indian reservation and within one-half mile thereof, or with a set-net extending not more than one-third across the waters of any river or stream flowing through or bordering on any such reservation and within five miles of the boundaries thereof. Provided, however, that this section shall not apply to the Nooksack River. [L. '15, p. 82, § 42.]

§ 5150-43. Licenses—To Whom not Issued.—No license for taking or catching salmon or other food or shell fish required by this act shall be issued to any person who is not a citizen of the United States of the age of eighteen years or over, unless such person has declared his intention to become a citizen, and is and has been an actual resident of the state for one year immediately preceding the application for such license. Nor shall any license be issued to a corporation unless it is authorized to do business in this state. Nothing herein contained shall be construed to prevent the issuance of licenses to Indians, providing such applicants possess the qualifications of residence hereinbefore required, nor prevent the renewal of licenses for fixed appliances by persons now holding the same. [L. '15, p. 82, § 43.]

§ 5150-44. Fact of Citizenship and Residence—How Determined. When required by the commissioner any person desiring to fish for

any food fish in any of the waters of this state, may go before a county clerk of any county of this state or the commissioner, and furnish satisfactory proof of his citizenship, or of the fact that he has declared his intention to become such, and file his own affidavit and the affidavit of two or more persons to the effect that he now is and for a year prior thereto has been an actual bona fide resident of this state, and thereupon such clerk or commissioner shall issue to him a certificate briefly reciting those facts, and thereafter in any prosecution against such person for a violation of the provisions of this act such certificate or a duly authenticated copy of the records in the office of the clerk or commissioner relative thereto shall be prima facie evidence of his citizenship and residence as in this act required. But in all prosecutions under this act the burden of proof shall be upon the defendant to establish the fact of his citizenship and residence. But nothing herein contained shall delay the issuance to any applicant of a license for a fish-trap, fish-wheel or pound-net, which are required by the provisions of this act to be issued on the first day of April of each year. [L. '15, p. 83, § 44.]

§ 5150–45. **Certificates—No Fee for Issuing—Registry.**—For taking the affidavits and issuing the certificates herein provided for, no fee shall be charged. The clerk or commissioner shall keep in his office a record of all certificates issued pursuant to this act. [L. '15, p. 83, § 45.]

§ 5150–46. **Licenses — How Transferred.** — Any license may be assigned or transferred to any person or corporation entitled to hold a license under the provisions of this act, and notice shall be given of such transfer or assignment within thirty days from the date thereof to the commissioner, who shall indorse the date of such notice on the license. If such notice be not given the license shall be void. And any assignee of a license for operating any such appliance who shall fail within thirty days to give notice to the commissioner of the assignment of such license is guilty of a misdemeanor. [L. '15, p. 83, § 46.]

§ 5150–47. **Blank Licenses — How Provided.** — The commissioner shall prepare in blank and consecutively number all licenses required under the provisions of this act, all of which shall expire at the close of the thirty-first day of March following their issuance, and shall be renewed annually thereafter upon application and payment of license fees required by this act. [L. '15, p. 84, § 47.]

§ 5150–48. **Fisheries Fund.**—All license fees and fines collected under the provisions of this act unless otherwise provided herein, shall be paid into the state treasury and placed in a fund to be known as the fisheries fund, which shall not be used for any purpose other than for the propagation, protection and perpetuation of food

and shell fishes and the administration and enforcement of the laws relating thereto. All unexpended balances thereof shall continue in such fund unless otherwise disposed of by the legislature. The commissioner is directed to expend such funds, as nearly as may be, in the localities from which they are collected. [L. '15, p. 84, § 48.]

§ 5150-49. Remittances to State Treasurer.—All moneys collected by the commissioner shall be deposited in a bank, to be designated by the state fish commission, which bank shall give a surety bond to the state of Washington in a sum designated by the fish commission, said bond to contain such conditions and provisions as may be required by it.

The commissioner shall make daily remittances to the state treasurer of all moneys collected by him from any source whatever, together with a statement showing from whence the moneys are derived. A duplicate of this statement shall be sent to the state auditor. [L. '15, p. 84, § 49.]

§ 5150-50. Expenses.—All expenses incurred under the provisions of this chapter shall be audited by the state auditor, upon bills being presented, properly certified by the fish commissioner, and the said auditor shall from time to time, draw warrants upon the state treasurer for the amount. [L. '15, p. 84, § 50.]

§ 5150-51. Licenses—How Issued, Fees Therefor.—Licenses herein required shall be issued to any qualified person or corporation by the commissioner upon application therefor and the payment of the license fees herein required:

For each pound-net or fish-trap license for taking salmon at both ends on Puget Sound, one hundred dollars;

For each pound-net or fish-trap license on Puget Sound for the taking of salmon fifty dollars;

For each first-class pound-net or fish-trap license for the taking of salmon on the Columbia River twenty-five dollars;

For each second-class pound-net or trap license on the Columbia River fifteen dollars.

A first-class trap is hereby defined to be a trap on the Columbia River that during the preceding season caught fish of the value of one thousand dollars or more, and a second-class trap a trap on the Columbia River that caught during the preceding season fish of the value less than one thousand dollars;

For each pound-net or fish-trap license for taking salmon in Willapa Harbor and Grays Harbor fifteen dollars;

For each brush-weir license for the taking of smelt and herring twenty-five dollars;

For each stationary fish-wheel license for the taking of salmon thirty-five dollars;

For each scow fish-wheel license for the taking of salmon twenty-five dollars;

For each purse seine license twenty-five dollars; no purse seine shall be of greater length than eighteen hundred lineal feet measured on cork line when wet;

For each gill-net license for the taking of salmon on Puget Sound of a length not to exceed six hundred feet, five dollars; and for each additional lineal foot in length, one cent; no gill-net shall be operated on Puget Sound of a greater length than three thousand feet;

For each gill-net license for the taking of salmon on the Columbia River, Grays Harbor and Willapa Harbor seven and fifty one-hundredths dollars;

For each reef-net five dollars;

For each drag seine license three cents per lineal foot;

For each set-net license for the taking of salmon three and seventy-five one-hundredths dollars.

Any person may use a jigger in the taking of smelt or herring for the use of himself and family without any license therefor.

For each bag-net license for the taking of smelt or herring one dollar;

For each smelt drag bag-net on Puget Sound one dollar;

For each license for beam trawl ten dollars;

For each license for set lines having more than one hundred hooks, one dollar.

The license issued by the commissioner for the appliances hereinbefore mentioned shall specify the district wherein the license is to be used and no license for one district shall be used in another.

For each license to take crabs one dollar;

For each license to take clams and mussels one dollar;

For each license to take oysters from the state reserves for seed purposes under regulations to be promulgated annually by the state fish commission, five dollars;

For each person, firm or corporation engaged in the business of buying and selling, packing and preserving or otherwise dealing in trout or other food fish obtained from private hatcheries of this state, two and fifty one-hundredths dollars;

For each private trout hatchery twenty-five dollars;

For each retail fish dealer a license of one dollar;

For each wholesale dealer in fish and for each person engaged in freezing, salting, smoking, kippering, preserving in ice or otherwise, a license of ten dollars;

For each fish broker not operating as a packer or canner a license of fifty dollars;

For each person using scows, boats or other water craft in buying, handling or transporting food fish except persons, firms and corpora-

tions operating canneries, packing or curing establishments that pay an annual license fee to the state of Washington where the fish are disposed of for canning, curing, preserving or selling within the state of Washington, a license of one dollar;

For each person, firm or corporation using scows, boats or other water craft in the buying of fish on the Columbia River for each scow, boat or other water craft a license fee of fifty dollars; this requirement shall not apply to scows, boats, or other water craft used in buying fish for and transporting fish to canneries and packing plants that pay an annual license fee to the state of Washington or Oregon, of not less than one hundred dollars.

Every person, firm or corporation engaged in canning salmon, shell or other food fish shall procure a license from the commissioner before commencing the season's packing and shall on or before the fifteenth day of November of each year pay to the commissioner as an annual license fee for all salmon, shell or other food fish packed by him subsequent to the thirty-first day of March of each year and prior to November 15th of each year, and on the thirty-first day of March of each year shall pay to the commissioner for all salmon, shell or other food fish packed by him subsequent to November 15th and prior to the thirty-first day of March of each year two cents per case for each case of steelhead, blue-back, Quinault, or sockeye salmon, and one cent for each case of other varieties of salmon, except that he shall pay for each case of Chinook salmon packed on the Columbia River prior to the twenty-sixth day of August of each year four cents per case, and for each case of Chinook salmon packed on the Columbia River after the twenty-sixth day of August of each year two cents per case, for each case of clams, clam nectar, crabs, shad, shrimp and other food and shell fish one cent per case.

For the purpose of this act a case of fish is defined to consist of forty-eight one-pound cans, bottles, or their equivalent in weight. The owner or licensee of any cannery before beginning the operation of the same in any year and at the time of making application for his license shall execute a good and sufficient bond to the commissioner in such sum as he may require conditioned that he will pay or cause to be paid to the commissioner the license fees or charges for salmon, shad, crab, clam and other food and shell fish packed by him at the time and in accordance with the requirements of the foregoing section, such bond to contain such other provisions as may be required by the commissioner.

Each person, firm or corporation buying, selling or otherwise dealing in salmon and other food fish at wholesale caught in the state of Washington, shall pay to the commissioner on or before the fifteenth day of November of each year one dollar ($1) per gross ton for each ton or fraction thereof so bought, handled, preserved or

cured during the preceding calendar year: Provided, that no person, firm or corporation engaged in the canning business shall be required to pay such tax upon any fish caught or bought and canned by them, and no person, firm or corporation shall be required to pay such tax upon any fish caught and sold by him. Nor shall such tax or charge be paid upon any fish ultimately canned, nor shall more than one tonnage tax be collected upon any particular quantity of fish.

Every person engaged in buying fish except for canning purposes shall obtain a permit from the commissioner for each representative of such buyer. And each person, firm or corporation so buying, selling or otherwise dealing in salmon and other food and shell fish at wholesale, or freezing, salting, smoking, kippering, preserving in ice, curing, mild-curing, or otherwise shall, before beginning operations in any year first obtain a license from the commissioner and at the time of the application for such license shall execute a good and sufficient bond in such sum as may be required and subject to the approval of the commissioner, conditioned that on or before the tenth day of the following month they will pay, or cause to be paid to the commissioner the said license fee or charge for all salmon and other food and shell fish handled during the preceding month.

For the purpose of ascertaining the amount of the license fee required in each instance the commissioner shall determine the class and character of each appliance.

All gill-net licenses issued by the state of Oregon shall be valid in the concurrent waters of the Columbia River in this state. The commissioner when issuing licenses for the Columbia River district shall furnish to the fisheries department of Oregon the name of all licensees and the number of their licenses.

Every person, firm or corporation operating in the Puget Sound, Willapa Harbor or Grays Harbor districts any of the fishing appliances hereinbefore mentioned (except gill-nets, set-nets and drag seines) and every person, firm or corporation operating in the Columbia River district any of such fishing appliances (except gill-nets and set-nets), which by the terms of this act are required to be licensed shall in addition to the license fees by this act provided pay to the state for the food and shell fish taken from the waters thereof, as follows:

For each one thousand or fraction thereof of Chinook salmon caught in the Columbia River prior to the twenty-sixth day of August of each year at the rate of five dollars per thousand and for Chinook salmon caught in the Columbia River after the twenty-sixth and for tyee, king, black mouth or spring salmon at the rate of three dollars per thousand. For each one thousand or fraction thereof of Chinook, tyee, king, black mouth or spring salmon in Willapa Har-

bor, Grays Harbor and Puget Sound at the rate of three dollars per thousand.

For each one thousand or fraction thereof of steelhead salmon at the rate of three dollars per thousand.

For each one thousand or fraction thereof of sockeye or blue-back salmon, at the rate of one dollar and fifty cents per thousand.

For each one thousand or fraction thereof of silverside or Cohoe salmon, chum or fall salmon, at the rate of one dollar per thousand. For each one thousand or fraction thereof of humpback or pink salmon at the rate of fifty one-hundredths dollars ($0.50) per thousand.

For each one hundred pounds or fraction thereof of smelt, herring or shad, three cents.

For each one hundred pounds or fraction thereof of shrimp, fifteen cents.

For each sturgeon, seven and one-half cents.

For each gross of crabs, ten cents.

For each ton of clams, gross weight in shell, seventy-five cents.

[L. '15, p. 85, § 51.]

§ 5150–52. Reports to Commissioner.—Every owner of any fishing appliance which by the terms of this act is required to be licensed shall report to the commissioner under oath on blanks to be furnished by the commissioner, upon request, on the first day of March, July, and November of each year for the four months preceding the date on which the report is made, stating the number of salmon, specie stated separately, the number of crabs, sturgeon, pounds of smelt, herring, shrimps, clams and shad and other food fish caught during the preceding four months period together with the name of the persons, firm or corporation to whom such fish were sold with the number or quantity delivered to each purchaser, and shall at the same time remit the license charges and the additional fees as by this act provided; and every person, firm or corporation engaged in preserving, salting, smoking, kippering, mild-curing, curing, freezing, preserving in ice or otherwise, and in buying, selling or otherwise dealing in food and shell fish caught within the waters of this state as wholesalers or retailers either as principal, agent or employee shall on the same dates and for the same period make reports to the commissioner stating the quantity in pounds of all fish preserved or cured and all purchases and sales made during the preceding period for which the report is made, the varieties stated separately, together with the name of the person, persons, firms or corporations from whom purchased and the place from which the fish were taken and the appliance with which the same were taken and at the same time shall remit to the commissioner the license charges and additional charges as provided by this act, and any person, firm or corporation who shall fail to make the reports in this paragraph provided and

at the same time make payments of the amounts of money due the state shall be guilty of a gross misdemeanor and shall be punished by a fine of not less than fifty nor more than five hundred dollars or by imprisonment in the county jail for not more than six months or by both such fine and imprisonment and the amounts owing by any such persons for license charges and additional charges shall become and constitute a first lien on the fishing appliances of any such person and also a lien on the real and personal property of the person owing such sum or sums, from and after a notice of such lien on behalf of the state shall have been filed in the office of the county auditor in which the person owing such amount or amounts shall reside; the notice of lien to be filed by the commissioner shall be sufficient if it shall state the amount for which the lien is claimed and the person owing the same. [L. '15, p. 90, § 52.]

§ 5150–53. License Number and Lights to be Displayed.—Each fixed appliance for taking food fish shall have displayed thereon in a conspicuous place in black figures not less than six inches in length, painted on a white ground, the license number under which the same is operated.

Each gill-net, and set-net used for the purpose of taking food fish shall have branded on the corks at each end of such net, in figures not less than one-half inch in length, the license number under which the same is operated.

Each boat or vessel used to operate any seine or net for food fish shall have displayed upon the bow thereof in black figures, not less than six inches in length, painted on a white ground, the license number under which such seine or net is operated, preceded by a capital "W." Each pound-net or trap on the Columbia River, Grays Harbor and Willapa Harbor shall between sunset and sunrise conspicuously display a bright light. [L. '15, p. 91, § 53.]

§ 5150–54. Closed Season—Puget Sound.—It shall be unlawful to take or fish for salmon except with hook and line in Puget Sound and in any of the rivers and streams emptying into it between the hours of 4 o'clock P. M. on Friday and 4 o'clock A. M. Sunday of each week of the months of July and August of each year, except with gill and set nets as herein provided. It shall be unlawful to take or fish for salmon with gill or set nets in any of said waters between the hours of 6 o'clock A. M. Saturday and 6 o'clock P. M. Sunday of each week of July and August of each year. It shall be unlawful to take or fish for salmon except with hook and line in any of the waters of Puget Sound or any river or any stream flowing into the same north of a line extending from Brace Point in King county to Point Southworth in Kitsap county and north of a line extending from Foul Weather Bluff in Kitsap county to Tala Point in Jeffer-

son county, from November 10th to December 10th both dates inclusive in each year; and it shall be unlawful to take or fish for salmon in the tributary thereof known as Hood Canal and in any river or stream flowing into the same south of the lines above described between the twentieth day of November in each year and the first day of January of the year following, both dates inclusive; and it shall be unlawful to take or fish for salmon except with hook and line in Carr's Inlet or any of the waters southerly and westerly thereof or in any of the rivers or streams emptying into such waters, and for the purposes of this act such waters are bounded as follows: Beginning at Gordon Point in Pierce county and running thence northwesterly to Hyde Point on McNeil's Island, thence northeasterly to Gibson Point on Fox Island, thence northwesterly along the south shore of Fox Island to Green Point in Pierce county, between the tenth day of November of each year and the fifteenth day of April of the year following, both dates inclusive; and it shall be unlawful to take or fish for salmon in any of the waters between the waters bounded and described in the preceding clause and a line beginning at Brace Point in King county and running thence westerly to Point Southworth in Kitsap county or in any of the rivers or streams emptying into such waters between the first day of January and the first day of February, both dates inclusive. And it shall be unlawful to take or fish for salmon, except with hook and line in any of the said described waters or in any of the waters of Puget Sound or in any of the rivers or streams flowing into such waters between the first day of March and the fifteenth day of April, both dates inclusive, of each year. The commissioner shall designate by the erection of monuments and signs all of the above-mentioned boundary points.

In the event that the Dominion of Canada or the Province of British Columbia shall enact and enforce laws prohibiting the taking of sockeye salmon above the Westminster bridge at all times and in Georgia Straits and all the waters of the Fraser River and its tributaries between the twenty-fifth day of August and the fifteenth day of September of each year, then it shall be unlawful to take or fish for sockeye salmon in any of the waters of Puget Sound between the twenty-fifth day of August and the fifteenth day of September, both dates inclusive, of each year, and any sockeye salmon taken between the last named dates in the waters of Puget Sound shall be liberated, and nothing in this paragraph of this section shall be construed to prevent any person, firm or corporation from operating its fishing appliances for the catching of other varieties of salmon between the last named dates.

If the Province of British Columbia or the Dominion of Canada shall prohibit and prevent the taking of salmon in Georgia Straits

and the Fraser River during a forty-eight hour weekly period in each even-numbered year, beginning at 6 o'clock P. M. Friday and ending not earlier than 6 o'clock P. M. Sunday, then and in that event, it shall be unlawful to take or fish for sockeye salmon by any means whatever, except with hook and line, in any of the waters of that portion of Puget Sound last described, between the hours of 8 o'clock P. M. Thursday and 8 o'clock P. M. Saturday of each week in each even-numbered year. In the event that this proviso becomes effective and during the years while in effect, it shall supersede and render inoperative the thirty-six hour closed period in this section first provided as to and in the waters above described.

If it shall be adjudicated that the foregoing proviso be unconstitutional and invalid for any reason, such adjudication of invalidity of such proviso or any part of this act shall not affect the validity of the act as a whole or any part thereof. [L. '15, p. 92, § 54.]

§ 5150–55. Certain Nets Prohibited—Skagit River—Puget Sound. It shall be unlawful to use any gill-net, seine or other net, the meshes of which are less than eight and one-half inches, stretched measure, in the Skagit River between July 1st and September 1st, both dates inclusive, of each year.

It shall be unlawful to use any drag seine, purse seine, gill-net, set-net or other like seine or net, the meshes of which are less than three inches, stretched measure, in Puget Sound, for any purpose whatsoever, during the months of May, June and July. [L. '15, p. 94, § 55.]

§ 5150–56. Closed Season, Columbia River.—It shall be unlawful to take or fish for salmon or sturgeon in the Columbia River, its tributaries and in any of the waters or sloughs thereof, west of the north and south line between sections 14 and 15, township 2 north, range 15 east of the Willamette Meridian and within three miles outside the mouth of the Columbia River, by any means whatever, between 12 o'clock noon on the first day of March and 12 o'clock noon on the first day of May, and between 12 o'clock noon on the twenty-fifth day of August, and 12 o'clock noon on the tenth day of September, and between 6 o'clock P. M. on Saturday of each week and 6 o'clock P. M. of the Sunday following, from the first day of May to the twenty-fifth day of August, both dates inclusive, of each year.

It shall be unlawful to take or fish for salmon or sturgeon in the Columbia River and any of its tributaries above the north and south line between sections 14 and 15, township 2 north, range 15 east of the Willamette Meridian, by any means whatever between 12 o'clock noon on the fifteenth day of March and 12 o'clock noon on the first day of June, and between 12 o'clock noon on the twenty-fifth day of August and 12 o'clock noon on the tenth day of September.

It shall be unlawful to take or fish for salmon in the Snake River and any of its tributaries by any means whatever in any year between 12 o'clock noon on the first day of April and 12 o'clock noon on the first day of June and between 12 o'clock noon on the first day of August and 12 o'clock noon on the fifth day of September of each year. [L. '15, p. 94, § 56]

§ 5150–57. Closed Season for Grays Harbor and Willapa Harbor. It shall be unlawful to take or fish for salmon in Grays Harbor or Willapa Harbor or in any of the rivers or streams flowing into the same between the fifteenth day of March and the fifteenth day of April and between the first day of December and the first day of January, all dates inclusive, in each year. [L. '15, p. 95, § 57.]

§ 5150–58. Right to Take Fish for Sale Limited to Citizens.—It shall be unlawful for any person to fish or take for sale or profit any salmon or other food or shell fish in any of the rivers or waters of this state or over which it has concurrent jurisdiction in civil and criminal cases, unless such person be a citizen of the United States or has declared his intention to become such and is and has been for twelve months immediately prior to the time he engages in such business an actual resident of this state or an adjoining state, but this section shall not apply to Indians. [L. '15, p. 95, § 58.]

§ 5150–59. Closed Season, Strait of Juan de Fuca.—It shall be unlawful to take or fish for salmon between the first day of June and the first day of July, both dates inclusive, by any means whatsoever in the waters of the Pacific Ocean within a distance of three miles of the west shore of Clallam county and west of a line drawn from Tatoosh light in Clallam county to Carmanah light on Vancouver Island, constituting the headlands marking the entrance to the Strait of Juan de Fuca and it shall be unlawful for any person to bring into the state of Washington any salmon caught west of Clallam county and the line above described between the dates mentioned in this section: Provided, however, that this section shall be inoperative unless the Dominion of Canada or the Province of British Columbia shall by law, rule, order or regulation adopt provisions concerning the water herein described similar in intent and purpose to those contained in this section in which event the provisions contained herein shall continue to be and remain in full force and effect. [L. '15, p. 95, § 59.]

§ 5150–60. Sturgeon — Protection of Sturgeon — Closed Season.—Hereafter it shall be unlawful for any person to take, capture or kill in any of the waters of the Columbia River or its tributaries any sturgeon between 12 o'clock meridian, the first day of March and 12 o'clock meridian on the first day of May, and between 12 o'clock meridian on the twenty-fifth day of August and 12 o'clock meridian

on the tenth day of September and 6 o'clock P. M. on Saturday of each week and 6 o'clock P. M. on the Sunday following, from the first day of May to the twenty-fifth day of August, both dates inclusive. [L. '15, p. 96, § 60.]

§ 5150–61. Protection of Young Sturgeon.—Penalty.—It shall be unlawful at any time to take or kill young sturgeon under four feet in length, or fish for the same by any device or appliance whatever in the waters of the Columbia River or tributaries thereof, and any person or persons fishing with gill-nets, fish-wheels, or other fishing apparatus whatever in the waters of the Columbia River or tributaries thereof, who on lifting, drawing, taking up or removing any of said nets, or other fishing apparatus, shall find young sturgeon under four feet in length entangled or caught therein, shall immediately with care and the least possible injury to the fish, disentangle and let loose the same and transmit the fish to the water without violence. Any person or persons violating any of the provisions of this section, or having in their possession young sturgeon under four feet in length, either for consumption or sale, or who is known to willfully destroy the same for so offending, shall be guilty of a misdemeanor. [L. '15, p. 96, § 61.]

§ 5150–62. Chinese Lines Prohibited—Penalty.—It shall be unlawful to cast, extend, set, use or continue or assist in casting, extending or using any Chinese sturgeon lines, or lines of a similar character, in the waters of this state. The commissioner or any of his deputies is authorized to seize and destroy any such lines found in said waters, and they are hereby authorized to arrest forthwith any person or persons detected in setting or using any Chinese sturgeon lines of similar character, in the waters of this state. Any person violating any of the provisions of this section shall be guilty of a misdemeanor. [L. '15, p. 97, § 62.]

§ 5150–63. Traps, How Closed—Penalty.—Throughout the weekly closed season prescribed in this act, each pound-net or fish-trap shall be closed by an apron placed across the outer entrance to the heart of the trap or pound-net, which apron shall extend from above the surface of the water to the bottom of the water, and shall be securely connected to the piles on either side of the heart of such trap or pound-net, fastened by rings not more than two feet apart on taut wires stretched from the top to the bottom of the piles. And such apron or the appliances by which it is raised and lowered shall be provided with such signals or flags visible at a distance of at least one-half mile from the trap which shall disclose that the trap is closed, which signal or flag shall be of the form and character as may be prescribed by the commissioner under regulations to be issued by him.

For the purpose of enforcing this regulation, the owner or operator of the fish-trap or pound-net shall constantly maintain, during the weekly closed season, a watchman, whose duty, among other things, it shall be to cause such pound-net or trap to be closed as above provided. Any owner or operator of a pound-net or fish-trap, or any watchman violating any of the provisions of this section, either by failing to do any act or thing required, or by doing any act or thing prohibited by this section, shall be deemed guilty of a misdemeanor and shall, upon conviction, be subject to a fine of not less than two hundred and fifty dollars, nor more than two thousand dollars. [L. '15, p. 97, § 63.]

§ 5150-64. Taking Fish from Lawful Owner.—It shall be unlawful to take from any building, scow, live-box, trap, wheel, seine, or net, any caught or impounded fish with the intent of depriving the owner of said fish and any person so doing shall be guilty of a gross misdemeanor. [L. '15, p. 98, § 64.]

§ 5150-65. Unlawful Purchase of Fish.—It shall be unlawful for any person, firm or corporation to purchase any food fishes of any variety unlawfully taken from waters of this state during any of the closed seasons prescribed in this act, and any person who purchases any such fish during such periods shall be guilty of a misdemeanor. [L. '15, p. 98, § 65.]

§ 5150-66. Taking or Sale of Young Salmon or Salmon Trout Prohibited.—Any person who by any means, except with hook and line, shall catch or take any salmon or salmon trout of any variety, less than fifteen inches in length, and who shall not immediately return the same alive to the water, or who shall buy or sell or offer for sale or have in his possession any such fish, shall be guilty of a misdemeanor. [L. '15, p. 98, § 66.]

§ 5150-67. Possession Unlawful—Fish Illegally Caught.—It shall be lawful to buy, sell or have in possession any of the food fishes mentioned in this act caught or taken in any of the waters of this state wherein it is unlawful to catch or take the same. [L. '15, p. 98, § 67.]

§ 5150-68. Salmon Canned Within Sixty Hours.—It shall be unlawful to can or preserve for food any salmon that has been removed from the water for a longer period than sixty hours, unless such fish have been kept artificially chilled. [L. '15, p. 98, § 68.]

§ 5150-69. Taking Fish Except for Food or Bait Prohibited.—It shall be unlawful to take or fish for, or have in possession, any food fish of any kind, character or description, unless the same are to be used for food or bait. [L. '15, p. 99, § 69.]

§ 5150–70. Unlawful to Destroy Food Fish.—It shall be unlawful for any person, firm or corporation wantonly to waste or destroy salmon or other food fishes taken or caught on any of the waters of the state of Washington, and no person engaged in the canning, preserving or curing of food fish shall purchase or engage a greater quantity of fish than he is able to can, preserve or cure within sixty hours after the same are taken from the water, unless such fish have been kept artificially chilled. [L. '15, p. 99, § 70.]

§ 5150–71. Taking Salmon Below Dam or Fish-rack Prohibited.—It shall be unlawful to catch, kill or in any manner destroy any salmon on or within one mile below any rack, dam or other obstruction erected across any river or stream. [L. '15, p. 99, § 71.]

§ 5150–72. Spearing, Shooting Fish Prohibited—It shall be unlawful to shoot, gaff, snag or snare any food fish in any of the waters of the state. [L. '15, p. 99, § 72.]

§ 5150–73. Taking Salmon for Propagation—By Whom.—Nothing in this act shall be construed to prevent the commissioner or the proper officers of the United States, or any person with the consent and under the direction of the commissioner from taking salmon for propagation in any manner at any time. [L. '15, p. 99, § 73.]

§ 5150–74. May Remove Fish Below Hatcheries.—The commissioner may take or remove or cause to be taken or removed in any manner, at any time, any fish of any kind, character or description within one mile below any hatchery or rearing pond. [L. '15, p. 99, § 74.]

§ 5150–75. Dolly Varden Trout may be Taken.—It shall be lawful to take, kill, capture or destroy at any time, in any lawful manner, or to possess or market, the Salvelinus Malma, commonly known as the Dolly Varden or bull trout. [L. '15, p. 100, § 75.]

§ 5150–76. Fish not to be Planted Without Consent of Commissioner.—It shall be unlawful to liberate, release, implant, or place any fish of any kind or description in any stream, river, pond, lake, or other waters of the state, either fresh or salt, without first obtaining the written consent of the commissioner. [L. '15, p. 100, § 76.]

§ 5150–77. Canals and Ditches to be Screened.—Every ditch, channel, canal or water-pipe used for conducting water from any lake, river or stream where any state fish hatchery is located, for irrigation, manufacturing, domestic or other purpose, shall be provided at its entrance or intake with a fish-guard so fixed as to prevent the passage of fish into such ditch, channel or water-pipe and subject to the approval of the commissioner, which shall be constantly maintained at all times when water is taken or admitted into such ditch, channel, canal or water-pipe. Every owner, manager, agent, or per-

son in charge of such ditch, channel, canal or water-pipe who shall fail to comply with the provisions of this section shall be guilty of a gross misdemeanor.

Each day the end of ditch, channel, canal or water-pipe is not equipped with this covering as provided, shall constitute a separate offense. If within thirty days after notice to equip any such ditch, channel, canal or water-pipe such person shall fail to do so the commissioner is hereby authorized to take possession of same in the name of the state of Washington and to close same to the entrance of any water until such time as the ditch shall be properly equipped, and the expense incident thereto shall constitute a lien upon the ditch, channel, canal or water-pipe and upon the real or personal property of person or persons, firm or corporation owning same. Notice of such lien shall be filed and recorded in the office of the county recorder in the county in which such action is taken. [L. '15, p. 100, § 77.]

§ 5150–78. Dams to be Provided With Fishways.—Every dam or other obstruction across or in any stream shall be provided with a durable and efficient fishway, which shall be maintained in a practical and effective condition in such place, form and capacity as the commissioner may approve, for which plans and specifications shall be furnished by the commissioner upon application to him, and which shall be kept open, unobstructed and supplied with a sufficient quantity of water to freely admit the passage of fish through the same. Every owner, manager, agent or person in charge of such dam or obstruction who shall fail to comply with the provisions of this section shall be guilty of a misdemeanor.

If any person, firm or corporation shall fail to construct and maintain such fish-ladder or fishway or to remove such dam or obstruction in a manner satisfactory to the commissioner, then within thirty days after written notice thereof shall have been served upon the owner, his agent or the person in charge thereof, the commissioner may construct a suitable fish-ladder or fishway, or remove such dam or obstruction, and the actual cost in case of construction of fishway thereof shall constitute a lien upon the dam and upon all the personal property of the person or persons, firm or corporation owning the same.

Notice of such lien shall be filed and recorded in the office of the county auditor of the county in which such dam or obstruction is situated. Such lien may be foreclosed in any action brought in the name of the state of Washington.

If any person or corporation shall fail to make any such fishway or remove such dam or obstruction in a manner satisfactory to the commissioner, then within thirty days after written notice thereof shall have been served on the owner, his agent, or the person in

charge, such dam or obstruction shall thereby become a public nuisance and the commissioner may take possession of same in his own name or in the name of the state of Washington and destroy same and no liability shall attach for such destruction. No dam or obstruction shall be erected in any stream in this state to a height that in the judgment of the commissioner shall make a fish-ladder or fishway thereover impracticable. [L. '15, p. 101, § 78.]

§ 5150-79. Dams to be Provided With Hatchery.—In the event that any person desires to construct a dam in any of the streams of this state to a height that will make a fish-ladder or fishway thereover impracticable, in the opinion of the commissioner, then such person may make an application to the commissioner for a permit to construct such dam, and the commissioner is hereby authorized to grant such permit in his discretion, upon the condition that the person so applying for such permit shall convey to the state of Washington a site of the size and dimensions satisfactory to the commissioner, at such place as may be selected by the commissioner, and erect thereon a hatchery and hatchery residence, according to plans and specifications to be furnished by the commissioner, and enter into an agreement with the commissioner, secured by a good and sufficient bond, to furnish all water and lights, without expense, to operate said proposed hatchery; and no permit for the construction of any such dam shall be given by the commissioner until the person applying for such permit shall have actually conveyed said land to the state and erected said hatchery and hatchery residence in accordance with the said plans and specifications. The provisions of this section shall not apply to cases where dams have been heretofore constructed in streams to a height where the construction of a fish-ladder is impracticable, provided an agreement has been entered into and executed, with reference to the construction and maintenance of such dam between the commissioner and the owners thereof. [L. '15, p. 102, § 79.]

§ 5150-80. Use of Explosives Prohibited.—It shall be unlawful to use or discharge, in any of the waters of this state, any explosive substances of any kind, character or description for the purpose of catching, killing or destroying fish. [L. '15, p. 102, § 80.]

§ 5150-81. Casting Waste in Waters.—It shall be unlawful to cast or pass or to suffer or permit to be cast or passed into any waters of this state either fresh or salt, within such distance from any incorporated city or town, any dead fish, heads or offal or other waste from any fish cannery, as the commissioner of public health may determine. [L. '15, p. 103, § 81.]

§ 5150-82. Polluting Waters Prohibited.—It shall be unlawful to cast or pass or to suffer or permit to be cast or passed into any

waters of this state, either fresh or salt, any sawdust, planer shavings, wood pulp or other wastes, lime, gas, coculus indicus, chemical substances or any refuse or waste material or matter deleterious to fish or shell-fish, at any time whatsoever: Provided, however, that nothing in this act contained shall be construed as prohibiting the depositing of coal mine waste or drainage in any waters either fresh or salt. Any person who shall violate any provision of this act shall be guilty of a misdemeanor. [L. '15, p. 230, §§ 1 and 2. Cf. L. '15, p. 103, § 82.]

§ 5150-83. Attorney General to Prosecute—When.—If any person violates any of the provisions of this act, and the prosecuting attorney of the county wherein such violation occurs shall, after information has been given him by the commissioner, refuse or neglects within five days thereafter to file an information against such alleged violator, it shall be the duty of the attorney general, and he is hereby given the authority when requested by the commissioner to file an information directed in the superior court of said county and in the place and stead of said prosecuting attorney to prosecute the case. [L. '15, p. 103, § 83.]

§ 5150-84. Attorney General — May Assist Commissioner. — The commissioner shall have authority to apply to the attorney general for his official opinion upon any question touching the construction and interpretation of the statutes, and the duties of the commissioner under the statutes for the protection of fish and shell-fish, wherein he shall need legal advice; and the attorney general shall furnish from his office such official legal assistance as he may deem necessary in the conduct of any suit brought by the commissioner, in pursuance of the provisions of this act. [L. '15, p. 103, § 84.]

§ 5150-85. Venue.—If any person shall fail to make any report or return to the commissioner, action against him shall lie in the superior court of the county in which he resides. [L. '15, p. 104, § 85.]

PRIVATE FISH HATCHERIES.

§ 5150-86. Riparian Proprietor may Establish Private Hatchery. Any riparian proprietor may establish a private fish hatchery for the cultivation of food fishes, and for such purpose and use may, within the limits of his own premises, inclose the waters of any river or stream or lake in this state, subject to the conditions and regulations hereinafter provided, and any person lawfully conducting any such private fish hatchery and engaged in the artificial propagation, culture and maintenance of fishes may take them in his own inclosed waters wherein the same are so cultivated and maintained at any time and for any purpose. [L. '15, p. 104, § 86.]

§ 5150–87. Private Hatchery—Passageway for Migratory Fish—Passageway for Boats, etc.—Exceptions.—Any person, firm or corporation establishing a private fish hatchery and inclosing the waters of a river or stream, as provided in the preceding section, shall provide and furnish a suitable passageway along said hatchery for migratory fishes naturally frequenting such waters, above and below such hatchery, and shall so place and construct said inclosure as to allow the passage of boats, sawlogs, shingle-bolts, cordwood, fencing posts or rails, without unreasonable delay, when such inclosure is upon a river or a stream navigable and generally used for the navigation of boats, or for the floating down of logs, fencing posts, or rails: Provided, that if the person, firm or corporation inclosing the water of a river or stream, as herein provided, is the sole riparian proprietor thereof from such inclosure to and including the source of such river or stream, such person, firm or corporation shall be excepted from the operation of this section, and shall not be required to furnish any passageway for fish or boats, logs, fencing or other material. [L. '15, p. 104, § 87.]

§ 5150–88. Private Hatchery Defined.—Any person, firm or corporation engaged in the business of taking fish spawn and the artificial hatching thereof, or in the raising of fry and fish therefrom, in any of the waters or streams of this state, shall be deemed to be conducting a private fish hatchery under the terms of this act. [L. '15, p. 105, § 88.]

§ 5150–89. Sale of Fish from Private Hatchery Prohibited Unless Location, etc., be Approved, and Same Licensed.—No fish spawn, fry or fish from private fish hatchery shall be sold under the terms of this act, unless the location and plan of such hatchery, including the character and size of a fishway and the passage be approved by the commissioner, and the same duly licensed as a private fish hatchery. [L. '15, p. 105, § 89.]

§ 5150–90. When Fish may be Sold.—The product of such fish hatchery, fish spawn, fry and fish may be sold at any time of the year by such hatchery or their vendees after having first complied with the terms of this act and the regulations of the commissioner thereto. [L. '15, p. 105, § 90.]

§ 5150–91. License Fee Twenty-five Dollars.—Each private fish hatchery, before it shall be entitled to the benefits of this chapter, shall pay an annual license fee of twenty-five dollars to the commissioner. [L. '15, p. 105, § 91.]

§ 5150–92. Report to Commission.—It shall be the duty of the superintendent or person in charge of any private fish hatchery to make a quarterly report beginning April 1st, to the commissioner

of the amount of spawn, fry and number of fish sold, and the name and address of the party receiving the same. It shall be the duty of each person, firm or corporation affected by the provisions of the following section to render to the commissioner a quarterly report giving a detailed statement showing the amount of spawn, fry and number of fish received from any private hatchery, and giving the name and postoffice address of the superintendent or manager of the same. [L. '15, p. 105, § 92.]

§ 5150-93. License Fee for Business of Buying, Packing, Selling, etc.—Every person, firm or corporation, buying and selling, packing and preserving or otherwise dealing in trout or other food fish obtained from private hatcheries in this state, shall procure a license for such business from the commissioner of the state, and shall pay an annual license fee of two dollars and fifty cents. [L. '15, p. 106, § 93.]

§ 5150-94. Unlawful to Take Fish Without Permission of Proprietor of Private Hatchery.—No person shall take fish in any manner from the inclosed portion of any river, stream, pond or other water in which a private fish hatchery is located, or in which fish are artificially propagated, cultivated and maintained under the provisions of this chapter, without permission of the owner or proprietor of such hatchery. [L. '15, p. 106, § 94.]

§ 5150-95. Tags or Brands on Fish Sold.—The commissioner shall have authority to require tags, branding or other device attached to all fish sold for private hatcheries, and shall designate such tags or devices. [L. '15, p. 106, § 95.]

§ 5150-96. Destruction of Seals and Sea-lions.—The commissioner shall have the power and it shall be his duty to cause his employees to kill and destroy seals and sea-lions in the waters of the state of Washington and, he shall have the authority to expend such moneys as may from time to time be appropriated by the legislature for such purposes and he shall keep an accurate record of the number of seals and sea-lions that are so destroyed. Any person killing or causing to be killed within the waters of the Columbia River district any common seal or any sea-lion, shall be entitled to receive a bounty of one dollar from the moneys appropriated for such purposes by the legislature of Oregon or the legislature of Washington, for each seal or sea-lion so killed. All moneys appropriated for such purpose by the legislature of this state shall be paid out under the supervision of the state fish commission upon vouchers approved by the commissioner, and the state fish commission shall adopt rules and regulations providing for the proof of such killing and the surrender and destruction of the scalp of such seal or sea-lion. The state fish commissioner may, in his discretion, enter

into an agreement with the duly authorized authorities of the state of Oregon for the joint expenditure of appropriations made by the legislatures of the states of Washington and Oregon under such regulations as may be prescribed in such agreement. [L. '15, p. 106, § 96.]

§ 5150–97. Certificates for Scientific Purposes.—Certificates shall be granted by the commissioner and ex-officio game-warden to any properly accredited person of legal age permitting the holder thereof to collect birds, their nests and eggs or any of the game, food or shell fish of this state for strictly scientific purposes only. In order to obtain such certificate the applicant must present to the commissioner and ex-officio game-warden a written statement from two well-known scientific men, certifying to the good character and fitness of such applicant and must pay to the commissioner and ex-officio game-warden one dollar for the issuance of the certificate and must file with him a properly executed bond in the sum of one thousand dollars. On proof that the holder of such certificate has killed or taken the nest or eggs of any bird, or has taken any food, shell or game fish for other than scientific purposes, this bond shall be forfeited to the state and the certificate shall become void and the holder shall be held subject for each offense to a fine not less than ten dollars and not more than five hundred dollars. [L. '15, p. 107, § 97.]

§ 5150–98. United States Officers may Take Fish for Propagation. Nothing in this act shall be construed so as to prevent the taking of salmon or other food fishes by the commissioner or proper officers of the United States for propagation purposes. [L. '15, p. 107, § 98.]

CLAMS AND MUSSELS.

§ 5150–99. Closed Season, Pacific Ocean Beach.—It shall be unlawful for any person or persons whomsoever to take or dig clams from the sands of the beach of the Pacific Ocean in this state, or from the beaches of Grays Harbor or Willapa Harbor, or to have in their possession, if the same have been taken for the purpose of canning or for sale, between the first day of June and the thirty-first day of August of each year: Provided, that nothing in this section shall prevent the taking of these clams for consumption of the taker or his family, or guests at all times without a license. [L. '15, p. 108, § 99.]

§ 5150–100. Closed Season, Puget Sound.—It shall be unlawful for any person to take or dig clams or mussels from any of the tide-lands abutting on Puget Sound or from the waters of Puget Sound below the line of low tide, or have them in their possession, if the same have been taken for the purpose of canning or selling, between the first day of April and the first day of September of

each year: Provided, that nothing in this section shall prevent the taking of these clams for consumption of the taker or his family, or guests at all times without a license. [L. '15, p. 108, § 100.]

§ 5150–101. Taking or Fishing for Crabs.—It shall be unlawful for any person, firm or corporation to take or have in their possession for the purpose of selling or canning any female or any male crab measuring less than six and one-half inches across its back or to take or fish from any of the waters of the state or have in its possession after the same has been taken, for the purpose of selling or canning any crab, during the months of July, August and September of each year: Provided, that any such person who has a crab in his possession caught during the month of June may retain the same in his possession lawfully until the fifth day of July thereafter: Provided, that nothing in this section shall prevent the taking of crabs for the consumption of the taker or his family or guests, at all times without a license, and it shall be unlawful for any person, firm or corporation to take or catch any crabs with beam trawl or drag seine.

It shall be unlawful for any person, firm or corporation to take, capture or remove from any of the waters of the state of Washington any crab by the use of a spear or other sharp instrument whereby the shell of any said crab is broken or penetrated. [L. '15, p. 108, § 101.]

OYSTERS.

§ 5150–102. Oysters, Duties of Commission.—On or before the tenth day of April of each year, the state fish commission shall designate which of the oyster reserves of the state shall be opened for the taking of oysters therefrom during the ensuing calendar year.

It shall be the duty of the state fish commission to:

Annually fix the price which shall be charged per sack of one hundred and twenty pounds of oysters which it shall decide to sell from the oyster reserves of the state.

Annually formulate rules and regulations governing the taking of such oysters.

Annually designate those reserves which shall be open for sale of oysters therefrom, and it shall be unlawful to take oysters from the oyster reserves of the state unless the same shall be opened by order of the fish commission.

The state fish commission shall authorize the commissioner when to improve or cause to be improved any of the oyster reserves, and it is hereby declared to be the policy of the state to annually improve some portion of the reserves, to the end that all may finally become productive, and to have these reserves yield a revenue sufficient for their maintenance and betterment, and, in fixing the price at which

oysters shall be sold from the reserves, the state fish commission shall take into consideration such policy; and it is further declared to be the policy of the state to maintain the oyster reserves for the purpose of furnishing a seed supply to the owners of oyster lands, which have heretofore been acquired and improved under previous statutes, or which may hereafter be acquired and improved under the laws of this state, and for this purpose all the oyster reserves are hereby forever reserved from sale or lease.

As soon as an appropriation is made therefor, the fish commission shall cause the commissioner to erect monuments, establishing the boundaries of the several oyster reserves in the state, said monuments to be of stone or cement of not less than one hundred pounds in weight, and marked with letters "S. R." cut thereon not less than three inches long and one-half inch deep.

It shall be the duty of the state fish commission to protect all reserves, reseed, replant, and do such other things as in its judgment are necessary for their care and protection.

For the purposes of this section, a merchantable oyster is defined to be an oyster of the age of three or more years. [L. '15, p. 109, § 102.]

§ 5150–103. License to Take Seed Oysters.—Any person before taking any seed oysters from the reserves of this state shall secure a license from the commissioner. Such oysters are to be used for seed purposes only, and the taker must affirm in writing that they are secured to be used upon the terms and conditions hereinafter provided. [L. '15, p. 110, § 103.]

§ 5150–104. Manner of Procuring License—To Specify Time for Taking Seed.—No license shall be granted to take seed from the oyster reserves except between the dates fixed by the state fish commission and between the hours designated by it; and no person, firm or corporation shall take from the state oyster reserves an amount of oysters to exceed five hundred sacks to each acre prepared for seeding, and all seed taken from the state oyster reserves under the provisions of this act must be used upon lands situated in the state of Washington, and described in the application for license. Any person, firm or corporation desiring to take oysters from the state oyster reserves for the purpose of seeding his, her or their oyster-beds, may make application to the commissioner for a license so to do, said application to be made upon forms to be provided by said commissioner in substance as follows: It shall show the date when made; the name of person, firm or corporation making the same; a description of the land upon which the oysters are to be placed, said description of land to show county, township, name of bay or inlet where land is located; sufficient for identification

upon the premises; it shall show the amount of land prepared for seeding; whether the same is diked or not; whether it is hard ground or mud, and, if mud ground, whether any crust or shell, sand or other substance has been formed to protect the seed oysters. The applicant must state in his application the number of sacks of oysters desired to be taken under the license, which amount must not exceed five hundred sacks per acre for all ground properly prepared to receive them. Where the applicant desires the license to be made in the name of any other person than himself or themselves or his or their agent, he shall so state. And no person, firm or corporation shall take oysters from any of the reserves in this state without first having procured a license so to do. The applicant must agree to pay to the commissioner, such price per sack and under such rules as may be prescribed by the state fish commission, for all oysters taken under his license, and in all other things to comply with the rules and regulations governing the taking of oysters from the oyster reserves as set forth in the license; and that all oysters taken in pursuance of the license will be put on the ground described in the application. Every applicant shall declare upon oath or affirmation that all things stated therein are true. It shall be unlawful for any person, firm or corporation so acquiring oysters under such license to use said oysters upon any other ground than that stated in his application, or for any other purpose whatsoever. [L. '15, p. 110, § 104.]

§ 5150–105. Moneys to Go to State Oyster Reserve Fund.—All moneys received from the disposal of oysters from the reserves and from sales and leases and from licenses for the taking of oysters from the reserves shall be paid into the "state oyster reserve fund" and all expenses incurred on account of the oyster reserves shall be paid from said fund: Provided, that moneys coming into the fund from said sales, leases, licenses, etc., from Willapa Harbor shall be expended upon the oyster reserves of Willapa Harbor, and moneys so received from Puget Sound shall be expended on the oyster reserves in Puget Sound: And provided further, that any moneys now in the possession of the state treasurer of the state of Washington held in a special fund pursuant to section 6822 of Rem. & Bal. Code shall be transferred to said state oyster reserve fund for the improvement and protection of the reserves on Puget Sound, and any and all moneys received pursuant to said section 6822 in the future shall be paid into said state oyster reserve fund for the improvement and protection of the reserves on Puget Sound. [L. '15, p. 112, § 105.]

§ 5150–106. Penalty for Violation.—If any person, firm or corporation shall take oysters from any of the state oyster reserves

contrary to the provisions of this act, or shall go upon said reserve and rake up, or otherwise prepare oysters to facilitate the taking of same, he shall be guilty of a gross misdemeanor, and forfeit any license he, she, or it may then hold. [L. '15, p. 112, § 106.]

§ 5150–107. Acquisition by Discovery of Oyster-beds.—Any person or persons, being a citizen or citizens of the United States, who shall discover any bed or beds of oysters in any bay or arm of the sea bordering upon this state, that has not been before discovered, shall, by right of said discovery, be entitled to the exclusive right or privilege of gathering or dredging oysters on said bed or beds for the term of five years. The person or persons making such discovery, who desires to avail himself of the rights and privileges hereby granted, shall be required to designate the place and area of the bed or beds so discovered, with stakes or other artificial marks, and shall make affidavit before the auditor of the county in which such discovery has been made that he located the premises so described, accompanied by a description and diagram of the same, which shall be filed in the office of said county auditor: Provided, that the restriction and protection of the discoveries shall be ten acres. [L. '15, p. 112, § 107.]

§ 5150–108. Penalty for Gathering Oysters from Beds Located by Another.—It shall be unlawful for any person to gather oysters by any means on any bed located in accordance with the preceding section, except at the option and by the permission of the party or parties holding the same, under a penalty of five hundred dollars fine for so offending, or imprisonment, to be recovered in a civil suit to be brought in the name of the state. [L. '15, p. 113, § 108.]

§ 5150–109. Rights of Planters.—When any person has, acting in good faith, planted oysters on tide or shore lands not containing any bed of natural oysters belonging to the state of Washington, and not otherwise occupied for purposes of trade or commerce, such oysters shall, pending the sale, lease or reservation of such lands by the state, be considered as personal property, and the unauthorized taking of the same shall subject the offender to civil and criminal prosecution, as in any similar case of violation of property rights: Provided, that the grounds holding the oysters have been kept suitably marked by stakes or other landmarks; but such stakes or other landmarks having been removed by accident or design shall not excuse any person from wrongfully taking the oysters thereby marked, if he knew the ground to have been planted with oysters. [L. '15, p. 113, § 109.]

§ 5150–110. Deep-water Planting—Penalty.—When any person has, acting in good faith, planted oysters on any grounds lying deeper than the level of the water, said grounds being under the

jurisdiction of the state of Washington, and not otherwise occupied for the purpose of trade or commerce, such oysters shall pending the sale, lease or reservation of such lands by the state of Washington, be considered as personal property, and the unauthorized taking of the same shall subject the offender to civil and criminal prosecution, as in any similar case of violation of property rights: Provided, that the grounds holding the oysters have been kept suitably marked by stakes or other landmarks, but such stakes or other landmarks having been removed by accident or design shall not excuse any person from wrongfully taking the oysters thereby marked, if he knew the grounds to have been planted with oysters. [L. '15, p. 113, § 110.]

§ 5150–111. Penalty for Removing Oysters.—Any person who shall, without due authority, remove oysters belonging to any other person, either from plant beds or cull beds, or from any boat or water craft, or from any float or crate, shall be guilty of a gross misdemeanor. The penalties provided in this section shall not prevent the recovery by the injured party, in civil action, of damages for any unlawful removing of oysters. [L. '15, p. 114, § 111.]

§ 5150–112. Providing for the Return of Small Oysters to Beds.—It shall be unlawful for any person to destroy oysters taken from their natural beds, by assorting or culling them on land or shore and leaving the small oysters there to die; but in all cases the small oysters must be returned to their natural beds, or to the private beds for cultivation; and, if any person shall offend against the provisions of this section, or in any way wantonly destroy the small oysters, he shall be guilty of a misdemeanor. [L. '15, p. 114, § 112.]

§ 5150–113. Oysters—Chilled in Transit.—No person shall, within the state, sell, offer for sale, or have in his possession oysters, except oysters for planting purposes, which shall or may be hereafter shipped into this state unless said oysters shall have been during the entire time consumed in the shipment, kept in a chilled condition, at a temperature not greater than thirty-four degrees F. Any person violating this section shall be guilty of a misdemeanor. [L. '15, p. 114, § 113.]

§ 5150–114. Not to Affect Existing Laws.—This act shall in no manner apply to the provisions of any act heretofore enacted by the legislature of the state of Washington, providing for the sale of tide and shore lands for the purpose of oyster planting. [L. '15, p. 115, § 114.]

§ 5150–115. Commissioner may Dredge for Purpose of Discovery—May Permit Others.—The commissioner of the state of Washington may and he is hereby authorized to dredge or permit others to dredge

in all the waters of the state of Washington for the purpose of discovering whether any particular waters not already reserved, leased or appropriated under existing laws, or the provisions of this act, contain oysters in a natural state, and regulate the taking thereof, under such rules as the state fish commission may prescribe. [L. '15, p. 115, § 115.]

§ 5150–116. Joint Compact Between the States of Washington and Oregon.—Should congress, by virtue of the authority vested in it under section 10, article I, of the constitution of the United States, providing for compacts and agreements between states, ratify the recommendations of the conference committees of the states of Washington and Oregon, appointed to agree on legislation necessary for the regulation, preservation and protection of fish in the waters of the Columbia River, or its tributaries, over which said states have concurrent jurisdiction, or which would be affected by said concurrent jurisdiction, said recommendation being as follows: "We further recommend that a resolution be passed by the legislatures of Washington and Oregon, whereby the ratification by congress of the laws of the states of Washington and Oregon shall act as a treaty between said states, subject to modification only by joint agreement by said states"; and said recommendation having been approved by resolution adopting the report of the conference committee, then, and in that event, there shall exist between the states of Washington and Oregon a definite compact and agreement, the purport of which shall be substantially as follows:

All laws and regulations now existing or which may be necessary for regulating, protecting or preserving fish in the waters of the Columbia River, or its tributaries, over which the states of Washington and Oregon have concurrent jurisdiction, or which would be affected by said concurrent jurisdiction, shall be made, changed, altered and amended in whole or in part, only with the mutual consent and approbation of both states. [L. '15, p. 115, § 116.]

§ 5150–117. Penalties.—Any person who shall violate or who shall fail to observe, obey and comply with the provisions of this act for which no penalty is herein prescribed, shall be guilty of a misdemeanor. [L. '15, p. 116, § 117.]

§ 5150–118. Repealing Provision.—Sections 5150 to 5240, inclusive, sections 5245 to 5263, inclusive, and sections 5267 to 5275, inclusive, of Remington & Ballinger's Annotated Codes and Statutes of Washington, and all other acts and parts of acts in conflict with this act are hereby repealed. [L. '15, p. 116, § 118.]

§ 5150–119. Saving Clause.—Any acts or parts of acts herein repealed, which are re-enacted in form or in substance in this act, shall not be construed as new acts, but as continuations and amendments

of such act or parts of acts. All rights of action under existing laws, which this act in any way supersedes or repeals, if the same at the time this act takes effect shall not have been commenced, shall proceed under the provisions of this act.

Any action or proceedings pending in the courts under existing laws, which this act in any way supersedes or repeals, shall proceed without being in any way affected by this act. All licenses heretofore issued shall continue and remain in force during the time that they should continue under existing laws, and all rights and privileges under such licenses shall rest and remain in the holders thereof until the date of their expiration, and the holders thereof shall be entitled to all property rights accruing to them thereunder, and to the renewal of such rights by the renewals of such licenses as provided in this act.

The present commissioner and state game-warden heretofore appointed under existing laws shall continue to act as commissioner and state game-warden under the provisions of this act, until the date of the expiration of the term for which he was appointed, unless sooner removed for cause by proper authority. [L. '15, p. 116, § 119.]

§ 5150–120. Game Fish Laws. — The provisions of this act shall apply exclusively to food and shell fish and the same shall be enforced regardless of any conflicting provisions of any game fish laws of the state of Washington now in existence or hereafter passed, and no act lawfully done under the provisions of this act shall be deemed unlawful in the event that such act conflicts with any provisions of such game fish laws. [L. '15, p. 117, § 120.]

CHAPTER VII.

State Oyster Commission and Oyster Land Reserves.

Acquisition or lease of oyster lands: See "Lands of the State," § 6799.

§ 5241. Oyster Commission, Creation of.—There is hereby created a state oyster commission to consist of the governor, commissioner of public lands and the fish commissioner. [L. '03, p. 340, § 1.]

§ 5242. Secretary—Records.—The commissioner of public lands shall be the secretary of said commission, which secretary shall keep a true, full and correct record of all meetings of said commission. Said records shall be kept in the office of the commissioner of public lands and shall be public records open for inspection of the public during office hours. [L. '03, p. 340, § 2.]

§ 5243. Time of Meetings.—The said commission shall regularly meet on the first Tuesday in January, April and October, of each year, at the office of said commission, and at such other times as the chairman of said commission may call and direct. [L. '03, p. 340, § 3.]

§ 5244. Quorum, etc.—A majority of said commission shall constitute a quorum to do business on all questions arising or coming before said commission. A decision of a majority of the members of said commission shall be valid as the act, ruling, judgment or decision of said commission. [L. '03, p. 340, § 4.]

§ 5264. Natural Oysters, How Lawfully Gathered.—It shall at all times be unlawful to gather with any tool or implement, or in any way whatever, any oysters from any natural oyster-bed, except the person so gathering shall be on and working from a boat or water craft of some kind, said water craft being afloat during the time he is gathering. Any person violating any provision of this section shall, on conviction thereof, be fined in any sum not less than one hundred dollars nor more than four hundred dollars, and, at the discretion of the court, be imprisoned in the county jail not less than two months nor more than six months; one-half the aforesaid fine to be paid by the state to the informer. [Cf. 1 H. C., §§ 2590–2592; L. '95, p. 49, §§ 1, 4; L. '97, p. 304, § 22.]

This section includes the first and fourth sections of the Act of 1895, and probably supersedes section 2, which was as follows: "It shall at all times and places be unlawful, in gathering oysters from any natural bed of oysters,, to use a common garden rake or any instrument of similar construction and operation." See L. '95, p. 48, § 2.

Food. See "Health."

Forcible Entry and Detainer. See §§ 810–837.

TITLE XXXVI.

FORESTS AND FOREST FIRES.

Penalties for setting fires. See "Fires," § 5141 et seq.

5276. Board of forest commissioners—Term, oath, meetings, etc.
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5277–3. Appointment of forester—Audit of bills.
5277–4. Assistants—Duties.
5277–5. Wardens—Duties of forester and wardens—Compensation.
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5277–8. Closed season—Fires—Permits.
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5277–11. Removing notices—Penalty.
5277–12. Notice of damage.
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5277–17. Stationary engineers—Watchman—Regulations.
5277–18. Fire patrol.
5277–19. Arrests.
5277–20. Duty of prosecuting attorney.
5277–21. Fines.

§ 5276. Board of Forest Commissioners.—Term, Oath, Meetings, etc.—There is hereby created a board to be known as the state board of forest commissioners, consisting of the state land commissioner whose term of office shall be coextensive with his term as state land commissioner, and four electors of the state of Washington to be appointed by the governor, whose term of office shall be four years from the date of appointment: Provided, however, that two of the first appointees under the terms of this act shall hold office for only two years, and thereupon the governor shall appoint the successors of such two-year appointees for the term of four years. Each of the members of said board shall take and subscribe an oath or affirmation before some officer authorized by law to administer the same to faithfully perform the duties of said office. The members of said board shall receive no compensation whatever for the performance of their duties. The secretary of state shall provide suitable quarters for the use of said board and the state fire-warden and forester in the state capitol building. The said board shall meet at the call of the governor as soon as convenient after their appointment at the state capital, and shall organize by the election of a chairman. A majority of the members of said board shall constitute a quorum. Said board shall meet at the state capital, or any other convenient place within the state at any other time at the call of the chairman, and the chairman is hereby directed to call a meeting thereof when-

ever requested in writing so to do, by three or more members of said board. [L. '05, p. 320, § 1.]

For former law repealed by L. '05, p. 328, § 14, see L. '03, pp. 205–208.

§ 5277–1. Defining Terms.—In this act, unless the context or subject matter otherwise requires, the word "board" shall be held to mean "state board of forest commissioners"; "forester" shall be held to mean "state forester and fire-warden"; "warden" shall be held to mean "fire-warden"; "wardens" shall be held to mean "fire-wardens"; "ranger" shall be held to mean "forest ranger"; "rangers" shall be held to mean "forest rangers"; "one" shall be held to mean "person, firm or corporation," and "forest material" shall be held to mean "forest slashing, chopping, woodland or brushland." [L. '11, p. 623, § 1.]

Cited in 80 Wash. 28.

§ 5277–2. Powers and Duties of Board.—The board shall supervise all matters of forest policy and forest management under the jurisdiction of the state, and shall have power to authorize all needful and proper expenditures for forest protection; it shall have full power to appoint a forester; to make rules and regulations for the prevention, control and suppression of forest fires as it deems necessary; to regulate and control the official acts of the forester, his assistants, the wardens, and the rangers, and to remove at will any of these officials. It shall be the duty of the board to collect information regarding the timber lands owned by the state, through investigation made by the forester, his assistants, the wardens and the rangers regarding the condition of the timber lands belonging to the state, the investigation to include any damage caused by forest fires, and any illegal cutting, or trespassing upon the state timber lands.

The board is hereby authorized, when in its judgment it appears advisable, to accept on behalf of the state, any grant of land within the state; which shall then become a part of the state forest: Provided, that no grant shall be accepted until the title has been examined and approved by the attorney general of the state and a report made to the board of the result of such examination. [L. '11, p. 623, § 2.]

§ 5277–3. Appointment of Forester—Audit of Bills.—The board shall appoint a forester at an annual salary, the amount of which shall be fixed by the board, and payable in equal monthly installments out of the state treasury, in the same manner as the salaries of other state officials are paid.

The forester shall be entitled to all office and other necessary expenses incurred by him under the authority of the board while in the

actual performance of his duties. All expenses so incurred shall be submitted in full detail to the board for examination, and if approved and allowed by the board, shall be presented to the state auditor, who shall, if found correct, draw his warrant upon the state treasurer for the amount so allowed, and the state treasurer is hereby authorized to pay said amount due out of any moneys in the state treasury appropriated for this purpose.

The board shall audit and inspect all bills of salary and expenses incurred by the wardens for their official accounts, and all other bills properly authorized by the wardens for the prevention, suppression, checking, or control of forest fires. When so audited and inspected, the board shall present a statement thereof for each county, accompanied by the original bills, to the state auditor, who shall audit the same, and if found correct, the state auditor shall draw his warrant on the state treasurer in payment thereof, and the state treasurer is hereby authorized to pay said warrants out of any money in the treasury appropriated for such purposes. [L. '11, p. 624, § 3.]

§ 5277-4. Assistants—Duties.—The forester may at his discretion, subject to the approval of the board, appoint trained forest assistants, possessing technical qualifications, and may employ necessary clerical assistants, and fix the amount of their respective salaries, which shall be payable in equal monthly installments to each assistant so appointed or employed.

He shall act as secretary of the board, or he may delegate that duty to one of his assistants. He shall, acting under the supervision of the board, and whenever he may deem it necessary to the best interests of the state, co-operate in forest surveys, in forest studies, in forest products studies, in forest fire fighting and patrol, and in the preparation of plans for the protection, management, replacement of trees, wood lots, and timber tracts, with any of the several departments of the governments of other states, and with the government or with the departments of the government of the United States, with the Dominion of Canada, or with any province thereof, and with counties, towns, corporations, and individuals within the state of Washington.

He shall, subject to the rules and regulations of the board, have direct charge and supervision of all matters pertaining to forestry, including the forest fire service of the state.

The term "forest fire service" as used in this act shall be held to include all wardens, rangers and help especially employed for preventing or fighting forest fires.

In times of emergency or unusual danger the forester is empowered to mass the forest fire service of the state where its presence might be required by reason of forest fires, and to take charge of, and direct the work of suppressing such fires.

The forester shall enforce all laws for the preservation of the forests within the state, investigate the origin of all forest fires, vigorously prosecute all violators of this act; prepare and print for public distribution an abstract of the forest laws and the forest fire laws of Washington, together with such rules and regulations as may be formulated by the board.

The forester may, with the approval of the board, publish for free distribution, information pertaining to forestry, and to forest products, which he may consider of benefit to the people of the state.

It shall be the duty of the forester to annually notify the county clerk in each county where wardens or rangers are appointed, giving the names of such appointees.

The forester shall furnish notice printed in large letters on cloth, calling attention to the dangers from forest fires, and to the penalties for the violation of this act; such notices to be posted in conspicuous places by the wardens or rangers in all timbered districts along roads and trails, streams and lakes, frequented by tourists, campers, hunters and fishermen, and in other visited regions.

The forester shall, subject to the approval of the board, prepare all necessary printed forms for use of wardens and rangers, in connection with the granting of applications for permits to burn; for the appointment of wardens and rangers, and any and all forms or blanks required or desirable, and shall supply each warden and ranger with such forms and blanks.

The forester shall become familiar with the location and the areas of all state timbered and cut-over lands, and shall prepare maps of each of the timbered counties showing the state land therein, and supply such maps to each warden and in all ways that are practical and feasible protect such lands from the dangers of fire, trespass, and the illegal cutting of timber, reporting from time to time direct to the board such information as may be of benefit to the state in the care and protection of its timber.

It shall be the duty of the forester to institute inquiry into the extent, kind, value and condition of all timber lands within the state; the amount of acres, and the value of the timber that is cut and removed each year, to determine what state lands are chiefly valuable for growing timber; the extent to which timber lands are being destroyed by fire; and also to examine into the production, quality and quantity of second-growth timber, with a view to ascertaining conditions for reforestation, and not later than the first day of December of each year, make a written report to the board upon all such tracts so examined by him, together with detailed information as to the work of the forest fire service of the state. [L. '11, p. 624, § 4.]

§ 5277–5. Wardens—Duties of Forester and Wardens—Compensation.—The forester shall, subject to the approval of the board, have

power to appoint within any county in this state where there is timber requiring protection, one or more wardens for all or any portion of the period during which the forester deems that forest fire dangers exist.

The forester may, subject to the approval of the board, and at such times and in such localities as he deems the public welfare demands, employ one or more wardens whose duty it shall be to examine deforested lands of the state, and ascertain if such lands are chiefly valuable for agriculture, or if they are chiefly valuable for timber growing, with a view to reforestation. The said wardens shall, under the direction of the forester, engage in the discovery of inflammable material, and cause, or assist in, the burning of such material at such times as the burning can be done without endangering adjacent timber, or other property. The said wardens, under the direction of the forester, shall prevent and detect trespass and illegal cutting upon state timber lands, and shall enforce the laws in respect to such trespass and illegal cutting.

The forester shall have power to temporarily suspend any warden or ranger who may be incompetent or unwilling to discharge properly the duties of his office, and to appoint his successor temporarily, until his action shall be passed upon by the board.

Each warden shall receive compensation not to exceed four dollars ($4) per day, and also necessary and proper expenses for the time actually employed.

The wardens shall make their headquarters at the county seat of the county which they represent, and be equipped with suitable office quarters in the county courthouse by the county commissioners.

The board of county commissioners of any county in which there has been no warden appointed, may request the forester to appoint a warden, and the forester may, if in his judgment the necessity exists, appoint, subject to the approval of the board, one or more wardens for each county.

The authority of the wardens respecting the prevention, suppression and control of forest fires, summoning, impressing or employing help, or making arrests for the violation of this act, may extend to any adjacent county, or to any part of the state in times of great fire danger.

The salaries and necessary expenses of all wardens, together with all expenses incurred for help and assistance in forest fire protection, shall be borne in the proportion of two-thirds by the state and one-third by the county in which the service was given and the expense incurred for forest fire protection.

All accounts of the wardens shall be submitted to the forester, as well as all bills for forest fire protection authorized by the wardens, and when such bills are approved and paid as provided for in section

5277–3, the amount of one-third of all such outlays in each county shall be due and payable on demand from each of said counties into the state treasury, and credited to the fund appropriated by this act.

All wardens and rangers shall render reports to the forester on such blanks or forms, or in such manner, and at such times as may be ordered, giving a summary of how employed, the area of country visited, expenses incurred, and such other information as may be called for by the forester. [L. '11, p. 627, § 5.]

§ 5277–6. Duties of Warden.—Each warden shall be at all times under the direction and control of the forester, and shall perform such other duties at such times and places as he may direct.

It shall be the duty of wardens to post over the forest areas notices of warning giving the date of the closed season as provided for in section 5277–8, and copies of all such laws and rules as they may be directed to post by the forester.

They shall investigate all fires and report all of a serious or threatening character to the forester immediately. They shall patrol their districts; visit all parts of roads and trails, and frequented places and camps as far as possible, warn campers or other users of fire, see that all locomotives are provided with spark-arresters, and with adequate devices for preventing the escape of fire or live coals from ash-pans and fire-boxes, in accordance with the law; extinguish small or smoldering fires; summon, impress or employ help to stop conflagrations; see that all laws for the protection of forests are enforced, and arrest and cause to be prosecuted all offenders. [L. '11, p. 628, § 6.]

§ 5277–7. Ex-officio Rangers — Compensation. — All state land cruisers, all game-wardens, when approved by the forester, and all rangers and assistant rangers of the United States forest service, when recommended by their forest supervisors, and commissiond by the forester, shall be ex-officio rangers.

Timber cruisers and citizens of the state advantageously located may, at the discretion of the forester, be appointed rangers, and vested with their duties and powers.

Rangers shall receive no compensation for their services except when employed in co-operation with the state under the provisions of this act, and shall not create any indebtedness, or incur any liability on behalf of the state: Provided, that rangers actually engaged in extinguishing, or preventing the spread of fire in brush, slashings, choppings, timber or elsewhere that may endanger timber or other property, shall when their accounts for such services have been approved by the fire-wardens in authority, be entitled to receive compensation for such services at the rate of twenty-five cents (25c) per hour. [L. '11, p. 629, § 7.]

§ 5277–8. Closed Season—Fires—Permits.—No one shall burn any forest material within any county in this state in which there is a warden or ranger during the months of June to September, inclusive, in each year, which period is hereby designated as the closed season, without first obtaining permission in writing from the forester, or a ranger, and afterward complying with the terms of said permit; and anyone violating any provisions contained in the preceding portions of this section shall, upon conviction thereof, be fined not less than twenty-five dollars ($25.00) nor more than five hundred dollars ($500.00), or be imprisoned in the county jail not exceeding thirty (30) days. Such permission for burning shall be given only upon compliance with such rules and regulations as the board prescribe, which shall be only such as the board deems necessary for the protection of life or property.

The forester, any of his assistants, any warden or ranger, may at his discretion, refuse, revoke or postpone the use of permits to burn when such act is clearly necessary for the safety of adjacent property. [L. '11, p. 629, § 8.]

§ 5277–9. Burning Material — Control — Penalty. — No one shall burn any forest material until all dry snags, stubs and dead trees over twenty-five (25) feet in height, within the area to be burned, shall have been cut down, and until such other work shall have been done in and around the slashing or chopping, to prevent the spread of fire therefrom, as shall be required to be done by the forester, or any warden or ranger.

When any person shall have obtained permission from the forester, or warden or ranger, to burn any slashings made for the purpose of clearing land, the warden may, at his discretion, furnish him with a man to supervise and control the burning, who shall represent and act for such warden, and shall have all the power and authority of a warden while engaged in such service, including the right to revoke such permit, if in his opinion the burning authorized would endanger any valuable timber or other property. Such man shall serve only until such time as the party burning may be able to keep the fire under control himself.

The forester and wardens are hereby authorized and empowered to employ a sufficient number of men to extinguish or prevent the spreading of any fires that may be in danger of destroying any valuable timber or other property in this state. The forester, or any warden by special authority of the forester, may provide needed tools and supplies, and transportation when necessary for men so employed.

Every man so employed, and also the representative of the warden supervising the burning, shall be entitled to compensation of twenty-five cents per hour for each hour's actual service; and the warden

shall issue a certificate to each man so employed showing the number of hours worked by him and the amounts due to him, upon which, after approval by the forester, the man shall be entitled to receive payment from the state in the manner provided for in section 5277–3.

Any person refusing to render assistance when called upon by any warden, shall be guilty of a misdemeanor, and shall be punished by a fine of not less than ten dollars ($10) nor more than one hundred dollars ($100). [L. '11, p. 630, § 9.]

§ 5277–10. Suspension of Permits and Game Laws.—In times and localities of unusual fire danger, the governor, with the advice of the forester, may suspend any or all permits or privileges authorized by section 5277–8, and may prohibit absolutely the use of fire therein mentioned.

Whenever during an open season for the hunting of any kind of game within this state, it shall appear to the governor that by reason of extreme drought, the use of firearms or fire by hunters is liable to cause forest fires, he may by proclamation suspend the open season and make it a closed season for the shooting of wild birds or animals of any kind, for such time as he may designate, and during the time so designated all provisions of law relating to closed seasons for game shall be enforced. [L. '11, p. 631, § 10.]

§ 5277–11. Removing Notices—Penalty.—Any person who shall willfully or needlessly deface, or remove any warning placard or notice posted under the requirements of this act, shall be guilty of a misdemeanor, and shall upon conviction be punished by a fine of not less than twenty-five dollars ($25) nor more than one hundred dollars ($100) for each offense, or by imprisonment in the county jail not exceeding thirty (30) days.

Any person who shall upon any land within this state, set and leave any fire that shall spread or damage or destroy property of any kind not his own, shall upon conviction, be punished by a fine of not less than ten dollars ($10) nor more than five hundred dollars ($500). If such fire be set or left maliciously, whether on his own or on another's land, with intent to destroy property not his own, he shall be punished by a fine of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), or imprisonment in the county jail for not less than one month, nor more than one year, or by both such fine and imprisonment, and shall be liable for all damages in a civil suit.

During the closed season, any person who shall kindle a fire on land not his own, in or dangerously near any forest material and leave same unquenched, or who shall be a party thereto, or who shall by throwing away any lighted cigar, matches, or by use of firearms, or in any other manner, start a fire in forest material not his own,

and leave same unquenched, shall upon conviction, be fined not less than ten dollars ($10) nor more than one hundred dollars ($100) or be imprisoned in the county jail not exceeding two (2) months. [L. '11, p. 631, § 11.]

§ 5277-12. Notice of Damage.—Any and all inadequately protected forests, or deforested land covered wholly or in part by any inflammable debris, or otherwise likely to further the spread of fire, which by reason of such location or condition, or lack of protection, endangers life or property, when adjoining, lying near, or intermingling with other forest land, is hereby declared to be a public nuisance, and whenever the forester shall learn thereof, he shall notify the owner, or person in control or possession of said land, advise him of means and methods that should be taken for its protection, and request him to take the proper steps to that end. [L. '11, p. 632, § 12.]

§ 5277-13. Burning Wood-waste—Penalty.—It shall be unlawful for anyone manufacturing lumber or shingles, or other forest products, to destroy wood-waste material by burning the same at or near any mill situated within one-quarter of one mile of any forest material, without properly confining the place of said burning and without further safeguarding the surrounding property against danger from said burning by such additional devices as the forester may require.

It shall be unlawful for anyone to destroy any wood-waste material by fire within any burner or destructor operated at or near any mill, and situated within one-quarter of one mile of any forest material, or to operate any power-producing plant using in connection therewith any smokestack, chimney, or other spark-emitting outlet, without installing and maintaining on such burner, or destructor, or on such smokestack, chimney or other spark-emitting outlet, a safe and suitable device for arresting sparks.

Anyone violating the provisions of this section shall upon conviction thereof, be punished by a fine of not less than fifty dollars ($50) nor more than five hundred dollars ($500) for each and every violation, or by imprisonment of not less than thirty (30) days in the county jail. [L. '11, p. 632, § 13.]

§ 5277-14. Closed Season—Restrictions.—It shall be unlawful for anyone to operate any spark-emitting railroad locomotive, logging locomotive, or farming engine, or boiler, at any time during the closed season, or for anyone to operate any railroad locomotive, logging locomotive, or logging or farm engine or boiler, within one-quarter of one mile of any forest material during the closed season, without such railroad locomotive, logging locomotive, logging, or other engine or boiler is provided with and uses a safe and suitable device for arresting sparks.

It shall be unlawful for anyone to operate during the closed season any railroad locomotive, logging locomotive, or logging, or other engine or boiler, within one-quarter of one mile of any forest material, without such railroad locomotive, logging locomotive, or logging or other engine or boiler is provided with and uses an adequate device to prevent the escape of fire or live coals from all ash-pans, and all fire-boxes, except when said ash-pans and said fire-boxes are being cleaned when not in motion.

Everyone failing to comply with the provisions of this section, shall upon conviction pay a fine for each railroad locomotive, logging locomotive, or other engine or boiler, for each day so operated without such spark-arresting or without such adequate device to prevent the escape of fire or live coals from said ash-pans or said fire-boxes, of not less than ten dollars ($10), nor more than fifty dollars ($50) per day for each railroad locomotive, logging locomotive, or other engine or boiler so used, and shall be prohibited from further use of such railroad locomotive, logging locomotive, or other engine or boiler until such spark-arrester or such adequate device for preventing the escape of fire or live coals from said ash-pans and said fire-boxes, is provided and used therewith. [L. '11, p. 633, § 14.]

§ 5277–15. Railroads—Fire on Right of Way.—No one operating a railroad shall permit to be deposited by his, or its, employees, and no one shall deposit during the closed season, fire or live coals upon the right of way outside of the yard limits, and within one-quarter of one mile of any forest material, without such deposit of fire or live coals shall be immediately extinguished.

Anyone violating the provisions of this section respecting the deposit of fire or live coals, shall upon conviction pay a fine of not less than twenty-five dollars ($25), nor more than one hundred dollars ($100) or be imprisoned in the county jail not exceeding thirty (30) days.

Wardens and rangers shall report any lack of sufficient spark-arresters, and any lack of adequate devices for preventing the escape of fire and live coals, as provided in this act, to the forester, and to the prosecuting attorney of their county, and the superior court of that county where suit is first instituted, shall have jurisdiction of the offense. [L. '11, p. 634, § 15.]

§ 5277–16. Closed Season—Prohibitions.—Everyone clearing right of way for railroad, wagon road, or other road, shall pile and burn on such right of way all refuse timber, slashings, choppings and brush cut thereon, as rapidly as the clearing or cutting progresses, and the weather conditions permit, or at such other times as the forester, or any of his assistants, or any warden may direct, and before doing so, shall obtain a permit.

During the closed season such burning shall not be required to be done, while the forester, any of his assistants, or any warden in authority shall refuse to issue a permit for such burning.

No one slashing brush or timber for the purpose of clearing land, or cutting or logging timber, shall fell, or permit to be felled, trees, in such a manner that the tops or branches shall fall into green timber not owned by the one felling or permitting the felling of such trees, without first obtaining permission of the owner of said green timber. [L. '11, p. 634, § 16.]

§ 5277-17. Stationary Engineers — Watchman — Regulations.—Everyone operating a stationary engine, for the logging of timber, or the clearing of land of tree stumps, or other wood material, shall during the closed season:

(a) Maintain a watchman at the point where the said donkey-engine, or other portable or stationary engine may be located, said watchman to be on duty for at least two hours following every time when the said donkey-engine, or other portable stationary engine shall cease operations.

(b) Cut down all snags, stubs and dead trees over twenty-five feet in height within a radius of fifty (50) feet from each donkey-engine or other portable or stationary engine. [L. '11, p. 635, § 17.]

§ 5277-18. Fire Patrol.—Everyone operating a logging locomotive during the closed season, shall:

Have a man whose duty it shall be to follow each logging locomotive, except a locomotive using oil for fuel, for the purpose of acting as fire patrol, the said man to begin the said patrol at approximately thirty (30) minutes after the starting of the logging locomotive which it is his duty to follow.

Anyone who shall violate any of the provisions contained in section 5277-16, 5277-17, or 5277-18, shall be punished by a fine not to exceed one hundred dollars ($100) or by imprisonment in the county jail for not less than thirty (30) days. [L. '11, p. 635, § 18.]

§ 5277-19. Arrests.—The forester, his assistants, wardens, rangers, and all police officers are hereby empowered to make arrests without warrant of persons violating this act. [L. '11, p. 636, § 19.]

§ 5277-20. Duty of Prosecuting Attorney.—Whenever an arrest shall have been made for a violation of any of the provisions of this act or whenever information of such violation shall have been lodged with him, the prosecuting attorney of the county in which the criminal act was committed, shall prosecute the offender or offenders, with all diligence and energy. If any prosecuting attorney shall fail to comply with the provisions of this section, he shall be guilty of a misdemeanor and shall be punished by a fine of not less than fifty

dollars ($50) nor more than five hundred dollars ($500), and by imprisonment of not less than thirty (30) days, nor more than one year in the county jail. The penalties of this section shall apply to any magistrate, with proper authority, who refuses or neglects to cause the arrest and prosecution of any person or persons when complaint under oath of violation of any provisions of this act has been lodged with him. [L. '11, p. 636, § 20.]

§ 5277–21. Fines.—All fines collected under this act shall be paid into the county treasury of the county in which the offense was committed. [L. '11, p. 636, § 21.]

Forfeitures. Actions on, see §§ 963–966.

Franchises. See "Highways," § 5609; "Street and Electric Railways," § 9080.

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TITLE XXXVII.

FRAUDS.

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CHAPTER I.

Statute of Frauds.

§ 5288. Deeds in Trust for Grantor Void as to Creditors.—All deeds of gift, all conveyances, and all transfers or assignments, verbal or written, of goods, chattels, or things in action, made in trust for the use of the person making the same, shall be void as against the existing or subsequent creditors of such person. [L. '54, p. 403,

§ 1; L. '60, p. 298, § 1; L. '63, p. 412, § 1; Cd. '81, 2324; 1 H. C., § 1452.]

Cited in 1 Wash. 263, 364; 6 Wash. 268; 36 Wash. 681; 75 Wash. 463.

§ 5289. Contracts, etc., Void Unless in Writing.—In the following cases specified in this section, any agreement, contract and promise shall be void, unless such agreement, contract or promise, or some note or memorandum thereof, be in writing, and signed by the party to be charged therewith, or by some person thereunto by him lawfully authorized, that is to say: (1) every agreement that by its terms is not to be performed in one year from the making thereof; (2) every special promise to answer for the debt, default, or misdoings of another person; (3) every agreement, promise or undertaking made upon consideration of marriage, except mutual promises to marry; (4) every special promise made by an executor or administrator to answer damages out of his own estate; (5) an agreement authorizing or employing an agent or broker to sell or purchase real estate for compensation or a commission. [L. '05, p. 110, § 1. Cf. L. '54, p. 403, § 2; L. '60, p. 298, § 2; L. '63, p. 412, § 2; Cd. '81, § 2325; 1 H. C., § 2432.]

Cited in 8 Wash. 546; 20 Wash. 704; 28 Wash. 484; 29 Wash. 533; 36 Wash. 330, 331; 38 Wash. 696; 44 Wash. 328, 330; 45 Wash. 467; 46 Wash. 133, 138; 47 Wash. 647; 48 Wash. 580, 679; 50 Wash. 279, 497, 498; 53 Wash. 423, 639; 54 Wash. 522, 592, 594; 56 Wash. 618; 57 Wash. 287, 501; 61 Wash. 278, 423; 63 Wash. 566, 570; 64 Wash. 65; 65 Wash. 285; 67 Wash. 20, 266; 68 Wash. 326; 69 Wash. 205; 71 Wash. 56, 426; 72 Wash. 312, 541; 74 Wash. 346, 428; 75 Wash. 214, 684; 79 Wash. 341; 80 Wash. 121; 81 Wash. 239, 258, 262; 83 Wash. 184; 85 Wash. 481.

See infra, § 8802 et seq., leases.
See infra, § 8745, and notes, statute of frauds as to real property.
See infra, § 9307, contracts by telegraph.

§ 5290. Contract for Sale of Goods Void, When.—No contract for the sale of any goods, wares, or merchandise, for the price of fifty dollars or more, shall be good and valid, unless the purchaser shall accept and receive part of the goods so sold, or shall give something in earnest to bind the bargain, or in part payment, or unless some note or memorandum in writing of the bargain be made and signed by the party to be charged thereby, or by some person thereunto by him lawfully authorized. [L. '54, p. 403, § 3; L. '60, p. 298, § 3; L. '63, p. 413, § 3; Cd. '81, § 2386; 1 H. C., § 1453.]

Cited in 8 Wash. 191; 55 Wash. 19; 56 Wash. 534; 62 Wash. 396; 64 Wash. 287; 76 Wash. 602; 85 Wash. 480.

§ 5291. Bill of Sale Void, When.—No bill of sale for the transfer of personal property shall be valid, as against existing creditors or innocent purchasers, where the property is left in the possession of the vendor, unless the said bill of sale be recorded in the auditor's office of the county in which the property is situated, within ten

days after such sale shall be made. [L. '54, p. 404, § 4; L. '63, p. 413, § 4; Cd. '81, § 2327; 1 H. C., § 1454.]

Cited in 6 Wash. 89, 91, 616; 14 Wash. 180; 36 Wash. 681; 41 Wash. 489; 48 Wash. 361; 58 Wash. 620; 73 Wash. 498.

See supra, § 3670, conditional bill of sale to be filed.

§ 5292. Burden of Proof in Transactions Between Husband and Wife.—In every case where any question arises as to the good faith of any transaction between husband and wife, whether a transaction between them directly or by intervention of third person or persons, the burden of proof shall be upon the party asserting the good faith. [Cd. '81, § 2397; 1 H. C., § 1455.]

Cited in 8 Wash. 208; 16 Wash. 7, 73; 28 Wash. 456; 34 Wash. 318; 50 Wash. 503; 52 Wash. 3; 53 Wash. 562; 68 Wash. 683; 70 Wash. 105; 75 Wash. 463; 78 Wash. 477; 82 Wash. 392; 86 Wash. 535.

See infra, § 5918, community property.

See infra, § 8766, conveyances between husband and wife.

§ 5293. Contracts of Minors, Liability.—A minor is bound, not only by contracts for necessaries, but also by his other contracts, unless he disaffirms them within a reasonable time after he attains his majority, and restores to the other party all money and property received by him by virtue of the contract, and remaining within his control at any time after his attaining his majority. [L. '66, p. 92, § 2; 1 H. C., § 2433.]

Cited in 34 Wash. 550.

§ 5294. Disaffirmance of Contracts Prohibited, When.—No contract can be thus disaffirmed in cases where, on account of the minor's own misrepresentations as to his majority, or from his having engaged in business as an adult, the other party had good reasons to believe the minor capable of contracting. [L. '66, p. 93, § 3; 1 H. C., § 2434.]

§ 5295. Satisfaction of Contracts With Minor.—When a contract for the personal services of a minor has been made with him alone, and those services are afterward performed, payment made therefor to such minor in accordance with the terms of the contract is a full satisfaction for those services, and the parents or guardian cannot recover therefor. [L. '66, p. 93, § 4; 1 H. C., § 2435.]

Cited in 79 Wash. 129.

CHAPTER II.

Bulk Sales Law.

§ 5296. Vendee must Require Affidavit as to Creditors and Indebtedness.—It shall be the duty of every person who shall bargain for, or purchase any stock of goods, wares or merchandise in bulk, for cash, or on credit, before paying to the vendor, or his agent, or representative, or delivering to the vendor, or his agent, any

part of the purchase price thereof, or any promissory note, or other evidence therefor, to demand of and receive from such vendor, or agent, or if the vendor or agent be a corporation, then from the president, vice-president, secretary or managing agent of such corporation, a written statement, sworn to substantially as hereinafter provided, of the names and addresses of all the creditors of said vendor, to whom said vendor may be indebted, together with the amount of the indebtedness due or owing, and to become due or owing, by said vendor to each of such creditors; and it shall be the duty of said vendor, or agent, to furnish such statement, which shall be verified by an oath to the following effect:

State of Washington, }
County of ——, } ss.

Before me personally appeared —— (vendor, or agent, as the case may be), who being by me first duly sworn upon his oath doth depose and say that the foregoing statement contains the names of all of the creditors of —— (the name of the vendor) together with their addresses, and that the amount set opposite each of said respective names is the amount now due and owing, and which shall become due and owing by —— (vendor) to such creditors, and that there are no creditors holding claims due, or which shall become due for or on account of goods, wares or merchandise purchased upon credit or on account of money borrowed to carry on the business of which said goods are a part, other than as set forth in said statement, and in his affidavit, are within the personal knowledge of affiant.

Subscribed and sworn to before me this —— day of ——, 190—.

(Title of officer taking oath.)

[L. '01, p. 222, § 1.]

Cited in 63 Wash. 215; 72 Wash. 339; 74 Wash. 403; 85 Wash. 456; 86 Wash. 418; 87 Wash. 330, 332, 449.

§ 5297. Failure to Require Affidavit or Protect Creditors Invalidates Sale.—Whenever any person shall bargain for, or purchase any stock of goods, wares or merchandise in bulk, for cash, or on credit, and shall pay any part of the purchase price, or execute or deliver to the vendor, thereof, or to his order, or to any person for his use, any promissory note, or other evidence of indebtedness for said purchase price, or any part thereof, without first having demanded and received from said vendor, or from his agent, the statement provided for in section 5296 and verified as there provided, and without paying, or seeing to it that the purchase money of the said property is applied to the payment of the bona fide claim of the creditors of the vendor as shown upon such verified statement,

share and share alike, such sale or transfer shall be fraudulent and void. [L. '01, p. 223, § 2.]

Cited in 87 Wash. 332, 450.

§ 5298. False Affidavit, Perjury—Penalty.—Any vendor of any stock of goods, wares or merchandise in bulk, or any person who is acting for, or on behalf of any vendor, who shall knowingly or willfully make or deliver, or cause to be made or delivered a statement as provided for in section 5296 which shall not include the names of all the creditors of such vendor with the correct amount due, and to become due to each of them or which shall contain any false or untrue statement, shall be deemed guilty of perjury, and upon conviction thereof, shall be punished by imprisonment in the penitentiary for not less than one nor more than five years, or shall be fined in any sum not exceeding one thousand dollars. [L. '01, p. 224, § 3.]

Cited in 77 Wash. 390; 83 Wash. 423; 87 Wash. 332.

§ 5299. Bulk Sale Defined—Waiver by Creditors.—Any sale or transfer of a stock of goods, wares or merchandise, or all or substantially all, of the fixtures and equipment used in and about the business of the vendor, out of the usual or ordinary course of business or trade of the vendor, or whenever substantially the entire business or trade theretofore conducted by the vendor, shall be sold or conveyed or whenever an interest in or to the business or trade of the vendor is sold or conveyed, or attempted to be sold or conveyed, shall be deemed a sale and transfer in bulk in contemplation of this act: Provided, however, that if such vendor produces and delivers a written waiver of the provisions of this act from his creditors as shown by such verified statements then and in that case the provisions of this section shall not apply. [L. '13, p. 610, § 4. Cf. L. '01, p. 224, § 4.]

Cited in 87 Wash. 450.

§ 5300. Act Not to Apply to Executors, etc.—Nothing in this chapter contained shall apply to executors, administrators, receivers, or any public officer acting under judicial process. [L. '01, p. 224, § 5.]

CHAPTER III.

Trading Stamps.

§ 5301. Redeemable Cash Value to be Printed on Face.—No person shall sell or issue any stamps, trading stamp, cash discount stamp, check, ticket, coupon or other similar device, which will entitle the holder thereof, on presentation thereof, either singly or in definite number, to receive, either directly from the vendor or indirectly through any other person, money or goods, wares or mer-

chandise, unless each of said stamps, trading stamps, cash discount stamps, checks, tickets, coupons or other similar devices shall have legibly printed or written upon the face thereof the redeemable value thereof in cents. [L. '07, p. 742, § 1.]

§ 5302. Must Redeem at Cash Value.—Any person who shall sell or issue to any person engaged in any trade, business or profession, any stamp, trading stamp, cash discount stamp, check, ticket, coupon, or other similar device which will entitle the holder thereof, on presentation thereof either singly or in definite number, to receive either directly from the vendor or indirectly through any other person, money or goods, wares or merchandise, shall, upon presentation, redeem the same either in goods, wares or merchandise, or in cash, good and lawful money of the United States, at the option of the holder thereof, and any number of such stamps, trading stamps, cash discount stamps, checks, tickets, coupons, or other similar devices shall be redeemed as hereinbefore set forth, at the value in cents printed upon the face thereof, and it shall not be necessary for the holder thereof to have any stipulated number of the same before demand for redemption may be made, but they shall be redeemed in any number, when presented, at the value in cents printed upon the face thereof, as hereinbefore provided. [L. '07, p. 742, § 2.]

§ 5303. Distributor Liable.—Any person engaged in any trade, business or profession who shall distribute, deliver or present to any person dealing with him, in consideration of any article or thing purchased, any stamp, trading stamp, cash discount stamp, check, ticket, coupon or other similar device, which will entitle the holder thereof, on presentation thereof, either singly or in definite number, to receive, either directly from the person issuing or selling the same, as set forth in section 5302, or indirectly through any other person, shall, upon the refusal or failure of the said person issuing or selling same to redeem the same, as set forth in section 5302, be liable to the holder thereof for the face value thereof, and shall upon presentation redeem the same, either in goods, wares or merchandise, or in cash, good and lawful money of the United States of America, at the option of the holder thereof, and in such case any number of such stamps, trading stamps, cash discount stamps, checks, tickets, coupons or other similar devices, shall be redeemed as hereinbefore set forth, at the value in cents printed upon the face thereof, and it shall not be necessary for the holder thereof to have any stipulated number of the same before demand for redemption may be made, but they shall be redeemed in any number, when presented, at the value in cents printed upon the face thereof, as hereinbefore provided. [L. '07, p. 743, § 3.]

§ 5304. Penalty.—Any person, firm or corporation who shall violate any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and shall be fined not less than one hundred dollars nor more than one thousand dollars for each offense. [L. '07, p. 743, § 4.]

CHAPTER IV.

Miscellaneous Frauds.

§ 5305. Charges in Excess of Published Rates to be Refunded.—Any corporation, partnership or individual who furnishes the public any goods, wares, merchandise, pledge, security, insurance or transportation of which the price, rate or tariff is by law required to be published, shall, when any price, rate or tariff is charged in excess of the existing and established price, rate or tariff, refund to the person, partnership or corporation so overcharged, or to the assignee of such claim, the amount of such overcharge, and on failure so to do, the claim for such overcharge shall bear interest at the rate of eight per cent per annum until paid. [L. '07, p. 407, § 1.]

§ 5306. Newspaper Mailed Without Authority is Gift.—Whenever any person, company, or corporation owning or controlling any newspaper or periodical of any kind, or whenever any editor or proprietor of any such newspaper or periodical shall mail or send any such newspaper or periodical to any person or persons in this state without first receiving an order for said newspaper or periodical from such person or persons to whom said newspaper or periodical is mailed or sent, shall be deemed to be a gift, and no debt or obligation shall accrue against such person or persons, whether said newspaper or periodical is received by the person or persons to whom it is sent or not. [L. '90, p. 460, § 1; 1 H. C., § 2882.]

§ 5307. Tolls for Grinding Grain.—The owners or occupiers of all mills in this state, moved by water or other power, shall be entitled to one-eighth part of all wheat, rye, or other grain ground and bolted, or ground and not bolted, and no more: Provided, however, said owner or occupier shall not be permitted to grind his own grain to the exclusion of other grists, when said mill is used and occupied as a grist-mill. [L. '54, p. 398, § 1; L. '63, p. 493, § 1; Cd. '81, § 2532; 1 H. C., § 2598.]

§ 5308. Duty and Liability of Miller.—The owner or occupier of any grist-mill shall well and sufficiently grind the grain brought to his mill for that purpose in due time and in the order in which it shall be received, and shall be accountable for the safekeeping of all grain received in such mill for the purpose of being ground therein, and shall deliver it, when ground, or ground and bolted, as the case may be, with the bag or cask in which it was brought,

when demanded, but every owner or occupier of a mill may grind his own grain at any time; and nothing in this section contained shall be construed to compel the owners or occupants of mills to grind for sale or merchant work. [L. '54, p. 398, § 2; L. '63, p. 493, § 2; Cd. '81, § 2533; 1 H. C., § 2599.]

§ 5309. No Liability in Certain Cases.—Nothing contained in the preceding section shall be so construed as to charge the owner or occupant of any mill for the loss of any grain, bag, or cask, which shall happen by robbery, fire, or inevitable accident, without the fault of such owner or occupants, his agents or servants. [L. '54, p. 398, § 3; L. '63, p. 493, § 3; Cd. '81, § 2534; 1 H. C., § 2600.]

§ 5310. Penalties and Liability.—Every miller, or owner or occupant of a grist-mill, who shall not well and sufficiently grind any grain as aforesaid, or not in due turn as the same shall be brought, or who shall exact or take more toll than is herein allowed, shall in every such case be liable to a fine of not less than three nor more than twenty dollars, and shall also be liable to the party injured in double the actual damages sustained by him. [L. '54, p. 398, § 4; L. '63, p. 494, § 4; Cd. '81, § 2535; 1 H. C., § 2601.]

§ 5311. Assistance in Carrying Grist.—Every owner or occupier of such grist-mill shall assist in carrying grists in and out of said mill, when the owner of such grist is unable to do the same. [L. '54, p. 398, § 5; L. '63, p. 494, § 4; Cd. '81, § 2536; 1 H. C., § 2602.]

CHAPTER V.

Auctioneers.

§ 5312. Auctioneers must Keep What Record.—Auctioneers are hereby required in all cases where property is offered to them to be sold at auction, and when there is doubt or uncertainty on the part of the auctioneer as to the rightful ownership of such property, to keep in a book provided for the same a record or inventory of the property so offered for sale, together with any marks or brands found on such property; also a minute description and record of the person or persons offering such property for sale. [L. '90, p. 458, § 1; 1 H. C., § 2372.]

See infra, § 7053, hawkers and peddlers.

§ 5313. Must Keep Records Open to Inspection, and Give Information.—The records required to be kept in the last preceding section shall be open at all times to inspection by anyone who may be interested in property which may have been stolen or unlawfully acquired, and auctioneers are hereby required in any case to give all information they may have of property received and sold, or offered for sale by them. [L. '90, p. 458, § 2; 1 H. C., § 2373.]

§ 5314. Violation of Provisions—Penalty for.—Any person or persons violating any of the provisions of this chapter shall, upon conviction thereof, be fined in any sum not less than one hundred dollars, nor more than one thousand dollars, or be imprisoned in the county jail not to exceed one year, or both fine and imprisonment, at the discretion of the court. [L. '90, p. 458, § 3; 1 H. C., § 2374.]

CHAPTER VI.

Gambling Losses and Contracts.

§ 5315. Recovery of Money Lost at Gaming.—All persons losing money or anything of value at or on any of said games shall have a cause of action to recover from the dealer or player winning the same, or proprietor for whose benefit such game was played or dealt, or such money or things of value won, the amount of the money or the value of the thing so lost.' [L. '79, p. 98, § 3; Cd. '81, § 1255; 2 H. C., § 142.]

Cited in 5 Wash. 223.

This chapter is part of the old Penal Code not repealed by the act of 1909. See § 2697, supra.

"Said games," refers to the gambling games described in Rem. & Bal. Code, § 2924.

§ 5316. Lease for Gambling Premises, How Terminated.—It shall be lawful for any person letting or renting any house, room, shop, or other building whatsoever, or any boat, booth, garden, or other place, which shall, at any time, be used by the lessee or occupant thereof, or any other person with his knowledge or consent, for gambling purposes, upon discovery thereof, to avoid and terminate such lease or contract of occupancy, and to recover immediate possession of said boat, building, or other place above mentioned by an action at law for that purpose, to be brought before any justice of the peace of the county in which such use shall be permitted. [L. '79, p. 98, § 5; Cd. '81, § 1257; 2 H. P. C., § 143.]

See note to last section.

The last part of this section, extending jurisdiction to justices of the peace, is invalid under Const., Art. IV, §§ 6, 10.

§ 5317. Note, etc., for Gambling Debt Void — Exception.—All notes, bills, bonds, mortgages, or other securities, or other conveyances, the consideration for which shall be money, or other things of value, won by playing at any unlawful game, shall be void and of no effect as between the parties to the same and all other persons, except holders in good faith without notice of the illegality of such contract or conveyance. [Cf. L. '79, p. 98, § 2; Cd. '81, § 1254; L. '91, p. 125, § 21; 2 H. P. C., § 148.]

Cited in 32 Wash. 395.

Fugitives. See §§ 2241-2256.

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TITLE XXXVIII.

GAME.

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CHAPTER I.

State Game-warden and Deputies.

§ 5318. State Fish Commissioner Ex-officio State Game-warden.—There is hereby created the office of state game-warden, and the state fish commissioner shall be ex-officio such officer. [L. '99, p. 276, § 1.]

§ 5319. Powers and Duties—Deputies.—The state game-warden shall have full control and supervision over all county game-wardens appointed in pursuance to any statute now existing on the statute books of this state, and may have the power to appoint said county game-wardens special deputy fish commissioners for the county in which said county game-wardens may reside and shall have general supervision over the enforcement and execution of all laws of this state for the protection of game animals, game birds, song birds and game fish, and shall have all the authority and powers as a peace officer conferred on county game-wardens by any law of this state. [L. '99, p. 276, § 2.]

County wardens: See note to § 5323, infra.

§ 5320. Annual Report to Governor.—The said state game-warden in connection with his report as said fish commissioner, shall annually, on December 1st, report to the governor of this state a full account of his actions as said state game-warden; also the operation and result of all laws pertaining to the protection of game animals, game birds and game fish. [L. '99, p. 276, § 3.]

§ 5321. Payment of Expenses of Deputy Fish Commissioners.—The expenses of the county game-wardens may be paid in the discretion

of the state game-warden and state fish commissioner for all services performed by them as deputy fish commissioners, upon the request or direction of said state game-warden and said state fish commissioner, and said expenses when so audited and allowed are made payable out of the fish commissioner's traveling and incidental expense fund. [L. '99, p. 276, § 4.]

§ 5322. Chief Deputy—Appointment—Salary and Duties of.—The state game-warden shall appoint one chief deputy state game-warden, who shall hold his office during the pleasure of the state game-warden, and shall receive a salary of fifteen hundred dollars ($1500) per year, to be paid in monthly installments, by the state treasurer on warrant drawn by the state auditor, and shall be allowed his actual expenses of travel in the performance of his duty, not to exceed the sum of seven hundred and fifty dollars ($750) in any one year; and no payment of salary or traveling expenses shall be made by the state auditor to said deputy state game-warden, except upon certificate of the state game-warden, that the vouchers of the deputy state game-warden are correct, that the services have been faithfully rendered and the money for traveling expenses actually expended. The duties of the chief deputy game-warden shall be to enforce all the provisions of law in reference to the protection of game and to prosecute all violations of law in reference thereto, to direct and supervise all acts of county and special deputy game-wardens, and to use all lawful ways and means to protect game and to encourage and secure the propagation thereof. [L. '05, p. 349, § 1.]

See infra, § 5356½, penalty for violating this section.

§ 5324. County Wardens Ex-officio Deputy State Wardens—Oath.—All county game-wardens shall be ex-officio deputy state game-wardens, and shall have the same powers in the enforcement of the game laws of the state as the chief deputy state game-warden, and shall be under the direction and supervision of the chief deputy state game-warden. County game-wardens shall have power to appoint special game-wardens for his county, such special game-warden shall receive no salary but shall have same authority as other game-wardens; county game-wardens before entering upon their duties shall take and file with the county auditor of his county the oath of office as prescribed for other county officers, and shall be held responsible for neglect, or nonperformance of his duties, and the county commissioners of any county may remove the county game-warden at any time for neglect or nonperformance of duty. [L. '05, p. 350, § 3.]

See infra, § 5356½, penalty for violating this section.

§ 5325. Duty of Game-warden—Certain Officers Ex-officio Game-wardens—Prosecutions.—It is hereby made the duty of every game-

warden so appointed, and every sheriff, deputy sheriff, constable, city marshal and police officer, within their respective jurisdictions in the state of Washington, to enforce all the provisions of this act, and all laws for the protection of game birds and animals, fish and song birds, and such sheriffs, deputy sheriffs, constables, city marshals, police officers, or any forest rangers appointed by the United States government, and each of them, by virtue of their election and appointment, are hereby created and constituted ex-officio game-wardens for their respective jurisdictions, and they and each of them, and each and every game-warden so appointed, under the provisions of section 5323, supra, shall have authority, and it shall be their duty to inspect all depots, warehouses, cold-storage rooms, store-rooms, hotels, restaurants, markets and all packages or boxes, held either for storage or shipment, which they shall have reason to believe contain evidence of the infraction of any of the provisions of this act. And if, upon inquiry said officer discovers evidence sufficient in his judgment to secure a conviction of the offender, or shall have good cause to believe that sufficient evidence exists to justify the same, he shall at once institute proceedings to punish the alleged offenders. [L. '97, p. 87, § 20; L. '01, p. 281, § 7.]

"This act" covers more than this chapter.

§ 5326. Authority of Warden and Other Officers to Make Arrests. Any game-warden appointed under the provisions of this chapter, any sheriff, deputy sheriff, city marshal, constable or police officer, forest ranger, may, without warrant, arrest any person by him found violating any of the provisions of this chapter, or any other act or acts hereafter enacted and enforced, at any time for the protection of game, fish and song birds, and take such person or persons before a justice of the peace or municipal judge having jurisdiction, who shall proceed without delay to hear, try and determine the matter, and give and enter judgment according to the allegations and proof. All such actions shall be brought in the name of the state of Washington and shall be prosecuted by the prosecuting attorney of the respective counties. [L. '97, p. 88, § 22; L. '01, p. 282, § 8.]

§ 5326–1. Authority to Search — Prima Facie Evidence. — Any game-wardens, any sheriff, deputy sheriff, constable or police officer, shall have power to search without warrant any person and examine any conveyance, vehicle, game bag, game basket, game coat or other receptacle for game or game fish, and all cold-storage rooms, warehouses, markets, taverns, boarding-houses, restaurants, clubs, eating-houses, saloons and other places where game or game fish may be kept or sold, and to search and examine all packages or boxes, which he has reason to believe contain evidence of the infraction of the laws of this state, for the protection of wild fowl, trout or other

game fish, game, game birds and song birds, and if upon diligent inquiry he can discover evidence sufficient in his judgment to secure the conviction of the alleged offenders or shall have cause to believe that sufficient evidence exists to justify the same he shall at once institute proceedings to punish the alleged offenders, and hindrance or interference with such search and examination shall be prima facie evidence of the violation of the laws by the party or parties who hinder or interfere with such search or examination. Any of the persons above mentioned may at any time seize and take possession of any and all game, wild fowl, game fish, game birds, song birds, or trout which has been caught, taken or killed at any time, in any manner, or for any purpose, or had in possession or under control or which have been shipped, contrary to the laws of this state. The search and seizure provided for in this act may be made without warrants. [L. '11, p. 396, § 2.]

Penalty for violating this section, see § 5364–2.

CHAPTER III.

Game Preserves, Islands, etc.

§ 5330. Establishment of County Game Preserve, Petition for.—The board of county commissioners of any county within this state may establish game reserves on any island within the borders of their respective counties, upon petition of two-thirds of the freeholders of any such island and upon the presentation of a petition signed by two-thirds of the resident freeholders of any island to the board of county commissioners of the county in which said island is situated. It shall be the duty of such board of county commissioners to designate a day upon which said petition shall be heard and to post notices to this effect in at least three conspicuous places on such island; said notices shall be posted at least ten days prior to such hearing. It may be the privilege of any resident on such island to appear at such hearing, and defend or oppose the granting of said petition. It shall be the duty of the board of county commissioners to pass upon such petition within ten days after the said hearing and if it appears to them that the said petition is the wish of two-thirds of the freeholders of the said island it shall be their duty to make an order and have same entered in the official records of the board establishing said island as a game reserve. [L. '05, p. 247, § 1.]

See infra, § 5332, penalty for violating this section.

§ 5331. Publication of Board's Order—Hunting on Reserve Prohibited.—A copy of the order of the board of county commissioners establishing any island as a game reserve shall immediately after such order is made be published three times in at least two newspapers of general circulation in the county and every person thereafter who

shall injure, take, kill or destroy or have in his possession except for breeding purposes, sell or offer for sale any deer, blue grouse, ruffed grouse, sharp-tailed grouse, American pheasants, Mongolian pheasants, golden pheasants, bobwhite quail, or California quail taken from said reserve shall be guilty of a misdemeanor. [L. '05, p. 247, § 2.]

See infra, § 5332, penalty for violating this section.

§ 5332. **Penalty for Violating Preserve.**—Every person convicted of a violation of any of the provisions of this chapter shall be punished by a fine of not less than ten dollars ($10) nor more than one hundred dollars ($100) and in default of payment of fine imposed shall be imprisoned in the county jail of the county wherein the offense was committed until such fine shall have been paid at the rate of one day for each two dollars ($2) of fine imposed. [L. '05, p. 248, § 3.]

§ 5334. **Deer on Islands—Hunting and Dogs Prohibited.**—Every person who shall at any time pursue, take, kill or injure any deer, or shall knowingly permit any dog or dogs owned by him or under his control to chase, injure or destroy any of said animals, on any of the islands, in the state of Washington, shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not less than twenty-five dollars ($25) or more than one hundred dollars. [L. '05, p. 351, § 5.]

See, also, infra, § 5395–23.
This section is superseded in part by the next section.
See infra, § 5356½, penalty for violating this section.

§ 5335. **Same—Open Season on Island in October.**—It shall be lawful during the month of October of each year to hunt for, take and kill deer on any island of the state of Washington: Provided, it shall be unlawful to hunt for or kill any deer on said islands with dog or dogs, and any person knowingly permitting any dog or dogs owned by him to pursue deer on said islands shall be guilty of a misdemeanor and punished by fine of not less than twenty-five dollars or more than one hundred dollars: Provided, further, that this section shall not apply to any islands where game preserves have been established. [L. '07, p. 515, § 2.]

§ 5336. **Hunting on Certain Islands Prohibited.**—Every person who shall, on any island in the state of Washington located in any fresh water lake, surrounded by navigable fresh water, and having an area exceeding five hundred acres, injure, take, kill, or destroy, or have in their possession except for breeding purposes, sell or offer for sale, any elk, deer, black, gray, or fox squirrels, blue grouse, ruffed grouse, sharp-tailed grouse, wild pigeons, prairie chickens, American pheasants, Mongolian pheasants, golden pheasants, bob-

white quail, California quail, or woodcock, shall be guilty of a misdemeanor. [L. '95, p. 332, § 1.]

Superseded as to killing deer by the preceding section, unless this section establishes a game preserve.

See infra, § 5338, penalty for violating this section.

This section is understood to apply only to Mercer's Island, in Lake Washington: See § 5339, infra.

§ 5338. Penalty for Violating Last Two Sections.—Every person convicted of a violation of any of the provisions of the last two preceding sections shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars, and in default of payment of fine imposed shall be imprisoned in the county jail of the county wherein the offense was committed until such fine shall have been paid at the rate of one day for each two dollars of fine imposed. All money collected from fines for the violation of the provision of the last two preceding sections shall be paid into the general fund of the county for the benefit of the public schools in said county. [L. '95, p. 333, § 3.]

§ 5339. Lake Washington Game Preserve.—It shall be unlawful to fire any gun or to kill, shoot, entrap, ensnare, maim, or destroy any wild birds at any season of the year upon the waters of Lake Washington, or within one mile of its shores, and any person who shall kill, shoot, entrap, ensnare, destroy, or maim any wild birds at any season of the year upon the waters of Lake Washington, or within one mile of the shores of said lake, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished as hereinafter provided. [L. '09, p. 98, § 1.]

Penalty: See next section.

§ 5340. Penalty for Violating Preserve.—Any person violating any of the provisions of the preceding section shall, upon conviction thereof, be subject to a fine of not less than ten dollars nor more than one hundred dollars, together with the costs of prosecution, or imprisonment in the county jail where the offense is committed for not less than five days nor more than thirty days, or by such fine and imprisonment in the discretion of the court. [L. '09, p. 98, § 2.]

§ 5341. Scientists With Certificates Excepted.—The last two preceding sections shall not apply to any person holding a certificate giving the right to take birds, their nests, or eggs, for scientific purposes, as now provided by law. [L. '09, p. 98, § 3.]

§ 5341-1. Game Preserve in Pierce County.—Any person who shall hunt, take, kill, trap, snare, maim, destroy or molest any game bird, water fowls, shore birds or deer at any season of the year in that part of Pierce county, Washington, bounded by the waters of Puget Sound and Commencement Bay, and a line beginning where

the line between townships 19 and 20 north intersects the easterly shore of Puget Sound, and running thence east to the corner common to sections 3 and 4, township 19 north, range 3 east and sections 33 and 34, township 20 north, range 3 east; thence due north to the shore of Commencement Bay, or upon the waters of Steilacoom Lake, Gravelly Lake, American Lake, Sequalitchew Lake or the islands therein, or within one mile of the shores of any of said lakes, or upon any part of sections 1, 2, 11, 12, 13, 14, 22, 23, 24, 25, 26, 27 and 28, township 19 north, range 2 east, sections 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29 and 30, township 19 north, range 3 east, and section 34 and the south half of section 27, township 20 north, range 3 east, shall be guilty of a misdemeanor: Provided, that this act shall not apply to persons holding certificates giving the right to take birds, their nests or eggs, for scientific purposes, as now provided by law. [L. '11, p. 384, § 1; L. '13, p. 382, § 1.]

§ 5341–2. Discharging Gun a Crime.—Any person who shall discharge any rifle within the above-described territory shall be guilty of a misdemeanor: Provided, that this section shall not apply to peace officers, officers or enlisted men in the United States army, and the officers and enlisted men in the National Guard of Washington, or any other state, while engaged in the performance of their respective duties as such officers or enlisted men: And provided further, that this section shall not apply to public or private shooting galleries or rifle ranges. [L. '11, p. 385, § 2; L. '13, p. 383, § 2.]

§ 5341–3. Disposition of Fines.—All fines collected under the provisions of this act shall be turned over to the county treasurer and by him placed in the game protection fund. [L. '13, p. 383, § 3.]

CHAPTER IV.

Other Than Game Birds Protected.

§ 5342. Killing Seagulls.—It shall be unlawful for any person in this state, or upon or about any of the waters or shores of this state, to take, injure, or kill, or endeavor to take, injure, or kill, any seagull of any kind or species. [L. '91, p. 29, § 1; 2 H. P. C., § 169.]

This and the next section seem to be covered by § 5345, infra.

§ 5343. Penalty for Violating Last Section.—Any person violating any of the provisions of the last section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by fine of not less than five nor more than twenty-five dollars, and in default of payment of the fine imposed shall be imprisoned in the county jail for the period of one day for each two dollars of the fine so imposed. [L. '91, p. 29, § 2; 2 H. P. C., § 170.]

§ 5344. Jurisdiction of Justices' and Other Courts.—Police justices or other magistrates of incorporated cities or towns, and justices of the peace (not excluding the jurisdiction of other courts), shall have jurisdiction over all proceedings under the last two sections. [L. '91, p. 29, § 3; 2 H. P. C., § 171.]

§ 5345. Possession or Sale of Birds Prohibited — Game Birds Enumerated.—No person shall, within the state of Washington, kill or catch or have in his or her possession, living or dead, any wild bird other than a game bird, or purchase, offer or expose for sale, transport or ship within or without the state, any such wild bird after it has been killed or caught, except as permitted by this act. No part of the skin, plumage or body of any wild bird protected by this section shall be sold or had in possession for sale. For the purposes of this act the following only shall be considered game birds: The anatidae, commonly known as swans, geese, brant, and river and sea ducks; the rallidae, commonly known as rails, coots, mud hens and gallinules; the limicolae, commonly known as shore birds, plovers, surf birds, snipe, sand-pipers, tatlers and curlews; the gallinae, commonly known as grouse, prairie chickens, pheasants, partridges and quail. [L. '03, p. 256, § 1. Cf. L. '97, p. 86, § 16; Bal. Code, § 7360.]

"Act" refers to the chapter, except the first three sections.

§ 5346. Destruction of Nests and Eggs Prohibited. — No person shall, within the state of Washington, take or needlessly destroy the nest or the eggs of any wild bird other than a game bird, or have such nest or eggs in his or her possession, except as permitted by this act. [L. '03, p. 257, § 2. Cf. L. '97, p. 86, § 17; Bal. Code, § 7361.]

§ 5347. Violations — Penalties — Disposition of Fines.—Any person who violates any of the provisions of this act shall be guilty of a misdemeanor, and shall be liable to a fine of not less than ten nor more than one hundred dollars for each offense and an additional fine of one dollar for each bird, living or dead, or part of bird or nest, or set of eggs, or part thereof, possessed in violation of this act, together with the costs of prosecution in such action, or to imprisonment for thirty days in the county jail, or both, at the discretion of the court. All fines collected under the provisions of this act shall be turned over to the treasurer of the county in which such action is brought, and by him placed in the game protection fund. [L. '03, p. 257, § 3.]

§ 5348. Exception as to Scientific Purposes.—The three preceding sections shall not apply to any person holding a certificate giving the right to take birds, their nests or eggs for scientific purposes, as provided for in the next section. [L. '03, p. 257, § 4.]

§ 5349. Certificates for Scientific Purposes—Procedure to Obtain. The chief game-wardens are authorized and empowered to issue permits for the collection of birds, their nests and eggs for scientific purposes only. Before any such permit shall issue, the applicant therefor shall file an application in writing stating his name, age, place of residence, which application shall be accompanied by a certificate signed by the president or the curator of the museum of either the University of Washington of [or] the State College of Washington, certifying that the applicant is a person of good moral character and is possessed of sufficient scientific knowledge of ornithology to warrant the issuance of such permit and the applicant shall file a bond running to the state of Washington with good and sufficient surety to be approved by the state game-warden in the penal sum of one thousand dollars, and conditioned for the faithful compliance with all of the provisions of this section: Provided, however, that the state game-wardens may issue permits to any accredited representative of any museum or institute of natural history of the United States or of any state presenting credentials under the seal of such museum or institute. All permits issued as hereinabove provided shall be valid for a period of one year from the first day of April in the year in which they are issued. It shall be unlawful for any person having a permit issued under the provisions of this section to sell or offer for sale any specimens collected but the holder of any such permit may exchange such specimen with any state university or any museum or institute of natural history of the United States or any state or with any individual holding a similar permit from the authorities of another state.

Every person violating any of the provisions of this section shall forfeit his permit and the bond required for the issuance of the same and shall be prohibited from being issued a similar permit for the period of five years. [L. '15, p. 429, § 6. Cf. L. '03, p. 257, § 5.]

§ 5350. Term of Certificates.—The certificates authorized by this act shall be in force one year only from the date of issue, and shall not be transferable. [L. '03, p. 258, § 6.]

"Act" refers to this chapter except the first three sections.

§ 5351. Exception as to Birds Destroying Fruit or Grain.—The English or European house sparrow, jays, magpies and chicken hawks, are not included among the birds protected by this act, and the provisions of this act shall not apply to any person who shall kill any bird on his own inclosed premises while such bird is destroying fruit or grain. [L. '03, p. 258, § 7.]

See note to preceding section.

CHAPTER V.

Prohibited Purposes, Appliances, and Methods of Hunting.

§ 5352. Killing Deer, Elk, etc., for Hides Prohibited.—Every person who shall, within the state of Washington, at any time, take, kill or destroy any deer, moose, elk, caribou, antelope, mountain sheep or goat for the skin, hide or horns of such animal, or who shall kill any of said animals unless the carcass thereof is used or preserved for food, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as hereinafter provided. [L. '97, p. 83, § 6.]

See infra, § 5358½, penalty for violating this section.

§ 5353. Not to Fire-hunt, Trap, nor Ensnare Deer, Elk, etc.—Every person who shall, within the state of Washington, fire-hunt for deer, moose, elk, antelope, caribou, mountain sheep or goat, or trap, ensnare or set up any traps, swivel, pivot or spring-guns, pit-falls, or other devices for the purpose of trapping, ensnaring or killing deer, elk, moose, caribou, antelope, mountain sheep or goat, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as hereinafter provided. [L. '97, p. 83, § 5.]

See, also, infra, § 5395–24.

See infra, § 5358½, penalty for violating this section.

§ 5355. Exceptions. — The provisions of sections 5352–5354 and 5357–5358½ inclusive shall not apply to persons engaged in prospecting for mines of precious minerals upon the public domain to the extent of the personal need only of such prospector. [L. '97, p. 88, § 23.]

For the most part, this section is now superseded by the present laws governing the closed season.

The sections are substituted for Bal. Code, §§ 7345–7366.

§ 5356½. Penalty.—Anyone violating any of the provisions of this act for which a penalty is not hereinbefore provided, shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not less than ten dollars ($10) nor more than fifty dollars ($50) or imprisonment in the county jail not less than ten days nor more than thirty days, or by both such fine and imprisonment. [L. '05, p. 353, § 13.]

"Act" refers to §§ 5322–5324, 5334, 5356, 5359, 5363½, 5370, and 5373.

§ 5357. Nest-robbing Prohibited.—Every person who shall, within the state of Washington, at any time, destroy or remove from the nest the egg or eggs of any wild duck, geese, or other water fowl; or the egg or eggs of any Mongolian or native pheasant, grouse, ptarmigan, prairie chicken, sage hen, partridge, quail or bobwhite, or of any other wild fowl, or have in his possession, sell or offer for

sale, any such egg or eggs, or willfully destroy the nest of any such wild fowl, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as hereinafter provided. [L. '97, p. 84, § 11.]

See infra, § 5358½, penalty for violating this section.

§ 5358. Use of Sink-boxes, Sneak Boats, etc., Prohibited.—Every person who shall use any sink-box or sink boat or sneak boat for the purpose of shooting wild ducks, geese, swan or other water fowl, or who shall use any battery, swivel or pivot gun, or any gun other than one to be held in the hands and fired from the shoulder, at any time, for the purpose of shooting wild ducks, geese, swan, brant or other water fowl; or who shall build any structure in any of the waters of this state for the purpose of shooting therefrom wild ducks, geese, swan, or other water fowl; or who shall at any time between one-half hour after sunset and one-half hour before sunrise fire off any gun or build any fire or flash any light, or burn any powder or other inflammable substance upon the shores of any feeding grounds frequented by wild ducks, geese, swan or other water fowl, with intent thereby to shoot, kill, injure, destroy or disturb any of such water fowl, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as hereinafter provided.

The term "sneak boat" as used in this act shall be deemed to mean any boat, skiff, steam or gasoline launch, or floating battery, except an ordinary open rowboat or canoe propelled by hand with side oars, such oars to be not less than five (5) feet in length and one oar to be used on each side of the boat or canoe. All occupants of such boat or canoe to be in an upright position so that at all times they shall be visible from the waist up while in pursuit of such ducks, geese, brant or other water fowl. [L. '13, p. 90, § 1. Cf. L. '97, p. 84, § 10.]

See infra, § 5358½, penalty for violating this section.

§ 5358½. Penalty, Defined — Possession Prima Facie Evidence.—Every person convicted of any of the misdemeanors defined in the foregoing sections 5352–5354 and 5357–5358 inclusive shall be punished by a fine of not less than ten dollars nor more than one hundred dollars, together with the costs of the prosecution in such action, and in default of the payment of said fine, shall be imprisoned in the county jail one day for each two dollars of such fine; and upon the trial of any person, agent or employee of a company or corporation, proof of the possession of the wild animals, birds, or song birds, when it is unlawful to take, kill or have same, shall be prima facie evidence that the said wild game animal, game bird, or song bird, was unlawfully taken or killed by the person having possession of same. [L. '97, p. 86, § 18.]

Sections substituted for Bal. Code, §§ 7345–7361.

§ 5359. **Blinds Allowed.**—It shall be lawful within the time herein when any goose, duck or brant may be killed, to hunt or pursue them from any blind or obstruction: Provided, that this shall not be construed to include sneak boats. [L. '05, p. 353, § 12.]

CHAPTER VI.

Open Season, Bag Limit, Prohibited Places, Possession, Sales, etc.

For former game laws, see the following:

Closed season for deer, etc., see L. '97, p. 82, §§ 2, 4; L. '99, p. 277, § 1; L. '01, p. 279, § 2; L. '03, p. 94, § 1.

Closed season for moose, caribou, elk, mountain sheep, etc., see L. '97, p. 82, § 1; L. '01, p. 297, §§ 1, 2; L. '03, p. 95, § 2.

Quail—Closed season for, see L. '03, p. 96, § 7. Okanogan county—Quail protected until 1912, see L. '07, p. 515, § 3.

Closed season for grouse, partridges, prairie chicken, sage hen, pheasant, etc., see L. '97, p. 83, § 7; L. '97, p. 85, § 15; L. '01, p. 233, § 1; L. '01, p. 280, § 3; L. '03, p. 95, § 3.

Closed season for all male pheasants in Western Washington, see L. '05, p. 352, § 10.

Mongolian or imported pheasants—Closed season, see L. '07, p. 514. § 1.

Pheasants protected in Skagit and Snohomish counties until 1911—Penalty, see L. '09, p. 632, §§ 1, 2.

Partridge, quail and pheasants, protected until 1912, see L. '09, p. 388, § 1.

Limit—Prairie chickens, grouse, pheasants, etc., see L. '03, p. 96, § 4.

Limit—Ducks, geese, snipe, brant—No shooting from launch, see L. '03, p. 96, § 6.

Rail, plover—Closed season—Bag limit, see L. '97, p. 83, § 8; L. '99, p. 7. § 1; L. '01, p. 280, § 4.

Closed season—Wild geese and brant, see L. '05, p. 353, § 11.

Unlawful to hunt water fowl in certain counties, see L. '05, p. 352, § 8.

Ducks, geese, etc.—Close season for, see L. '03, p. 96, § 5.

§ 5360. **Deer, Mountain Sheep and Caribou—Open Season—Limit—Killing in Water.**—Every person who shall, within the state of Washington at any time between the first day of November and the first day of September of the following year, hunt, pursue, take, kill, injure, destroy or possess any deer, mountain goat, mountain sheep or caribou, shall be guilty of a gross misdemeanor, and upon conviction thereof shall be punished as hereinafter provided. Every person who shall, within the state of Washington, during the season when it is lawful to kill same, take or kill more than two deer, or shall kill any female deer or spotted fawn, shall be guilty of a gross misdemeanor, and, upon conviction thereof, shall be punished as hereinafter provided. Every person who shall at any time shoot or kill in any manner a deer when such deer is in any river or lake, or body of salt water, or shall hunt or chase deer with dogs, shall be deemed guilty of a gross misdemeanor, and upon conviction thereof shall be punished as hereinafter provided. [L. '11, p. 395, § 1. Cf. L. '09, Ex. Sess., p. 42, § 1.]

Cited in 87 Wash. 656.
Penalty for violating this section, see § 5364–2.
See infra, § 5369, penalty.

§ 5363½. Geese and Water Fowl on the Columbia and Snake Rivers.—It shall be unlawful to hunt, pursue, catch, or kill any of the geese, brant, or other water fowl upon the Columbia or Snake rivers within this state or within one-fourth mile of the shores throughout the following named counties: Klickitat, Walla Walla, Franklin, Yakima, Kittitas, Douglas, Columbia, Garfield, Benton, Grant and Whitman counties. [L. '15, p. 429, § 5. Cf. L. '05, p. 352, § 8.]

See supra, § 5356½, penalty for violating this section.

§ 5364–1. Notice of Liberation of Imported Birds.—Whenever any species of game birds shall have been liberated in any county of this state by the county game commissions, such commissions may, with the consent of the owners of the land, close all or any portion of the county by giving notice thereof by publication for three successive weeks in a newspaper published in the county and thereafter it shall be unlawful to hunt, take, kill or molest any such species of birds within such designated area for not to exceed three (3) years after the date of the first publication of such notice. Any person violating any of the provisions of this section shall be guilty of a misdemeanor. [L. '15, p. 429, § 4. Cf. L. '11, p. 397, § 5.]

Penalty for violating this section, see § 5364–2.

§ 5364–2. Penalty.—Any person violating any of the provisions of this act shall be guilty of a misdemeanor. [L. '11, p. 397, § 6.]

"Act" in this section refers to sections 5360, 5326–1, 5365–1, 5391-1, and 5364–1.

§ 5365–1. Sale of Birds.—It shall be unlawful for any person at any time to sell or offer for sale any of the song birds, game birds or game animals protected by the laws of the state of Washington. [L. '11, p. 397, § 3.]

Penalty for violating this section, see § 5364–2.
See infra, § 5369, penalty.

§ 5366. Each Killing Separate Offense.—The killing of any bird or single animal protected by the laws of the state shall constitute an offense, and each bird or animal so killed shall constitute a separate offense. [L. '09, Ex. Sess., p. 46, § 7.]

See infra, § 5369, penalty.

§ 5368. Fines — Disposition — Share to Informer.—Every person other than a regular salaried game-warden or peace officer entering a complaint that any of the provisions of this act are violated and a conviction is secured thereon, shall be entitled to one-half of the fine imposed and collected by the court in such action: Provided, that

said reward to the informer shall never exceed the sum of twenty-five dollars. [L. '09, Ex. Sess., p. 46, § 9. Cf. L. '97, p. 87, § 21; Bal. Code, § 7365; L. '03, p. 98, § 13.]

§ 5369. Penalty — Misdemeanor. — Every person violating any of the provisions of this act shall be deemed guilty of a misdemeanor. [L. '09, Ex. Sess., p. 46, § 10.]

"This act" refers to the preceding sections of this chapter, except § 5663½.

§ 5370. Elk Protected Until 1915—Closed Season After 1915.— After the passage of this act and until October 1, 1915, it shall be unlawful to hunt, pursue, capture or kill any of the elk (cervus alces, or cervus conadensis) within the state of Washington. After 1915 it shall be unlawful to hunt, pursue, capture or kill any of the elk (cervus alces, or cervus conadensis) within the state of Washington between the first day of November of any year and the fifteenth day of September of the following year. No person shall within the state of Washington during the season when it is lawful to kill the same, kill more than one of the male elk (cervus alces or cervus conadensis). Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500), or be imprisoned in the county jail not less than thirty days nor more than ninety days, or by both such fine and imprisonment in the discretion of the court. [L. '05, p. 351, § 7.]

"This act" refers to Laws of 1905.
Penalty: See § 5356½, supra.

§ 5373. Nonresidents Permitted to Remove Game — Affidavit. — Every nonresident or nonresident alien who shall have procured a license to hunt in this state, shall be entitled to take from the state all game animals killed by him, not to exceed the number of each of said game animals as is allowed by law to be killed in any one year, and game birds killed by him not to exceed the number allowed by law to be killed by any person in any one day; but before any person shall be entitled to take any such game out of this state he shall make an affidavit before a notary public or other officer having a seal, stating that the game to be so removed from the state was killed by him in a lawful manner, and that the said game is not being exported for the purpose of sale. Such affidavit shall describe said animals or birds and shall be attached to said animals or birds while in transit from the state. [L. '05, p. 350, § 4.]

See supra, § 5356½, penalty for violating this section.

§ 5374. Shipments of Quail and Pheasants Prohibited from San Juan and Island Counties.—Any person, persons or corporation who

shall take away, ship or transport from the islands comprised within the limits of the boundaries of either San Juan or Island counties in the state of Washington, any quail or bobwhite, or any Chinese, English, golden, Reeves, Mongolian, silver, black-neck, or Japanese pheasants shall be guilty of a misdemeanor, and upon conviction of any violation of the provisions of this act, shall be punished by a fine of not less than ten dollars ($10) or more than one hundred dollars ($100) for each offense, or imprisonment in the county jail for a period of not less than thirty days, nor more than six months, or by both fine and imprisonment in the discretion of the court. [L. '09, p. 644, § 1.]

"Act" refers to §§ 5374–5377.

§ 5375. Each Bird Shipped a Separate Offense.—Each bird so shipped, taken away, or transported from said islands as aforesaid shall constitute a separate offense under this act. [L. '09, p. 644, § 2.]

See note to § 5374.

§ 5376. Act does not Apply to Breeders.—The provisions of this act shall not apply to any person, or persons or corporation who may be engaged, or shall hereafter be engaged in the business of propagation, raising or breeding of any aforesaid described birds; or to any of said birds which may have been propagated, bred and raised in captivity for commercial or domestic purposes. [L. '09, p. 644, § 3.]

See note to § 5374.

§ 5377. Act Applies to Game Birds Only.—This act only applies and is intended to apply to wild game birds, such as have been described herein. [L. '09, p. 645, § 4.]

See note to § 5374.

§ 5378. Sales of Propagated Game Permitted.—It shall be lawful for the owner of any game bird, game fish or game animal who has propagated the same or purchased the same from persons who have propagated them to sell or dispose of by gift for propagation purposes only, and to ship the same at any season of the year. [L. '09, p. 702, § 1.]

CHAPTER VII.

Game Fish.

§ 5381. Trout to be Taken Only with Hook and Line.—Every person who shall, within the state of Washington, take, catch, or destroy, with any seine, net, weir, trap, or other device, other than hook and line, any mountain trout, brook trout, bull trout, or salmon trout, in any of the waters of the state of Washington, shall be guilty of a misdemeanor. [Cf. L. '88, p. 98, § 9; L. '91, p. 179, § 2; 2 H. P. C., § 269.]

See infra, § 5383, penalty.

§ 5382. Possession Presumption of Unlawful Taking. — Every person who shall, within the state of Washington, have in his possession any of the . . . . fish mentioned in section 5380, at any time when by any of said section it is made unlawful to take or kill the same, shall be guilty of a misdemeanor; and proof of the possession by any person of any of the aforesaid . . . . fish, when it is unlawful to take or kill the same, shall be prima facie evidence that the . . . . fish were unlawfully taken or killed by the person having possession of the same, within the county wherein the same may be found. [Cf. L. '88, p. 98, § 10; L. '91, p. 132, § 43; 2 H. P. C., § 270.]

This section is superseded in part by the last chapter, and is retained as applicable to fish only.

§ 5383. Penalty for Violation of Certain Preceding Sections.— Every person who shall, within the state of Washington, be convicted of a violation of any of the provisions of sections 5380 and 5381, shall be punished by a fine of not less than ten dollars and not more than three hundred dollars, together with the costs of prosecution, or imprisonment in the county jail where the offense is committed not less than five days nor more than three months, or both such fine and imprisonment. One-half of all moneys collected from such fines for a violation of any of the provisions of said sections shall be paid to the informer, and one-half to the county in which the case is prosecuted. [L. '88, p. 99, § 14; 2 H. P., § 273.]

§ 5387. Fish Commissioner may Take Game Fish Within Mile of Hatcheries.—It shall be lawful at all times for the state fish commissioner, the general superintendent of state fish hatcheries, and assistants, to take trout and other game fish by means of hook and line or nets at any place within one mile of any state fish hatchery operated for the propagation of salmon: And provided, that the provisions of this section shall also apply to superintendents of salmon hatcheries operated by the United States bureau of fisheries in this state. [L. '09, p. 646, § 3.]

§ 5388. Closed Season — Trout, Bass, Pickerel, Pike — Eastern Washington.—It shall be unlawful for any person in the state of Washington in any of the counties lying east of the western boundary of the counties of Okanogan, Chelan, Kittitas, Yakima, and Klickitat, to take, capture, catch or kill in any of the lakes or streams therein, or have in their possession after the same has been so unlawfully taken, any trout, bass, perch, pickerel, or pike, between the first day of November and the first day of May of the following year. [L. '09, p. 578, § 1.]

See infra, §§ 5392, 5393.

§ 5390. Limit of Catch.—It shall be unlawful for any person to take, capture, catch or kill more than twenty pounds of trout, bass

or perch in any one day and no person shall have in his or her possession at any one time more than thirty pounds of such trout, bass or perch, which may have been caught in the waters above described. [L. '09, p. 579, § 4.]

See note to last section.

§ 5391. Penalty.—Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor and upon conviction shall be fined not less than ten dollars nor more than two hundred dollars, together with the costs of prosecution of such action, and in default of the payment of any fine imposed under this act, shall be imprisoned in the county jail one day for each two dollars of such fine. [L. '09, p. 579, § 5.]

"Act" refers to this and the last two preceding sections.

§ 5391-1. Notice of Stocked Streams or Lakes.—Whenever the chief game-warden, or the chief deputy or any of the county game commissions of the respective counties of the state shall consider that the protection of the game fishes mentioned in this act shall require it, the chief game-warden or the chief deputy game-warden, anywhere in the state, or the county game commissions, within their respective counties, may close to fishing any stream, river or lake, or portions thereof, for such time and in such manner as they may declare, in the following manner, to wit: They shall post in the office of the county auditor of the county or counties in which the stream or streams or lakes desired to be closed are situated, a notice that on a date set out in said notice, which date shall not be less than thirty (30) days from the date of the notice, said stream or streams, or lakes will be closed to public fishing, and shall cause a like notice to be published weekly, in some newspaper published in said county or counties, for not less than four (4) successive issues.

Any person fishing in that part or portion of said lake, stream or streams after it shall have been closed, as by this act provided, shall be guilty of a misdemeanor. [L. '15, p. 428, § 3. Cf. L. '11, p. 397, § 4.]

Penalty for violating this section, see § 5364-2.

§ 5392. **Garfield and Columbia Counties Excepted.**—Provided, that this act shall not apply to Garfield or Columbia counties. [L. '09, p. 579, § 7.]

"Act" refers to §§ 5388-5392.

§ 5393. **Trout—Closed Season in Chelan County—Lake Chelan.**—It shall not be lawful for any person or persons to take, capture, catch or kill from any of the lakes or streams within the county of Chelan, or to have in their possession after the same have been taken, captured, caught or killed, any trout between the first day of April and

the tenth day of June in each year: Provided, that it shall be lawful to take with hook and line only, from Lake Chelan in said county, at any time of the year, except between the first day of April and the tenth day of June, trout not exceeding in amount that which shall be actually used as food at home or in camp along the shore of said lake; and provided, further, that it shall be unlawful to waste, sell, salt or pack for future use, any trout taken from any of the waters of said Chelan county; and provided, further, that it shall be unlawful for any persons to fish with spawn, or trout eggs in said lake or in any of the streams emptying into it; and that it shall be unlawful to fish or to take fish in any way or at any time from any stream tributary to Lake Chelan on which a state hatchery is located. [L. '03, p. 54, § 1; L. '05, p. 83, § 1; L. '07, p. 574, § 1.]

See, also, supra, § 5388.

§ 5393-1. Black Bass and Perch in Silver Lake, Cowlitz County.—Every person who shall—

(1) Fish for or catch black bass or perch in the waters of Silver Lake, in Cowlitz county, between the fifteenth day of April and the fifteenth day of June in any year, or

(2) Fish for, or catch black bass or perch in the waters of such lake at any time except with hook or line, or

(3) Catch more than twelve black bass or twenty-five perch in the waters of such lake, in any one day,

—Shall be guilty of a misdemeanor. [L. '11, p. 299, § 1.]

§ 5394. Penalty.—Any person violating the provisions of the last section shall be guilty of a misdemeanor and subject to a fine of not less than twenty-five dollars ($25) nor more than one hundred dollars ($100). [L. '03, p. 54, § 2.]

§ 5395. Repeal.—All other laws relating to the close season for trout and other game fish shall be inoperative in the said county of Chelan after the passage of this act. [L. '03, p. 54, § 3.]

CHAPTER VIII.

Game Code of 1913.

§ 5395-1. County Game Commission.—A county game commission is hereby created, the said game commission to consist of three residents of each county, and there shall be a county game commission for each county in this state. [L. '13, p. 356, § 1.]

Cited in 82 Wash. 655; 87 Wash. 654.

§ 5395-2. Chief Game-warden and Deputy—Appointment—Compensation.—There shall be appointed by the governor a chief game-warden who shall reside west of the Cascade Mountains and a chief deputy game-warden who shall reside east of the Cascade Mountains.

The chief game-warden and chief deputy game-warden shall each receive not to exceed the sum of eighteen hundred dollars ($1,800) per year and their necessary traveling expenses while engaged in their official duties, to be paid out of the money received from the state game and fishing licenses to be collected under the provisions of the laws of this state, provided there are sufficient funds received into the state game fund hereafter created with which to make such payments. Traveling expenses shall be first paid, and if there is not sufficient money to pay the full salaries hereby provided for the funds in said fund shall be paid pro rata to the said chief game-warden and chief deputy game-warden. The county game commission shall be appointed on the recommendation of the board of county commissioners of each county and the appointment of such commissioners for all counties west of the Cascade Mountains shall be made by the chief game-warden, and the appointment of all game commissioners east of the Cascade Mountains shall be made by the chief deputy game-warden. The said appointments shall be made upon the recommendation of the county commissioners, but in case the county commissioners fail to recommend such county game commissioners for appointment upon the request of said state game-wardens within ten days after written notice so to do, then and in that case the chief game-warden may appoint in counties west of the Cascade Mountains, and the chief deputy game-warden may appoint for counties east of the Cascade Mountains. The game commission for each county shall appoint a county warden. Each county warden shall receive a salary of not less than twenty-five dollars ($25) per month nor more than one hundred and twenty-five dollars ($125) per month, the amount of which shall be fixed by the county game commission of each county and shall be paid solely out of the money received from county game licenses and fines, and no salary shall be fixed by said commission in excess of the amounts of the receipts herein provided for. The county [state] game-warden and the chief deputy game-warden shall have general supervision and control of the county game-wardens and county deputy wardens, and may transfer them on official business from one county to another whenever in their judgment it is advisable so to do. [L. '13, p. 357, § 2.]

§ 5395–3. **Annual Reports of Warden.**—It shall be the duty of each county warden to make a report annually to the state game-warden or the chief deputy game-warden, in whose jurisdiction he may reside, and the chief deputy game-warden shall make a report annually to the chief game-warden, and the chief game-warden shall biennially make a report to the governor of the state, which said report shall contain all the information concerning the acts of the county game-wardens, and all such other acts connected with

the enforcement of the game laws as may come to his notice. The chief game-warden and the chief deputy game-warden, the game commissions and the county wardens shall have jurisdiction to enforce all of the laws of the state relating to game birds, game animals and game fish. The county game commission shall have an office in the office of the county commissioners at the county seat. [L. '13, p. 358, § 3.]

§ 5395–4. Duties of County Game Commission.—Said county game commissioner[s] shall enforce the laws of the state within their respective counties involving the protection and propagation of all game birds, game animals, game fish and harmless birds and animals. Said county game commission shall have charge of:

1. The propagation and preservation of such varieties of game and game fish as it shall deem to be of public value.

2. The collection and diffusion of such statistics and information as shall be germane to the purpose of this act.

3. The construction, control and management of all county game and game fish hatcheries, including the control of grounds owned or leased for such purposes: Provided, that whenever any county game commission desires to establish a game fish hatchery it shall be the duty of the state fish commissioner to supervise the erection of such hatchery and the planting of any fish fry taken from such hatchery: And provided further, that no person in the state of Washington shall plant any fish or fish fry in any of the bodies of water in the state of Washington without the written consent of the state fish commissioner.

4. The receiving from the United States commissioner or other person, and the gathering, purchase and distribution to the waters of this state of all game fish, spawn or fry.

5. The taking of game fish from the public waters of the state for propagation and stocking of other waters therein.

6. The seizure and disposition of all game birds, game animals and game fish, either taken, killed, transported or possessed contrary to laws, and of all dogs, guns, seines, nets, boats, lights or other instrumentalities unlawfully used or held with intent to use in pursuing, taking, attempting to take, concealing or disposing of the same.

7. The county game commission[s] in their respective counties shall have the power and authority to set aside any of the state, school or granted lands, all waters lying below extreme low tide, all waters of meandered streams, rivers and lakes lying beyond the outer harbor area, and such other lands as the individual owners thereof from time to time give their consent and approval in writing, as game preserves wherein no game bird or game animal or game fish

can be caught or killed within the boundaries thereof, for such time and so long as they may see fit and proper.

8. The county game commissioners shall be paid out of the county game fund their actual traveling expenses when actually engaged in the transaction of their official duties, the said accounts to be approved by the chief game-warden for those counties lying west of the summit of the Cascade Mountains, and by the chief deputy game-warden for those counties lying east of the summit of the Cascade Mountains. The chief game-warden and chief deputy state game-warden shall also have authority, when occasion demands, each to appoint not more than two (2) deputy state game-wardens and assign them to such places in the state as in their judgment they deem necessary. Such special deputies shall receive a per diem of not to exceed three dollars ($3) per day and necessary traveling expenses. Such per diem and traveling expenses shall be paid from the state game fund. It shall be unlawful for any county game-warden or his deputy to hunt, take, pursue or kill any game bird, game fish or game animal at any time while in the discharge of his official duties. Any such officer violating the provisions of this section shall be guilty of a misdemeanor. [L. '15, p. 431, § 8. Cf. L. '13, p. 358, § 4.]

Cited in 82 Wash. 655, 656, 663.

§ 5395–5. Fiscal Report to County Auditor.—Said county game commission shall, on or before December 1st of each year, submit to the county auditor a detailed report of their actions, including the amount of money received from all sources, an inventory of all game, fish, guns, dogs, seines, nets, and other property seized and sold or destroyed, with the names of the purchasers and the amount received, and an itemized statement of their disbursements. The books and vouchers of said county game commission shall be subject to examination by the public examiner at all times. [L. '13, p. 359, § 5.]

§ 5395–6. Employees.—The county game commission may appoint and employ a sufficient number of deputy game-wardens and office assistants as may be necessary to carry out the purposes of this chapter, and fix their periods of service and compensation. [L. '13, p. 360, § 6.]

§ 5395–7. Execution of Writs.—The state game-wardens, the county game commission and county game-warden, and all deputy game-wardens appointed by them, shall have full power and authority to serve and execute all warrants and process of the law issued by the courts in enforcing the provisions of this act, or any other law of this state, relating to preservation and propagation of game and game fish, in the same manner as any constable or sheriff

may serve and execute the same; and for the purpose of enforcing any game laws of this state they may call to their aid any sheriff, deputy sheriff, constable or police officer, or any other person, and it shall be the duty of all sheriffs, deputy sheriffs, constables or police officers and other persons, when so called upon, to enforce and aid in enforcing any game laws of this state. The state game-wardens, the county game commission, the county game-warden and deputy game-warden shall have the power to arrest without a warrant any person or persons found in the act of violating any law enacted for the purpose of protecting or propagating game or game fish. [L. '13, p. 360, § 7.]

§ 5395-8. Bonds.—All appointees shall give bonds to be approved by the county game commission, and said bonds filed in the office of the county auditor, conditioned for the faithful discharge of their respective duties as follows: Each regular deputy [county] game-warden one thousand dollars. [L. '13, p. 360, § 8.]

§ 5395-9. Terms Defined—Agency No Excuse.—The words "sell" and "sale" as used shall be construed as meaning a sale or offer to sell or having in possession with the intent to sell, use or dispose of the same contrary to law. The word "person" shall be deemed to include partnerships, associations and corporations, and no violation of any of the provisions of the game law shall be excused for the reason that the prohibited act was done as the agent or employee of another, or that it was committed by or through an agent or employee of the person charged. The word "possession" shall be deemed to include both actual and constructive possession as well as control of the article referred to. The terms "waters of the state" shall be held to include all the boundary waters of the state, and the laws of this state shall be deemed to extend and be in force and effect over, upon and in all waters thereof. The terms "any part thereof" or "the parts thereof" whenever used shall be deemed to include the hides, horns, and hoofs of any animal so referred to, and the plumage and skin and every other part of any bird so referred to. The term "fur-bearing animals" shall not be deemed to include deer, elk, moose, caribou, mountain goat, mountain sheep, or gray squirrel. [L. '13, p. 361, § 9.]

§ 5395-10. Inspection of Hotels, etc.—The state game-wardens or any member of the county game commission, the county game-warden or any deputy game-warden may, at his discretion, from time to time inspect hotels, restaurants, cold-storage houses or plants and ice-houses commonly used in storing meats, game or fish for private parties, including all buildings used for a like purpose, for the purpose of determining whether game or game fish are kept

therein in violation of the laws of this state. Any person in possession or control, or in charge of any hotel, restaurant, storage plant or building referred to, or any part thereof, who refuses or fails to permit the state game-wardens, the county game-warden or any deputy game-wardens to enter any such building, or any part thereof, or any receptacle therein, for the purpose of making such inspection, is guilty of a gross misdemeanor. [L. '13, p. 361, § 10.]

§ 5395–11. Contraband Game, Seizure and Search.—Any game bird, game animal, game fish or any part thereof, caught, killed, shipped or had in possession or under control, contrary to any of the laws of this state, is hereby declared to be contraband. The state game-wardens, the county game commission, the county game-warden or any deputy game-warden, sheriffs and their deputies, constables and police officers, shall seize and take possession of any and all game birds, game animals or game fish, or any parts thereof, which have been caught, taken or had in possession or under control or shipped contrary to any of the laws of this state. Any court having jurisdiction shall, upon complaint showing probable cause for believing that any game bird, game animal, game fish, or any part thereof, caught, taken, killed or had in possession, or under control by any person, or shipped or transported contrary to the laws of the state, is concealed or illegally kept in any building, car or receptacle, issue a search-warrant and cause a search to be made in any such place for any game birds, game animals, game fish, or any part thereof, and may cause any building, inclosure or car to be entered and any apartment, chest, box, locker, crate, basket, package, or any other receptacle, whatsoever kind or description, to be broken, opened and the contents thereof examined. All such officers taking or seizing any such game birds, game animals, game fish, or any part thereof, shall at once report all the facts attending the same to the county game commission. [L. '13, p. 362, § 11.]

§ 5395–12. Contraband Device.—All nets, seines, lanterns, snares, devices, contrivances and materials while in use, or had and maintained for the purpose of catching, taking, or killing, or attracting, or deceiving any game bird, game animal, or game fish, contrary to any of the laws of this state, within this state, or upon or within the boundary thereof, including fish-houses, inclosures or other sheltering structures or appliances erected or maintained in any waters, or on the shores of any lake, pond or stream is hereby declared to be a public nuisance. The state game-wardens, the county game commission and their deputies, sheriffs and their deputies, constables and police officers, shall, without warrant or process, take, seize, abate or destroy any and all of the same while being used, had or maintained for such purpose, and no liability shall be incurred therefor to any person. [L. '13, p. 362, § 12.]

§ 5395-13. Witnesses.—In any prosecution under the laws of this state a participant in the violation thereof may testify as a witness against any other persons violating the same, without incriminating himself in so doing. The evidence so given shall not be used in any criminal proceedings against such witness. [L. '13, p. 363, § 13.]

§ 5395-14. Exchange Specimens.—The state game-wardens or the county commission may secure by purchase or otherwise, or by exchange, specimens of game birds, game animals, or game fish, with the game commission or game-wardens of other counties and states for propagating purposes and not otherwise, and may also grant permission under the seal of said commission to any accredited representative of any incorporated society of natural history to collect for scientific purposes only, nets, eggs, game birds, game animals or game fish protected by the laws of this state. Such specimens shall not be sold or transferred. [L. '13, p. 363, § 14.]

§ 5395-15. Disposition of Fines.—All fines collected and bonds forfeited under any of the game laws of this state shall be paid into the county treasury of the county wherein the conviction was had and placed to the credit of the county game fund to be used only for the protection and propagation of game birds, game animals and game fish. [L. '13, p. 363, § 15.]

§ 5395-16. Disposition of Other Moneys.—All moneys collected by the county game commission upon licenses issued by it, including moneys received for fines and other sources, shall be paid into the county treasury and credited to the game fund, and be used for the purpose of propagating and enforcing the game laws of this state within their respective counties. [L. '13, p. 364, § 16.]

§ 5395-17. Rewards.—Every person, other than a regular salaried game-warden or peace officer, entering a complaint that any of the provisions of this act are violated and a conviction thereon is secured shall be entitled to one-half of the fine imposed and collected by the court in such action: Provided, that said reward to the informer shall not exceed the sum of twenty-five dollars ($25). [L. '13, p. 364, § 17.]

§ 5395-18. Obstructing Commission.—No person shall obstruct the state game-warden, the county game commission, or any county game-warden or deputy game-warden, while engaged in gathering game fish spawn; nor shall any person place in any stream or river any logs or other debris at any time when said state game-wardens, county game commission and their employees are gathering spawn, or about to gather spawn or catch fish for that purpose, in any such stream or river or body of water: Provided, this does not apply to log or shingle-bolts for commercial purposes. Any person violating any of the provisions of this section shall be deemed guilty of a

misdemeanor. The state game-wardens, or the county game commission may institute a civil action in the name of the state of Washington to recover from any person or persons obstructing them in the performance of their duties, or who shall place such debris in such stream to the damages resulting therefrom, in addition thereto may in such action enjoin such party or parties from doing the acts prohibited. [L. '13, p. 364, § 18.]

§ 5395–19. Oath.—The state game-wardens, the county game commission, county game-warden and any deputy game-warden is hereby authorized to administer oaths, and may require any statement to them or him in applications for licenses, or in any report submitted to them or him in any manner connected with the discharge of their duties, to be made under oath. Any person failing or refusing to make any such statement under oath or falsely making an oath shall be guilty of a misdemeanor. [L. '13, p. 364, § 19.]

§ 5395–20. Penalty for Resisting Commission and Wardens.—Any person who shall resist or obstruct the state game-wardens, the county game commission, county game-warden or deputy game-wardens, or other peace officers of this state, in the discharge of their duties while enforcing the game laws, shall be guilty of a gross misdemeanor. [L. '13, p. 365, § 20.]

§ 5395–21. Game Property of State.—No person shall at any time or in any manner acquire any property in, or subject to his dominion or control, any of the game birds, game animals, or game fish, or any parts thereof, of the game birds, game animals or game fish herein mentioned, but they shall always and under all circumstances be and remain the property of the state; except, that by killing, catching or taking the same in the manner and for the purposes herein authorized, and during the periods when the killing is not herein prohibited, the same may be used by any person at the time, in the manner and for the purposes herein expressly authorized; and whenever any person kills, catches, injures, takes, ships, or has in his possession, or under control, any of the game birds, game animals, or game fish, or any parts thereof, mentioned in this chapter, at a time or in a manner prohibited by this chapter, such person shall thereby forfeit and lose all right to the use and possession of such game bird, game animals, or game fish, or any parts thereof, and the state shall be entitled to the sole possession thereof: Provided, that the state wardens, or the game commission of each county shall grant permission to persons to have in their possession and allow the sale and shipping of game birds or game animals for propagation only. Any person violating any of the provisions of this section shall be guilty of a misdemeanor. [L. '13, p. 365, § 21.]

Cited in 82 Wash. 657; 87 Wash. 654.

§ 5395–22. Nest and Eggs.—No person shall at any time take or have in his possession or under control, break or destroy or in any manner interfere with any nest, or the eggs of the kinds of birds the killing of which is at any or all times prohibited. Any person guilty of violating this section shall be guilty of a misdemeanor. [L. '13, p. 366, § 22.]

§ 5395–23. Hunting Deer With Dogs.—Any person who shall at any time shoot or kill in any manner a deer when such deer is in any river or lake, or body of salt water, or shall hunt or chase deer with dogs, shall be deemed guilty of a gross misdemeanor and upon conviction thereof shall be punished as hereinafter provided. [L. '13, p. 366, § 23.]

Cited in 80 Wash. 93.

See supra, § 5334, hunting with dogs.

§ 5395–24. Trap or Ensnare.—It shall be unlawful at any time (for any person) to set, lay, prepare, or have in his possession, any trap, snare, artificial light, net, bird lime, swivel-gun or set-gun, or any contrivances whatever for the purpose of catching, taking, or killing any of the game animals, or game birds in this state, except that decoys and blinds may be used in hunting wild ducks, geese or brant: Provided, however, that nothing in this act shall be construed to prevent any person from trapping any of the fur-bearing animals which are not protected under the laws of the state of Washington: Provided, further, that it shall be unlawful for any person in the state of Washington to use a steel trap of a larger size than what is commonly known and called a number four (4) trap: Provided, that every person who sets out a trap of any kind larger than a No. 4 shall post a notice above said trap in plain sight, stating such fact, which notice shall be in English, and on a placard at least (6x10) inches in size: Provided, further, that this section shall not apply to the trapping of coyotes: Provided, further, that it shall be unlawful to hunt, take or kill game squirrels commonly known as either gray squirrels, fox squirrels or black squirrels at any time in the state of Washington. Any person violating any of the provisions, of this act shall be guilty of a misdemeanor. [L. '15, p. 433, § 9. Cf. L. '13, p. 366, § 24.]

See, also, supra, § 5353.

§ 5395–25. Grouse, Quail, Pheasant, etc.—Every person who shall within the state of Washington, hunt, pursue, take, kill, injure, destroy or possess any ruffed grouse, Hungarian partridge, prairie chicken, sage hen, Chinese, English, golden, Mongolian, silver, blackneck or Japanese pheasant, blue grouse, Franklin grouse, wild turkey, scaley partridge, Reeves pheasant, or any species of quail or any species of upland game birds, except as herein provided, shall be

guilty of a misdemeanor: Provided, that in any of the counties lying west of the summit of the Cascade Mountains, it shall be lawful to hunt, pursue, take, kill, and possess ruffed grouse, native pheasant, Chinese pheasant, blue grouse, ptarmigan and any species of quail between the fifteenth day of September and the thirty-first day of October, both dates inclusive: Provided, that English, Mongolian and Reeves pheasants may be killed in all counties west of the Cascade Mountains, except in Mason and Thurston counties, from October 1st to October 15th: Provided further, that in the counties lying east of the summit of the Cascade Mountains, except in the counties of Walla Walla, Asotin, Garfield and Columbia, it shall be lawful to hunt, pursue, take, kill and possess ruffed grouse (native pheasant) and blue grouse between the first day of September and the fifteenth day of November, both dates inclusive: Provided, native pheasants shall not be so taken or killed in Yakima county: Provided, further, that in the counties of Walla Walla, Asotin, except in the precincts of Clarkston, South Clarkston and West Clarkston, in said county of Asotin. Garfield and Columbia, it shall be lawful to hunt, pursue, take, kill and possess ruffed grouse (native pheasant) and blue grouse from August 15th to October 1st, both dates inclusive of the same year, any species of quail from October 1st to October 10th, both dates inclusive of the same year; prairie chickens from September 15th to November 1st, both dates inclusive, of the same year: Provided further, that it shall be lawful to hunt, pursue, take, kill and possess Chinese pheasants in Benton, Yakima and Spokane counties between the first day of October and the fifteenth day of October, both dates inclusive, of the same year; sage hens from October 15th to November 1st, both dates inclusive, of the same year; and in Kittitas county, Hungarian partridge, Chinese pheasant, sage grouse and sharp-tail grouse (western prairie chicken) may be taken from the first day of October to the tenth day of October, both dates inclusive, of the same year. In Whitman, Okanogan, Ferry, Lincoln, Walla Walla, Adams, Asotin, Columbia and Garfield counties sharp-tailed grouse (western prairie chicken) may be taken from the fifteenth day of September to the first day of November, both dates inclusive, of the same year. In Spokane county, bob white quail and Hungarian partridges may be taken from the first of October to the fifteenth day of Noevmber, both dates inclusive, of the same year. In Douglas county, sharp-tailed grouse (western prairie chicken) may be taken from the first day of September to the first day of November, both dates inclusive, of the same year.

Any person or persons violating any of the provisions of this section shall be guilty of a misdemeanor. [L. '15, p. 433, § 10. Cf. L. '13, p. 366, § 25.]

§ 5395-26. Bag Limit.—Every person who shall, during the season when it is lawful to hunt the same, kill more than five (5) prairie chickens, grouse, partridge, Hungarian partridge, native pheasants, Chinese, English, golden, Mongolian, silver, blackneck or Japanese pheasant, or more than ten quail or any or all kinds in any one day, shall be guilty of a misdemeanor: Provided, that no person shall in any one day kill more than five (5) of the game birds mentioned in this section, it being the intention thereof to limit the bags of one day to five (5) birds, no matter how many varieties of these protected upland birds are included in the bag: Provided, further, that ten (10) quail may be killed in one day during the season when it is lawful to hunt the same, but the limit of upland game birds, if quail are included in the same, for one day shall never exceed ten upland birds, but in no event more than five of the above-named birds other than quail, and the limit of the bag for one week shall never exceed twenty-five (25) upland birds: Provided further, that in Kittitas county the bag limit for Chinese or English pheasants, Hungarian partridges, sage grouse, and sharp-tail grouse (western prairie chicken) shall not be more than three (3) birds of any one variety, or three of any mixed bag. Any person violating any of the provisions of this section shall be guilty of a misdemeanor. [L. '15, p. 435, § 11. Cf. L. '13, p. 368, § 26.]

§ 5395-27. Ducks, Geese and Brant.—Every person who shall within the state of Washington hunt, pursue, take, kill, injure, destroy or possess any species of wild goose, brant, wild duck, coot or rail between the sixteenth day of January and the first day of October of the same year, or who shall hunt, pursue, take, kill, injure, destroy or possess any species of plover, snipe, sandpiper, curlews, avocets, stilts, turnstone, oyster-catcher, phalaropes, or other species of birds, except black-breasted and golden plover, jack-snipe or Wilson snipe, or greater or lesser yellow-legs, which may be hunted, pursued, taken, killed and possessed between the first day of October and the fifteenth day of December, both dates inclusive, of the same year, or shall hunt, pursue, take or kill, injure, or destroy, any of the birds mentioned in this section after sunset or before sunrise, shall be guilty of a misdemeanor. [L. '15, p. 436, § 12. Cf. L. '13, p. 369, § 27.]

§ 5395-28. Bag Limit.—Every person who shall, in the state of Washington, during the season when it is lawful to hunt the same, kill more than twenty (20) ducks, geese or brant, any golden plover, jack or Wilson snipe, greater or lesser yellow-legs, in any one week, or have in possession or under control more than thirty (30) ducks, geese, or brant at any time, shall be guilty of a misdemeanor, it being the intention hereof to limit bags in any one week to twenty (20) of the above-mentioned birds, no matter how many varieties of those birds are included in said bag; and for the purposes of this act the

week shall be deemed to begin at midnight on Saturday night, and any person violating the provisions of this act shall be guilty of a misdemeanor. [L. '15, p. 436, § 13. Cf. L. '13, p. 369, § 28.]

§ 5395–29. Possession Limited. — Every person, company, club, partnership, firm or corporation, boarding-house keeper, hotel-keeper, restaurant-keeper, market keeper or cold-storage plant, their owners, proprietors, officers, managers, agents or servants, who shall offer for sale or for market, or barter for, or exchange or keep in their possession any time of the year, any deer, moose, caribou, antelope, mountain sheep or mountain goat of any kind, or the various kinds of quail or the various kinds of Chinese, English or Mongolian pheasants, grouse, native pheasants, ptarmigan, partridge, Hungarian partridge, prairie chicken, sage hen or any kind of wild duck, goose, brant, rail, plover or game shore birds, or any portion of the meats of said animals or birds, shall be guilty of a misdemeanor. Possession by the above-named persons or corporations of any of the animals or game birds mentioned or named herein or any of the meats of the same shall be presumptive evidence that said animals or birds or the meats of the same was unlawfully taken by the person having possession of the same, and upon conviction thereof shall be punished as hereinafter provided: Provided, that any person may have in his possession, or in cold storage, for his own use only the number and kind of animals and birds permitted to be taken by this act, during the time when the same may be taken, provided the same were taken by the person, so having them in his possession or obtained by gift for his use only, or otherwise taken as provided in the previous section of this act. Any person violating any of the provisions of this section shall be guilty of a misdemeanor. [L. '13, p. 369, § 29.]

§ 5395–30. Sale of Game.—It shall be unlawful for any person at any time to sell or offer for sale any of the game birds, game animals or song birds protected by the laws of the state of Washington. Any person violating any of the provisions of this section shall be guilty of a misdemeanor. [L. '13, p. 370, § 30.]

§ 5395–31. Other States—Game Unlawful.—Every person who shall at any time have in his possession or under control within this state any game birds, game animals or game fish, or any parts thereof, which have been caught, taken or killed outside of this state at a time when it is unlawful to have in possession or under control such game birds, game animals or game fish, or parts thereof, if caught, taken or killed in this state, or which have been unlawfully taken or killed outside of this state, or unlawfully shipped therefrom into this state, shall be guilty of a misdemeanor: Provided, however, that nothing in this act shall prevent the bringing into this state, by

a resident of the state of Washington, any elk, mountain goat, mountain sheep, caribou or deer when the same have been lawfully killed in any state, territory, or Canada, if accompanied by an affidavit that the same was lawfully killed, and is not transported for sale or profit, together with the shipping receipt from the originating point. [L. '15, p. 437, § 14. Cf. L. '13, p. 370, § 31.]

§ 5395–32. Possession Unlawful.—It shall be unlawful to have in possession or under control by any person, any game birds, game animals or game fish or any parts thereof, the killing of which is at any time prohibited; the same shall be prima facie evidence that it was the property of this state at the time it was caught, taken or killed, and that it was caught, taken or killed in this state when the killing, taking or possession thereof is by this chapter declared to be unlawful, that such taking or killing occurred during the closed season. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor. [L. '13, p. 371, § 32.]

§ 5395–33. Deer, Elk, Moose, Mountain Goat and Mountain Sheep. No person shall, within the state of Washington, hunt, catch, take, kill, ship, convey or cause to be shipped or transported by common or private carrier, to any person, either within or without the state, purchase, expose for sale, have in possession with intent to sell, sell to any person or have in possession or under control at any time, any elk, moose, caribou, deer, fawn, mountain sheep or mountain goat, or any part thereof, including the hides, horns or hoofs except as herein provided: Provided, that deer, caribou and mountain goat may be killed in the counties lying east of the eastern boundaries of Whatcom, Skagit, Snohomish, King, Pierce, Lewis and Skamania counties, between October 1st and November 15th of the same year: And provided further, that deer and mountain goat may be killed between September 15th and November 1st of the same year in the counties lying west of the eastern boundaries of Whatcom, Skagit, Snohomish, King, Pierce, Lewis and Skamania counties, and any deer, mountain goat or any part thereof, may be had in possession by any person during the said time. No person shall kill or have in possession during said time more than two deer, nor more than one mountain goat, or parts thereof: And provided further, that any person who is lawfully in possession of any deer, mountain goat, or any part thereof, may ship, or cause to be shipped, any such deer, goat, or part thereof, from place to place within the state: And provided further, that after the year 1925 male antlered moose and elk may be killed between October 1st and 15th of the same year, and any such male elk or moose or part thereof may be had in possession by any person during the time aforesaid, but no person shall kill or have in possession during said time more than one male antlered elk or

moose, or part thereof: And provided further, that any person desiring to retain any game bird, game animal or game fish, or any part thereof for human consumption or ornamental purposes, after the close of the season when the same was lawfully taken, may do so by furnishing the county game commission of the county wherein he desires to retain the same, a true and correct description thereof, giving the number, kind or kinds, and designating the place where the same is stored with reasonable certainty. The game commission or game-warden shall have authority to tag or stamp the same for the purpose of identification, without materially damaging the same. [L. '15, p. 437, § 15. Cf. L. '13, p. 371, § 33.]

Cited in 87 Wash. 654, 655.

§ 5395–34. State Game Fund—County Funds.—There is hereby established a fund to be known as the state game fund which shall consist of eighty per cent (80%) of all moneys received for state hunting and game fish licenses, and all such other sums as the legislature may from time to time appropriate and set aside for the purposes provided for in this act, said state game fund shall also consist of ten per cent (10%) of all moneys received by the county officers for county hunting and game fish licenses, and from fines which shall be paid into the state treasury, and constitute a part of said state game fund, said payments to be made quarterly on the last day of each quarter of the year, beginning on the first day of March. Such state game fund shall be used for the payment of the salaries and expenses of the state game-wardens provided for by this act, and their necessary traveling and office expenses, and for propagation, protection, introduction, purchase and distribution of any game animals, birds or fishes and for such other purposes for which the legislature may appropriate the same. Ninety per cent of all moneys received in any county from the sale of county hunting and game fish licenses, and from fines and costs, and twenty per cent (20%) of all money received from the sale of state hunting and game fish licenses, shall be expended in the said county from which the same are collected, and shall be so spent in the payment of salaries and expenses of the county game-wardens or special deputies appointed in said county by the county game commission and for the protection, introduction, propagation and purchase of animals, birds and game fishes in said county, and in the enforcement of the game and game fish laws within said county from which said moneys are received. All payments made under the provisions of this act shall be made by warrant in the usual manner and shall be audited by the state and county officers in the same manner as other claims against the state of Washington and the various counties are audited. [L. '15, p. 438, § 16. Cf. L. '13, p. 372, § 34.]

§ 5395–34a. Appropriation.—For the payment of the salaries of special deputy state game-warden and fisheries inspectors and expenses, there is hereby appropriated from the state game fund the sum of twelve thousand dollars ($12,000), or so much thereof as is necessary. [L. '15, p. 439, § 17.]

§ 5395–34b. Act Controls in Case of Conflict With Food Fish Laws:—The provisions of this act shall apply exclusively to game and game fish and the same shall be enforced regardless of any conflicting provisions of any food fish laws of the state of Washington now in existence or hereafter passed, and no act done under the provisions of this act shall be deemed unlawful in the event that such act conflicts with any provisions of such food fish laws. [L. '15, p. 440, § 18.]

"Act" in this section refers to the act of 1915.

§ 5395–35. Game Fish—Licenses.—It shall be unlawful for any person to hunt, pursue, catch, kill or take any of the game animals, game birds or game fish protected by the laws of this state during the season when it is lawful to hunt, pursue, take or kill the same without such person having procured before the time of such hunting, pursuing, catching or killing, a hunting or fishing license therefor duly issued to him by the county or state authorities.

The licenses provided for in this act shall be issued by the county auditors of the respective counties, and shall be as follows:

(a) A resident of this state may obtain a hunting and fishing license by paying the county auditor the sum of one dollar ($1) which shall entitle the holder thereof to hunt or fish within the county where such license is issued until the first day of March next following the date of its issuance, at any time when it is otherwise lawful to hunt or fish.

(b) Any person who is a resident of this state may obtain from any county auditor a state hunting and fishing license by the payment of five dollars ($5), which license shall entitle the holder thereof to hunt and fish in any part of the state until the first day of March next following the date of its issuance, whenever it is otherwise lawful to hunt or fish within said state.

(c) A nonresident of the state of Washington may obtain a hunting and fishing license by paying to the county auditor the sum of ten dollars ($10), which shall entitle the holder thereof to hunt and fish in any county in the state up to and including the first day of March next following the date of its issuance, when it would otherwise be lawful to hunt or fish in said county.

(d) Provided, however, that a county fishing license shall entitle the holder thereof to fish on either side of any stream or river, when the said stream or river shall constitute the boundary between two counties.

(e) The county auditor shall, upon application and the payment of two dollars ($2), issue to any nonresident of this state a license to take, catch, or kill any game fish in any lawful manner within the county where the license is issued, whenever it is lawful to take, kill or catch any game fish.

(f) Licenses issued under the provisions of this act shall be non-transferable, and any person hunting or fishing shall, upon demand of any warden, or deputy warden, exhibit his license, and a failure or refusal to exhibit such license shall be prima facie evidence that such person has no license.

(g) Any person hunting or fishing without having obtained the license herein provided for, or doing any other act which by this act is declared to be unlawful, in cases where no other specific penalty is provided, shall be guilty of a misdemeanor.

(h) Provided, however, that nothing in this act shall prevent any woman, or minor under the age of sixteen (16) years, who is an actual resident of this state, from fishing at any time when it is otherwise lawful to fish. [L. '13, p. 373, § 35.]

§ 5395–36. Application for License.—In applying for any license under this act the applicant shall make a written application which shall describe the applicant as to age, weight, height and complexion, and the license issued shall contain the said description as contained in said application, and in all cases other than that of a nonresident the application shall be accompanied by a statement to the effect that he is a resident of the state of Washington, his place of residence, and any person who falsely states that he is a resident of the state of Washington when he is not such, shall be guilty of a misdemeanor. [L. '13, p. 375, § 36.]

§ 5395–37. Sale Prohibited.—Any person who takes or kills or has in his possession with intent to sell, sells, offers or exposes for sale, ships by common carrier, conveys or causes to be conveyed, has in his possession with intent to ship, or to convey in any manner to any point within or without the state, any game animals, game birds or game fish, or any part thereof, including the hides and horns, or any person who buys any such game animals, game birds or game fishes or part thereof in violation of any of the provisions of this chapter or any common carrier or agent thereof, who ships or aids or abets in shipping any such game animals, game birds or game fish or any part thereof, or have possession of same with intent to ship or transport or convey to any point either within or without the state, shall be guilty of a gross misdemeanor. [L. '13, p. 375, § 37.]

§ 5395–38. Artificial Lights.—Any person who hunts for any of the protected game animals, game birds or game fishes with a jack-

light or other artificial light of any class, kind or description shall be guilty of a misdemeanor. [L. '13, p. 375, § 38.]

§ 5395–39. Export or Import.—Every steamboat company, railroad company, express company or common carrier, their officers, agents and servants and every other person who shall transfer or carry from one point to another within the state or take out of the state, or who shall receive for the purpose or transferring from this state any of the wild game birds, game animals, game or game fish enumerated in this act shall be guilty of a misdemeanor: Provided, that nothing in this section shall be construed to prevent any steamboat company, express company, railroad or other common carrier, their officers, agents and servants from receiving any of the game birds, game animals or game fishes enumerated in this act from transferring them from one point to another point within this state when said game birds, game animals or game fish are accompanied by an affidavit in duplicate by the shipper, that the same is not shipped for sale or profit; said affidavit may be furnished if necessary at destination. Such affidavit shall describe said game animals, game birds and game fish and shall be attached to said shipment while in transit from one point to another or furnished at its destination and the duplicate must be sent to the game commission or game-warden of said county. Any person violating any of the provisions of this section shall be guilty of a misdemeanor. [L. '13, p. 375, § 39.]

§ 5395–40. Beavers.—No person shall in any manner hunt for, trap, take, catch or kill any beaver in this state, or have in his possession, alive or dead, any beaver or any part thereof. Any person who violates the provisions of this section shall be guilty of a misdemeanor. [L. '13, p. 376, § 40.]

§ 5395–41. Game Fish.—No person shall, within the state of Washington, catch, take, attempt to take, kill, or have in his possession, or have under control for any purpose whatever, except as in this act provided, any of the game fish hereinafter mentioned within the periods mentioned, to wit: Any variety of trout except Dolly Varden or bull trout, or any species of bass, crappie, perch, sunfish, bream or pike, between the thirtieth day of November and the first day of April of the following year: Provided, that the above-named fish may be taken from the waters of Lake Chelan, situated in Chelan county, at any season of the year in any lawful manner: Provided further, that no person shall take betweeen the thirtieth day of November and the first day of April of the year following more than ten (10) pounds of game fish in any one day or more than twenty (20) pounds in any one week from the waters of Lake Chelan: Provided further, that in the county of Pierce no person shall

take, catch or kill any bass, perch, crappie, sunfish, bream or pike between the first day of May and the fifteenth day of June: Provided, further, that it shall be unlawful to take, catch or kill any bass from Silver Lake, situated in Cowlitz county, between the fifteenth day of March and the first day of June. Any person violating the provisions of this section shall be guilty of a misdemeanor. [L. '15, p. 427, § 1. Cf. L. '13, p. 376, § 41.]

§ 5395–42. **Limit of Catch.**—No person shall catch, take, kill or have in his possession more than fifty game fish in any one day, nor more than twenty pounds and one game fish in any one day, nor more than thirty pounds and one game fish in any one calendar week, nor in any other manner than by angling for them with hook and line held in the hand or attached to a rod so held, and no person shall have in his possession any game fish caught, taken or killed in any of the waters of this state except as provided in this chapter. Any person violating this section shall be guilty of a misdemeanor. [L. '13, p. 377, § 42.]

§ 5395–43. **Private Fish Hatcheries.**—No person shall have in his possession for sale or with intent to sell, expose or offer for sale or sell to any person, any trout or other game fish at any time, or ship or cause to be shipped or have in possession with intent to ship to any person either within or without the state any such game fish, or have any such game fish in his possession during the season for taking the same: Provided, that nothing in this act shall be construed to be in conflict with the provisions of sections 5171–5182 inclusive of Remington & Ballinger's Annotated Codes and Statutes of Washington. Any person violating this section shall be guilty of a misdemeanor. [L. '13, p. 377, § 43.]

§ 5395–44. **Size of Trout.**—No person shall at any time catch, take, kill, or have in his possession or under his control any trout or bass of any variety whatever which are less than six inches in length. Any person catching such game fish shall at once return the same to the water from whence they are taken with as little injury as possible. Any person violating the provisions of this section shall be guilty of a misdemeanor. [L. '13, p. 377, § 44.]

§ 5395–45. **Nonresident, Possession of.**—No person shall ship, have in his possession with intent to ship or cause to be shipped beyond the borders of this state any fish of the kind mentioned in this chapter: Provided further, that any nonresident of this state who is desirous of taking any fish beyond its boundaries for his personal use may carry with him on the same train or conveyance not to exceed fifty fish nor more than twenty pounds and one fish caught by him: Provided further, that all boxes, bags or packages of any description used in shipping or taking game fish out of the

state shall be plainly marked with the name and address of the consignor and consignee, and with the description and contents of the package. Any person who violates this section shall be guilty of a misdemeanor. [L. '13, p. 377, § 45.]

§ 5395-46. Devices—Public Nuisances.—Nets of any description being used in any of the fresh waters of this state above tide water are hereby declared and are a public nuisance, and it shall be the duty of all county game commissioners, game-wardens and their deputies, police officers and constables without warrant or process, to take, seize, abet and destroy any and all of the same. And any person using same shall be guilty of a misdemeanor. The game-wardens and their deputies, sheriffs and their deputies, police officers, and constables shall seize any and all nets and seines when illegally used and all game fish taken therewith and at once report the seizure to the county game commission or game-warden. Every person using, aiding or abetting the use of any such nets or other devices contrary to the provisions of this section shall be guilty of a misdemeanor. [L. '13, p. 378, § 46.]

Cited in 80 Wash. 84-86; 82 Wash. 686.

§ 5395-47. Fishways and Dams.—No person shall catch, take or kill in any stream within four hundred feet of any fishway or dam or have in his possession or under his control any game fish so caught, taken or killed. Any person who violates any of the provisions of this section shall be guilty of a misdemeanor. [L. '13, p. 378, § 47.]

§ 5395-48. Explosives, etc.—No person shall lay, set, use or prepare any drug, poison, lime, medicated bait, nets, fish-berries, dynamite or other explosive or any other deleterious substance whatever, or lay, stretch or place any tip-up, snare or net or trout line, or any wire string, rope or cable of any kind, class or description in any of the waters of this state with intent thereby to catch, take or kill any game fish. Any person violating any of the provisions of this section shall be guilty of a misdemeanor. [L. '13, p. 378, § 48.]

§ 5395-49. Providing Fishways.—Any person owning, erecting, managing or controlling any dam or other obstruction across the river, creek or stream within the state or forming the boundary lines of this state, shall construct in connection with such dam, durable fishways, in such manner and in such shape and size that the free passage of all game fish inhabiting such waters shall not be obstructed. Such fishway shall be maintained in good condition and kept in good repair by the person so owning, controlling, managing, operating, or using such dam or obstruction. If any person fails to construct or keep in good repair, durable and efficient fishways, as herein provided for within a period of ten days after notice, the county game commission may construct or repair the

same and the cost thereof may be recovered from the owner or any persons managing or being in control thereof in a civil action brought in the name of the state of Washington. Any moneys so received shall be credited to the game protection fund. All fishways heretofore or hereafter erected in any dam or obstruction across any of the streams of this state shall at all times be under the supervision of the county game commission. Any person who violates any of the provisions of this section shall be guilty of a misdemeanor. [L. '13, p. 379, § 49.]

§ 5395–50. Casting Sawdust in Rivers or Streams.—Every person who shall cast or discharge or permit to be cast or discharged into any waters of this state any sawdust, planer shavings, or other lumber waste, shall be guilty of a misdemeanor. [L. '13, p. 379, § 50.]

§ 5395–51. Defining Offense.—The killing of every single bird, animal or fish protected by the laws of this state shall constitute a separate offense. [L. '13, p. 379, § 51.]

§ 5395–52. Attempt Violations.—Any attempt to violate any of the provisions of any section of this chapter shall be deemed a violation of such provision and any person attempting to violate any of the provisions of this chapter shall be guilty of a misdemeanor, unless otherwise designated as a gross misdemeanor. [L. '13, p. 380, § 52.]

Cited in 80 Wash. 93.

§ 5395–53. Repealing and Saving Clause.—Sections 5323, 5327, 5328, 5333, 5337, 5354, 5356, 5361, 5362, 5363, 5364, 5365, 5367, 5371, 5372, 5379, 5380, 5384, 5385 and 5389 of Remington & Ballinger's Annotated Codes and Statutes of Washington, and all other acts or parts of acts inconsistent with the provisions of this chapter are hereby repealed: Provided, if any section of this act should be declared unconstitutional it shall not affect any other section or part of section thereof. [L. '13, p. 380, § 53.]

§ 5395–54. Catching of Fish in Clarke County—Appliances.—Every person, firm or corporation who shall fish for or catch fish excepting carp with any net, seine, trap, set-net or similar appliance in Lake River or any of the sloughs of the Columbia River in Clarke county, Washington, shall be guilty of a misdemeanor. [L. '13. p. 385, § 1.]

§ 5395–55. Limit on Catch.—Every person who shall with hook and line, commonly called angling, catch more than twelve black bass or more than fifty crappies in any one day in any of the waters described in section 5395–54, shall be guilty of a misdemeanor. [L. '13, p. 385, § 1.]

Garnishment. See §§ 680–706.

In justice's court, see §§ 1807–1846.

TITLE XXXIX.

GEOLOGICAL SURVEY.

5396. Board of geological survey—Of whom composed—State geologists.
5397. Objects of survey.
5398. Report to legislature.
5399. Printing and distribution of reports.
5400. Materials collected, distribution of among schools.
5401. Organization—Meetings—Co-operation with United States Geological Survey.
5402. Survey to complete map and investigate water supply.
5403. Entry on lands.

§ 5396. Board of Geological Survey—Of Whom Composed—State Geologists.—There is hereby established a state geological survey of the state of Washington, which shall be under the direction of the board of geological survey of the state of Washington, which is hereby established, composed of the governor, the lieutenant-governor, the state treasurer, the president of the University of Washington and the president of the Washington Agricultural College and School of Science, who shall serve without compensation, but shall be reimbursed for actual expenses incurred in the performance of their official duties, and the said board shall have general charge of the survey, and shall appoint as superintendent of the survey a geologist of established reputation, to be known as the state geologist, and upon his nomination such assistants and employees as the said board may deem necessary and the said board shall also determine the compensation of all persons employed by the survey, and may remove them at will. [L. '01, p. 334, § 1.]

Former laws on this subject: See Bal. Code, §§ 172–183 (L. '90, p. 647), and §§ 3145–3150 (L. '90, p. 249).

§ 5397. Objects of Survey.—The said survey shall have for its object:

(1) An examination of the economic products of the state, viz.: the gold, silver, copper, lead and iron ores, as well as building stones, clays, coal and all mineral substances of value. (2) An examination and classification of the soils, and the study of their adaptability to particular crops. (3) The investigation and report upon the water supplies, artesian wells, the water power of the state, gauging the streams, etc., with reference to their application for irrigation and other purposes. (4) An examination and report upon the occurrence of different road building material. (5) An examination of the physical features of the state with reference to their practical bearing upon the occupations of the people. (6) The preparation of special geological and economic maps to illustrate the resources of the state. (7) The preparation of special

reports with necessary illustrations and maps, which shall embrace both the general and detailed description of the geology and natural resources of the state. (8) The consideration of such other kindred scientific and economic questions as in the judgment of the board shall be deemed of value to the people of the state. [L. '01, p. 334, § 2.]

See infra, § 5907, survey for road building material.

§ 5398. Report to Legislature.—The board shall cause to be prepared a report to the legislature before each regular meeting of the same, showing the progress and condition of the survey, together with such other information as they may deem necessary and useful or as the legislature may require. [L. '01, § 335, § 3.]

§ 5399. Printing and Distribution of Reports.—The regular and special reports of the survey with proper illustrations and maps, shall be printed as the board may direct, and the reports shall be distributed or sold by the said board as the interests of the state and of science demands; and all money obtained by the sale of reports shall be paid into the state treasury. [L. '01, p. 335, § 4.]

§ 5400. Materials Collected, Distribution of Among Schools.—All materials collected, after having served the purpose of the survey shall be distributed by the board to the University of Washington, the Washington Agricultural College and School of Science, the normal schools, and the leading high schools of the state in such a manner as to be of the greatest advantage to the educational interests of the state. [L. '01, p. 335, § 5.]

§ 5401. Organization — Meetings — Co-operation With United States Geological Survey.—The board of geological survey shall meet for organization within thirty days after the passage of this act. The regular meetings of the board shall be on the first Wednesday in April and the first Wednesday in November of each year. The said board of geological survey is hereby authorized to make provisions for topographic geologic and hydrographic surveys of the state of Washington in co-operation with the United States geological survey in such manner as in the opinion of the said board will be of the greatest benefit to the agricultural, industrial and geological requirements of the state of Washington: Provided, that the director of the United States geological survey shall agree to expend on the part of the United States upon said surveys a sum equal to that expended by the said board. [L. '01, p. 336, § 6; L. '03, p. 331, § 1.]

"Act" refers to the preceding sections of this title.

§ 5402. Survey to Complete Map and Investigate Water Supply. In order to complete the topographic map of the state of Wash-

ington, and for the purpose of making more extensive stream measurements, and otherwise investigating and determining the water supply of the state, . . . the board of geological survey is hereby authorized and directed to enter into such agreements with the director of the United States geological survey as will insure that the said surveys and investigations be carried on in the most economical manner, and that the maps and data be available for the use of the public as quickly as possible. [L. '09, p. 885, § 1.]

Part of this section is omitted, relating only to appropriations.

§ 5403. Entry on Lands.—In order to carry out the purposes of this act, all persons employed hereunder are authorized to enter and cross all lands within the state: Provided, that in so doing no damage is done to private property. [L. '09, p. 885, § 3.]

Governor. See "State Officers," § 8988.
Grain. See "Inspection," § 5980–1.
Toll for grinding, see "Frauds," § 5307.
Grand Jury. See §§ 89–111, 2025–2049.
Granted Lands. See "Lands of the State."
Guardianship. See §§ 1621–1682.
Habeas Corpus. See §§ 1063–1085.
Habitual Drunkards. See §§ 1708–1715.
Harbor Lines and Areas. See "Lands of the State," § 6769.
Harbors. See "Navigation."
Hawkers. See "Licenses," § 7053.
Hay. See "Inspection," § 5980–1.

TITLE XL.

HEALTH.

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CHAPTER I.

State Board of Health and Sanitary Provisions.

§ 5404. State Board of Health—Appointment—Terms.—The governor, with the advice and consent of the senate, shall appoint five

persons, who shall constitute the state's board of health. The persons so appointed shall hold their office for five years: Provided, that the term of office of the first five appointed shall be so arranged that the term of one shall expire on the thirtieth day of December of each year, and the vacancies so created, as well as all vacancies occurring otherwise, shall be filled by the governor, with the advice and consent of the senate: And provided also, that appointments made when the senate is not in session may be confirmed at the next ensuing session. [L. '91 p. 188, § 1; 1 H. C., § 2606.]

See infra, § 5497 et seq., county boards of health.
See infra, § 5536, city boards of health.

§ 5405. Meetings of Board—Quorum, Rules, etc.—The first meeting of the board shall be within fifteen days after their appointment, and thereafter in January and June of each year, and at such other time as the board shall deem expedient. The meeting in January of each year shall be at the capital. A majority shall constitute a quorum. They shall choose one of their number to be president, and they may adopt rules and by-laws for their government, subject to the provisions of this chapter. [L. '91, p. 190, § 9; 1 H. C., § 2614.]

§ 5406. Board—Powers—Duty of Local Officers.—The state board of health shall have supervision of all matters relating to the preservation of the life and health of the people of the state. The board shall have supreme authority in matters of quarantine, and may declare and enforce it when none exists, may modify, relax or abolish it when it has been established. The board may have special or standing orders or regulations for the prevention of the spread of contagious or infectious diseases, and for governing the receipt and conveyance of remains of deceased persons, and such other sanitary matters as admit of and may best be controlled by universal rule. It may also make and enforce orders in local matters, when in the opinion of the state board of health, an emergency exists and the local board of health has neglected or refused to act with sufficient promptness or efficiency, or when no such local board has been established, and all expenses so incurred shall be paid by the county in which such services are rendered out of the general fund of said county. It shall be the duty of all local boards of health, health authorities and officials, officers of the state institutions, police officers, sheriffs, constables, and all other officers and employees of the state, or any county, city or township thereof, to enforce such quarantine and sanitary rules and regulations as may be adopted by the state board of health, and in the event of failure or refusal on the part of any member of said boards or other officials, or persons in this section mentioned to so act, he or they shall be subject to a fine of not less than fifty dollars, upon first conviction, and upon conviction of second offense of not less than one hundred dollars. The board shall make careful inquiry as to the cause of

disease especially when contagious, infectious, epidemic or endemic, and take prompt action to control and suppress it. It shall respond promptly, when called upon by the state or local government and municipal or township boards of health, to investigate and report upon the water supply, sewerage, disposal of excreta, heating, plumbing, or ventilation of any place or public building. [L. '01, p. 236, § 1. Cf. L. '91, p. 189, § 2; 1 H. C., § 2607.]

§ 5407. Contagious Diseases—Report to State Board—Measures.—It shall be the duty of the local board of health, health authorities or officials, and of physicians in localities where there are no local health authorities or officials, to report to the state board of health, promptly upon discovery thereof, the existence of any one of the following diseases which may come under their observation, to wit; Asiatic cholera, yellow fever, smallpox, scarlet fever, diphtheria, typhus, typhoid fever, bubonic plague or leprosy, and of such other contagious or infectious diseases as the state board may from time to time specify. And when any contagious or infectious disease shall, in the opinion of the state board of health, become or threaten to become epidemic in any city, village or county, and the local authorities shall neglect or refuse to enforce measures which, in the opinion of the state board of health, are efficient for its prevention, the state board of health, or its executive officers, on the order of the president of said board, may appoint a medical or sanitary officer, and such assistants as he may require, and authorize him to enforce such orders or regulations as said board or its executive officer may deem necessary, the expense thereof to be paid by that county in which such services are rendered out of its general fund. [L. '01, p. 237, § 2.]

§ 5408. Commissioner of Health—Appointment—Term and Salary. Within thirty days after this act takes effect the state board of health shall elect a state commissioner of health, who may or may not be a member of the state board of health; who shall be a physician of at least five years' experience in the practice of medicine and who shall be learned in sanitary science and experienced in public health administration. He shall hold his office for five years and until his successor is elected and qualified, but may be removed by the state board of health for incompetency, malfeasance or corruption proven by evidence given under oath before the board and for this purpose the board shall have power to administer oaths and take testimony. He shall receive a salary of three thousand six hundred dollars per year and his expenses actually incurred in the performance of his duties, to be paid monthly in the same manner as the salary and expenses of other state officers, upon vouchers signed by the president of the state board of health. [L. '09, p. 719, § 1.]

"Act" refers to §§ 5408, 5410 and 5411.

§ 5409. Expenses of Board—Salary of Secretary.—The other members of the board shall receive no compensation for their services, but their traveling and other expenses, while employed on business of the board, shall be paid. The president of the board shall quarterly certify the amount due the secretary as salary, and all other accounts due, and on presentation of his certificate, with the proper vouchers, the auditor of state shall draw his warrant on the treasurer for the amount. [L. '03, p. 86, § 1. Cf. L. '91, p. 191, § 10; 1 H. C., § 2615; L. '97, p. 283, § 1.]

See next section, state commissioner to be secretary of board.
Salary payable monthly: See last section and § 8975.

§ 5410. Duties—Deputies—Vital Statistics—Law Enforcement.—The state commissioner of health shall be state registrar of vital statistics and secretary of the state board of health and executive officer of said board. He shall be the custodian of all property and records of the state board of health and shall have charge of the office and all laboratories of said board. He is authorized to appoint deputy commissioners of health and such scientific, clerical and other assistants as may be necessary to properly carry on the work of the board. He shall devote his time to the investigation of sanitary conditions and the prevalence of disease in the state and to such other duties as the state board of health may direct or this act or any other act may require. It shall be his duty to strictly enforce all laws passed for the protection of the public health and improvement of sanitary conditions of the state and to enforce all rules, regulations and orders of the state board of health. He shall investigate all epidemics of disease that may occur in the state and advise the local health officers as to the best measures to be taken to prevent and control such disease and he shall supervise all measures taken by local health officers for the suppression and control of disease. He shall have the same authority to quarantine and disinfect any person, article of household goods or merchandise, building or vessel that is conferred by law upon any local county or city health officers or commissioner: Provided, he shall not exercise such authority to quarantine and disinfect unless the local health officer or commissioner refuses or neglects to do so or when in an emergency the safety of the public health demands it. He is authorized to release any quarantine whether ordered by himself or any local health officer when in his opinion it is no longer necessary. [L. '09, p. 719, § 2.]

§ 5410–1. Annual Convention of County Health Officers.—It shall be the duty of the state commissioner of health to hold annually a convention of county health officers, at such place as he shall deem convenient, for the discussion of questions pertaining to public health and sanitation. Said convention shall continue in session for such

time not exceeding three days as the said commissioner of health shall deem necessary. It shall be the duty of the health officer of each county to attend said convention during its entire session, and such officer shall receive his actual and necessary traveling expenses, to be paid by said county: Provided, that no claim for such compensation or expenses shall be allowed or paid unless it be accompanied by a certificate from the state commissioner of health attesting the attendance of such health officer at said convention. [L. '15, p. 249, § 1.]

§ 5411. Assisting Local Authorities — Sanitation. — The commissioners of any county or the mayor of any city may call upon the state commissioner of health for advice relative to improving sanitary conditions or disposing of garbage and sewage or obtaining a pure water supply, and when so called upon the state commissioner of health shall either personally or by an assistant make a careful examination into the conditions existing and shall make a full report containing his advice thereon to the county or city making such request. [L. '09, p. 720, § 3.]

§ 5412. Annual Report of Board, What to Contain.—It shall be the duty of the board of health to make an annual report, through their secretary or otherwise, in writing, to the governor of the state on or before the first of January of each year, and such reports shall include so much of the proceedings of the board and such information concerning vital statistics, such knowledge respecting diseases, and such instructions on the subject as may be thought useful by the board for the dissemination among the people, with suggestions as to legislative action as they may deem necessary. [L. '91, p. 191, § 11; 1 H. C., § 2616.]

§ 5413. Books and Certificates, How Furnished.—The secretary of the state shall furnish to each county auditor the necessary books for record, and blank certificates in book form, which certificates the county auditor shall furnish to each physician practicing in his county. [L. '91, p. 191, § 12; 1 H. C., § 2617.]

§ 5414. Rooms to be Provided by Secretary of State.—The secretary of the state shall provide room suitable for the meetings of the board and office room for the secretary. [L. '91, p. 191, § 14; 1 H. C., § 2618.]

§ 5415. Cognizance of Fatal Diseases Among Animals.—The state board of health shall take cognizance of any fatal diseases which may be prevalent among the domestic animals of the state, and ascertain the nature and causes of such disease, and shall, from time to time, publish the result of their investigations, with suggestions for the proper treatment of such animals as may be affected, and the remedy or remedies therefor. [L. '91, p. 191, § 15; 1 H. C., § 2619.]

CHAPTER II.

Vital Statistics.

§ 5416. Registration of Births and Deaths.—The board of health shall have supervision of the state system of registration of births and deaths as hereinafter provided. They shall recommend such forms and such legislation as shall be necessary for the thorough registration of vital and mortuary statistics throughout the state. The secretary of the board shall be the superintendent of such registration, and shall keep well-bound record books, in which shall be tabulated the reports made to the state board by the county auditor as hereinafter provided. He shall keep an accurate account of all moneys received for certificates issued, for fines and all other sources. He shall pay at the end of each month all money on hand to the state treasurer for the credit of the state board of health. [L. '91, p. 189, § 3; 1 H. C., § 2608.]

To what extent this and the next six sections are superseded by § 5423 et seq. may be questioned, there being no repealing clause in that act and no absolute conflict between any of the provisions of these sections; however, they are probably superseded.

§ 5417. Physicians, Accoucheurs, and Midwives must Register.—It shall be the duty of all physicians in this state to register their names and postoffice address with the county auditor of the county where they reside; and every physician shall, under penalty of ten dollars, to be recovered in any court of competent jurisdiction in the state, at suit of any member of any state or local board of health, report to the county auditor on or before the fifteenth day of every month, all births and deaths which may come under his or her supervision during the previous calendar month, with a certificate of the cause of death, and such correlative facts as the board may require, in the blank forms to be provided and furnished by the county auditor. [L. '90, p. 41, § 1; L. '91, p. 189, § 4; 1 H. C., § 2609; L. '95, p. 41, § 1.]

See note to §§ 5416, 5423.

§ 5418. Report of Birth or Death, Where No Physician in Attendance.—Where any birth or death shall take place, no physician, accoucheur, or midwife being in attendance, the same shall be reported to the county auditor within thirty days from the date of their occurrence, with the supposed cause of death, by the parent, or if none, by the nearest of kin not a minor, or if none, by the resident householder where the death shall occur, under penalty as provided in the preceding section of this chapter. [L. '91, p. 189, § 5; 1 H. C., § 2610.]

See note to §§ 5416, 5423.

§ 5419. Coroners must Report Death to Auditor.—The coroners of the several counties shall be required to report to the county auditor all cases of deaths which may come under their supervision, with the cause and mode of death, etc., as per forms to be provided and furnished by the county auditor, under penalty as provided in section 5417. [L. '91, p. 190, § 6; 1 H. C., § 2611.]

See note to §§ 5416, 5423.

§ 5420. Prosecutions—Procedure—Disposition of Fines Collected. All prosecutions and proceedings instituted by the state board of health, for the violations of any of the provisions of this act, or any other laws to be enforced by this board, for the violation of any of the orders or regulations of the state board of health, shall be instituted by its proper officer on the order of the board; and all laws prescribing the modes of procedure, courts, practice and penalties for judgments applicable to local boards of health, shall apply to the state board of health, and the violation of its laws or orders; and all fines or judgments collected or received, shall be paid over to the state treasurer, and credited to the fund created for the support of the state board of health. [L. '01, p. 238, § 3.]

See note to §§ 5416, 5423.
"This act" refers to the first seven sections of this chapter.

§ 5421. Moneys Recovered for Penalties, Appropriation of.—All moneys recovered under the penalties herein provided shall be appropriated to a special fund for the carrying out of the objects of this law. [L. '91, p. 190, § 7; 1 H. C., § 2612.]

See note to §§ 5416, 5423.

§ 5422. Records—What must be Kept by Auditors, and How.—The county auditor of the several counties in this state shall be required to keep a record book for the registration of the names and postoffice addresses of physicians, accoucheurs, and midwives, to be known as a register of physicians and accoucheurs. Shall also keep a book for registering all births, to be known as a birth register, and also shall keep a book to register all deaths, to be known as a death register, and all the births and deaths so registered shall be transcribed quarterly, in alphabetical order, into books to be known as the permanent record of births and the permanent record of deaths. He shall also keep a book, to be known as the marriage statistic record, in which shall be recorded all the statistical information prescribed by the state board. Said books shall always be open for inspection, and said county auditor shall be required to render a full and complete report of all marriage statistics, births, and deaths to the secretary of the board of health quarterly, and at such other times as the secretary of the board may direct. [L. '91, p. 190 § 8; 1 H. C., § 2613.]

See note to §§ 5416, 5423.

§ 5423. Registration of Births and Deaths—State Registrar.—It shall be the duty of the state board of health to have charge of the state system of registration of births and deaths and to prepare the necessary rules, forms and blanks for obtaining records and to insure the faithful registration of the same. The secretary of the state board of health shall be ex-officio state registrar and shall have general supervision over the system of vital statistics hereby authorized and shall be charged with the uniform and thorough enforcement of this law throughout the state, and shall, from time to time, recommend any additional forms and amendments that may be necessary. [The state board of health is authorized to appoint, when necessary, an assistant state registrar, who shall be assistant secretary of the state board of health, and to employ the necessary clerical assistants to properly record, index and classify the returns of vital statistics herein provided for.] [L. '07, p. 145, § 1.]

See supra, § 5410, state commissioner of health to be secretary and registrar.

The last part of this section in brackets is probably superseded by § 5410, supra.

These sections, being a complete act on this subject, probably impliedly repeal all or most of the seven preceding sections.

§ 5424. Registration Districts.—That for the purposes of this act the state shall be divided into registration districts as follows: Each city of the first, second and third class shall constitute a primary registration district, and each county, exclusive of the portion included within cities of the first, second and third class, shall be subdivided by the state registrar into districts in such manner as may appear necessary for the convenience of the people, and each such district shall constitute a primary registration district, and each primary registration district shall be numbered by the state registrar. [L. '15, p. 636, § 1. Cf. L. '07, p. 145, § 2.]

§ 5425. Local Registrars—Duties—Death Certificates and Burial Permits.—The health officer of each city of the first, second and third class shall be the local registrar in and for such primary registration district, and shall perform all the duties of the local registrar as hereinafter provided. The state registrar shall appoint a suitable person in and for each registration district not included in the cities of the first, second or third class, who shall hold such position during the pleasure of the state registrar, and shall perform all of the duties of local registrar, as hereinafter provided. Each local registrar shall appoint in writing a deputy who shall be authorized to act in case of the absence, death, illness or disability of the local registrar, and shall certify the appointment of such deputy to the state registrar. [L. '15, p. 636, § 2. Cf. L. '07, p. 145, § 3.]

§ 5426. Burial and Removal Permits — Unlawful Interments. — That it shall be unlawful for any person to inter, deposit in a vault,

grave or tomb, cremate or otherwise dispose of, or disinter or remove from one registration district to another or hold for more than seventy-two hours after death, the body or remains of any person whose death occurs in this state or any body which shall be found in this state, without obtaining, from the local registrar of the district in which the death occurred or in which the body was found, a permit for the burial, disinterment or removal of such body: Provided, that any licensed embalmer of this state may temporarily remove any such body of a person dying in this state from the place where death occurred outside of the corporate limits of any city of the first, second or third class to another registration district for the purpose of preparing the same for burial without having first obtained a removal permit, but in such case the embalmer shall at the time of securing a burial, removal or transit permit for such body, filed with the registrar from whom such permit is secured, upon a blank to be furnished by the state registrar, a certificate in writing of such temporary removal, signed by the embalmer, and it shall be unlawful for any person to bring into or transport within the state or inter, deposit in a vault, grave or tomb, or cremate or otherwise dispose of the body or remains of any person whose death occurred outside this state unless such body or remains be accompanied by a removal or transit permit issued in accordance with the law and health regulations in force where the death occurred or unless a special permit for bringing such body into this state shall be obtained from the state registrar. [L. '15, p. 637, § 3. Cf. L. '07, p. 146, § 4.]

§ 5427. Stillborn Children—Registration of.—That stillborn children or those dead at birth shall be registered as births and also as deaths, and a certificate of both the birth and the death shall be filed with the local registrar, in the usual form and manner, the certificate of birth to contain, in place of the name of the child, the word "stillbirth." The medical certificate of the cause of death shall be signed by the attending physician or midwife, if any, and shall state the cause of death as "stillborn," with the cause of the stillbirth, if known, and if born prematurely, the period of uterogestation in months, if known; and a burial or removal permit in usual form shall be required: Provided, that a certificate of birth or death shall not be required for a stillborn child that has not advanced beyond the seventh month of uterogestation. [L. '15, p. 638, § 4. Cf. L. '07, p. 147, § 5.]

§ 5428. Certificate of Death—Contents.—The certificate of death shall contain the following items: (1) Place of death; including state, county, township or town, village or city. If in a city, the ward, street and house number. If in a hospital or other institution, the name of the same to be given instead of the street and house number.

If in an industrial camp, the name to be given. (2) Full name of decedent. If an unnamed child, the surname preceded by "unnamed." (3) Sex. (4) Color or race; as white, black, (negro or negro descent), Indian, Chinese, Japanese or other. (5) Conjugal condition; as single, married, widowed or divorced. (6) Date of birth, including the year, month and day. (7) Age, in years, months and days. (8) Place of birth, state or foreign country. (9) Name of father. (10) Birthplace of father, state or foreign country. (11) Maiden name of mother. (12) Birthplace of mother, state or foreign country. (13) Occupation. The occupation to be reported of any person who had any remunerative employment, women as well as men. (14) Signature and address of informer. (15) Date of death, including the year, month and day. (16) Statement of medical attendance on decedent, fact and time of death, including the last time seen alive. (17) Cause of death, including the primary and immediate causes, and contributory causes or complications, if any, and duration of each. (18) Signature and address of physician or official making the immediate certificate. (19) Special information concerning deaths in hospitals and institutions, and of persons dying away from home, including the former or usual residence, length of time, and place of death, and place where the disease was contracted. (20) Place of burial or removal. (21) Date of burial or removal. (22) Signature and address of undertaker. (23) Official signature of registrar, with date when certificate was filed, and registered number.

The personal and statistical particulars (items 1 to 13) shall be authenticated by the signature of the informer, who may be any competent person acquainted with the facts.

The statement of facts relating to the disposition of the body shall be signed by the undertaker or person acting as such.

The medical certificate shall be made and signed by the physician, if any, last in attendance on the deceased, who shall specify the time in attendance, the time he last saw the deceased alive, and the hour of the day at which death occurred. And he shall further state the cause of death, so as to show the course of disease or sequence of causes resulting in death, giving the primary and immediate causes, and also the contributory causes, if any, and the duration of each. Indefinite and unsatisfactory terms, indicating only symptoms of disease or conditions resulting from disease, will not be held as sufficient for issuing a burial or removal permit; and any certificate containing only such terms as defined by the state registrar as indefinite and unsatisfactory shall be returned to the physician for correction and definition. Causes of death, which may be the result of either disease or violence, shall be carefully defined; and if from violence, its nature shall be stated, and whether accidental, suicidal or homi-

cidal, and in case of death in hospitals, institutions, or away from home, the physician shall furnish the information required under this head (item 19), and shall state where, in his opinion, the disease was contracted. [L. '07, p. 147, § 6.]

§ 5429. Death Without Medical Attendance—Investigation.—That in case of any death occurring without medical attendance, it shall be the duty of the undertaker, or any person acting as such, to notify the local registrar of the registration district where such death occurs, or the coroner, if in a county of the first class, of such death, and the local registrar shall at once investigate the circumstances of the case and make a certificate and return of death noting upon the certificate the fact that such death occurred without medical attendance: Provided, if the local registrar is not a qualified physician and the cause of death is obscure or uncertain, the local registrar shall refer the case to the health officer having jurisdiction over the locality where the death occurred, for certification: And provided, further, that if the circumstances of the case render it probable that the death was caused by unlawful means, the local registrar shall refer the case to the coroner, if the death occurred in a county of the first class, or to the prosecuting attorney, if the death occurred in any county other than a county of the first class, for certification. [L. '15, p. 638, § 5. Cf. L. '07, p. 149, § 7.]

§ 5430. Burial Permits, etc.—Procedure.—That it shall be the duty of every undertaker or person acting as undertaker, to obtain a certificate of death and file the same with the local registrar, and secure a burial or removal permit, prior to any permanent disposition of the body. He shall obtain the personal and statistical particulars required, from the person best qualified to supply them, over the signature and address of such person or state over his own signature that after careful inquiry he could not obtain such particulars. In case such deceased be a stranger whose identity cannot be determined it shall be the duty of the undertaker having such body in charge to have a photograph taken of such deceased and a copy of such photograph shall be filed with the secretary of the state board of health. He shall then present the certificate to the attending physician, if any, or in case the death occurred without any medical attendance, to the proper official for certification as hereinabove provided, for the medical certificate of the cause of death and other particulars necessary to complete the record as hereinabove provided. And he shall state the facts required relative to the date and place of burial, over his signature and with his address, and present the completed certificate to the local registrar, for the issuance of a burial or removal permit. The undertaker shall deliver the burial permit to

the sexton, or person in charge of the place of burial, before interring the body; or shall attach the transit permit containing the local registrar's removal permit, to the box containing the corpse, when shipped by any transportation company, and said permit shall accompany the corpse to its destination, provided that when a body is removed from one registration district in Washington to another for interment, cremation or other permanent disposition not requiring the use of a common carrier or the issuance of a transit permit, the registrar's removal permit from the district where the death occurred may be accepted as authority for burial in the other district. It shall be the duty of every person, firm or corporation selling a casket to keep a record showing the name and postoffice address of the purchaser, the name of the deceased and the date and place of death of the deceased, which record shall be open to inspection of the state registrar at all times, and it shall be the duty of every person, firm. or corporation selling caskets to, on the first day of each month, report to the state registrar each sale for the preceding month, on a blank provided for that purpose: Provided, however, that no person. firm, or corporation selling caskets to dealers or undertakers only shall be required to keep such record. It shall be the duty of every person, firm, or corporation selling a casket at retail, and not having charge of the disposition of the body, to inclose within the casket a notice furnished by the state registrar calling attention to the requirements of the law, a blank certificate of death, and a copy of the rules and regulations of the state board of health concerning the burial or other disposition of dead bodies. [L. '15, p. 639, § 6. Cf. L. '07, p. 149, § 8.]

§ 5431. Requisites of Burial Permit.—If the interment, or other disposition of the body, is to be made within the state, the wording of the burial permit may be limited to a statement by the local registrar and over his signature, that a satisfactory certificate of death having been filed with him, as required by law, permission is granted to inter, remove or otherwise dispose of the deceased; stating the name, age, sex, cause of death, and other necessary details upon the form prescribed by the state registrar. [L. '07, p. 150, § 9.]

§ 5432. Burial Grounds—Duties of Sexton.—It shall be unlawful for any person in charge of any premises in which bodies of deceased persons are interred, cremated or otherwise permanently disposed of, to permit the interment, cremation or other disposition of any body upon such premises unless it is accompanied by a burial, removal or transit permit as hereinabove provided. It shall be the duty of the person in charge of any such premises to, in case of the interment, cremation or other disposition of a body therein, indorse upon the permit the date and character of such disposition, over his signa-

ture, to return all permits so indorsed to the local registrar of his district within ten days from the date of such disposition, and to keep a record of all bodies disposed of on the premises under his charge, stating, in each case, the name of the deceased person, if known, the place of death, the date of burial or other disposition, and the name and address of the undertaker, which record shall at all times be open to public inspection, and it shall be the duty of every undertaker, or person acting as such, when burying a body in a cemetery or burial grounds having no person in charge, to sign the burial, removal or transit permit, giving the date of burial, write across the face of the permit the words "no person in charge," and file the burial, removal or transit permit within ten days with the registrar of the district in which the cemetery is located. [L. '15, p. 640, § 7. Cf. L. '07, p. 150, § 10.]

§ 5433. Registration of Births.—All births that occur in the state shall be immediately registered in the districts in which they occur, as hereinafter provided. [L. '07, p. 150, § 11.]

§ 5434. Certificate of Birth—Filing.—It shall be the duty of the attending physician or midwife to file a certificate of birth, properly and completely filled out, giving all of the particulars required by this act, with the local registrar of the district in which the birth occurred, within ten days after the date of birth. And if there be no attending physician or midwife, then it shall be the duty of the father or mother of the child, householder or owner of the premises, manager or superintendent of public or private institution in which the birth occurred, to notify the local registrar, within ten days after the birth, of the fact of such a birth having occurred. It shall then, in such case, be the duty of the local registrar to secure the necessary information and signature to make a proper certificate of birth. [L. '07, p. 150, § 12.]

§ 5435. Contents of Certificate.—The certificate of birth shall contain the following items:

(1) Place of birth, including state, county, township or town, village or city. If in a city, the ward, street, and house number; if in a hospital, or other institution, the name of the same to be given, instead of the street and house number. (2) Full name of the child. If the child dies without a name, before the certificate is filed enter the words "died unnamed." If the living child has not been named at the date of filing certificate of birth, the space for "full name of child" is to be left blank, to be filled out subsequently by a supplemental report, as hereinafter provided. (3) Sex of child. (4) Whether a twin, triplet, or other plural birth. A separate certificate shall be required for each child in a case of plural birth, giving the number of child in order of birth. (5) Whether legitimate or ille-

gitimate. (6) Full name of father. (7) Residence of father. (8) Color or race of father. (9) Birthplace of father. (10) Age of father at last birthday, in years. (11) Occupation of father. (12) Maiden name of mother, in full. (13) Residence of mother. (14) Color or race of mother. (15) Birthplace of mother. (16) Age of mother at last birthday, in years. (17) Occupation of mother. (18) Number of child of this mother, and number of children of this mother now living. [L. '07, p. 151, § 13.]

§ 5436. Names of Children Supplied.—It shall be the duty of every local registrar when any certificate of birth of a living child is presented without statement of the given name, to make out and deliver to the parents of such child a special blank for the supplemental report of the given name of the child, which shall be filled out as directed and returned to the registrar as soon as the child has been named. [L. '15, p. 641, § 8. Cf. L. '07, p. 151, § 14.]

§ 5437. Registration of Physicians, Midwives and Undertakers.—Every physician, midwife and undertaker shall, without delay, register his or her name, address and occupation with the local registrar of the district in which he or she resides or may hereafter establish a residence; and shall thereupon be supplied by the local registrar with a copy of this act, together with such rules and regulations as may be prepared by the state registrar relative to its enforcement. Within thirty days after October 1st of each year each local registrar shall make a return to the state registrar of all physicians and midwives who have been registered in his district during the whole or any part of the preceding calendar year: Provided, that no fee or other compensation shall be charged by local registrars to physicians, midwives, or undertakers for registering their names under this section or making returns thereof to the state registrar. [L. '07, p. 152, § 15.]

§ 5438. Inmates of Hospitals, etc.—Record.—All superintendents or managers, or other persons in charge of hospitals, almshouses, lying-in or other institutions, public or private, to which persons resort for treatment of disease, confinement, or are committed by process of law, are hereby required to make a record of all the personal and statistical particulars relative to the inmates in their institutions, at the date of approval of this act, that are required in the form of the certificate provided for by this act, as directed by the state registrar; and thereafter such record shall be by them made for all future inmates at the time of their admission. And in case of persons admitted or committed for medical treatment of contagious disease, the physician in charge shall specify, for entry in the record, the nature of the disease, and where, in his opinion, it was contracted. The personal particulars and information re-

quired by this section shall be obtained from the individual himself, if it is practicable to do so; and when they cannot be so obtained, they shall be secured in as complete a manner as possible from the relatives, friends, or other persons acquainted with the facts. [L. '07, p. 152, § 16.]

§ 5439. Duties of State Registrar.—That the state registrar shall prepare, print and supply to all registrars all blanks and forms used in registering, recording and preserving the returns, or in otherwise carrying out the purposes of this act; and shall prepare and issue such detailed instructions as may be required to secure the uniform observance of its provisions and the maintenance of a perfect system of registration. And no other blanks shall be used than those supplied by the state registrar. He shall carefully examine the certificates received monthly from the local registrars, and if any such are incomplete or unsatisfactory, he shall require such further information to be furnished as may be necessary to make the record complete and satisfactory, and shall cause such further information to be attached to and filed with the certificate. He shall furnish, arrange, bind and permanently preserve the certificates in a systematic manner, and shall prepare and maintain a comprehensive and continuous card index of all births and deaths registered; the cards to show the name of the child or deceased, place and date of birth or death, number of certificate, and the volume in which it is contained. He shall inform all local registrars of the diseases which are to be considered as infectious to the public health, as decided by the state board of health, in order that, when death occurs from such diseases, proper precautions may be taken to prevent the spreading of dangerous diseases. If any cemetery company or association, or any church or historical society or association, or any other company, society, or association, or any individual, is in possession of any record of births or deaths which may be of value in establishing the genealogy of any resident of this state, such company, society, association, or individual may file such record or a duly authenticated transcript thereof with the state registrar, and it shall be the duty of the state registrar to preserve such record or transcript and to make a record and index thereof in such form as to facilitate the finding of any information contained therein. Such record and index shall be open to inspection by the public, subject to such reasonable conditions as the state registrar may prescribe. If any person desires a transcript of any record filed in accordance herewith, the state registrar shall furnish the same upon application, together with a certificate that it is a true copy of such record, as filed in his office, and for his services in so furnishing such transcript and certificate he shall be entitled to a fee of fifty cents per hour or fraction of an hour necessarily con-

sumed in making such transcript, which fee shall be paid by the applicant. [L. '15, p. 641, § 9. Cf. L. '07, p. 153, § 17.]

§ 5440. Duties of Local Registrar.—It shall be the duty of the local registrar to supply blank forms of certificates to such persons as require them. And he shall carefully examine each certificate of birth or death when presented for record, to see that it has been made out in accordance with the provisions of this act and the instructions of the state registrar; and if any certificate of death is incomplete or unsatisfactory, it shall be his duty to call attention to the defects in the return, and to withhold issuing the burial or removal permit until they are corrected. If the certificate of death is properly executed and complete, he shall issue a burial or removal permit to the undertaker: Provided, that in case the death occurred from some disease that is held by the state board of health to be infectious, contagious, or communicable and dangerous to the public health, no permit for the removal or other disposition of the body shall be granted by the local registrar, except under such conditions as may be prescribed by the state and local boards of health. If a certificate of a birth is incomplete, he shall immediately notify the informant, and require him to supply the missing items if they can be obtained. He shall then number consecutively the certificates of birth and death, in two separate series, beginning with "number one" for the first birth and the first death in each calendar year, and sign his name as local registrar in attest of the date of filing in his office. He shall also make a complete and accurate copy of each birth and death certificate registered by him, upon a form identical with the original certificate, to be filed and permanently preserved in his office as the local record of such death, in such manner as directed by the state registrar. And he shall on or before the fifth day of each month, transmit to the state registrar all original certificates registered by him during the preceding month. And if no births or no deaths occurred in any month, he shall, on the fifth day of the following month, report that fact to the state registrar, on a card provided for this purpose: Provided, that in cities of the first class, original certificates may be retained by the local health authorities, and exact duplicates of the original certificates may be forwarded by the local registrars to the state registrar. [L. '07, p. 153, § 18.]

§ 5441. Compensation of Local Registrars.—That each local registrar shall be paid the sum of twenty-five cents for each birth or death certificate properly and completely made out and registered with him and by him returned to the state registrar on or before the tenth day of the following month, which sum shall cover and include the making out of the burial permit and copy of the certifi-

cate to be filed and preserved in his office. And, in case no births or deaths were registered during any month, the local registrar shall be paid the sum of twenty-five cents for each report to that effect, properly made out in accordance with the directions of the state registrar: Provided, that all local registrars who receive regular compensation as health officers shall not be entitled to the fee of twenty-five cents, above mentioned, but the duties of the local registrar shall be considered as a part of their duty as local health officer. All fees payable to local registrars under the provisions of this act shall be paid by the treasurer of the county, or city, as the case may be, properly chargeable therewith, out of the funds of such county or city, upon warrants drawn by the auditor, or other proper officer of such county or city. No warrant shall be issued to any local registrar except upon a certificate, signed and verified under oath by the state registrar, stating the names and postoffice address respectively of the local registrars entitled to fees from such county or city, and the number of certificates and reports of births or deaths, properly returned to the state registrar, by each such local registrar, during the three preceding calendar months prior to the date of such certificate, and the amount of fees to which each local registrar is entitled, which certificate the state registrar shall file with the proper officers during the months of January, April, July and October of each year. Upon the filing of such certificates, it shall be the duty of the auditor or other proper officer of the county or city to issue warrants for the amount due each local registrar and mail the same to the local registrars at their respective postoffice addresses, as given in such certificate of the state registrar. [L. '15, p. 643, § 10. Cf. L. '07, p. 154, § 19.]

§ 5442. Certified Copies of Records and Searches, Fees for.—It shall be the duty of the state registrar to, upon request, furnish any applicant with a certified copy of the record of any birth or death, registered under the provisions of this act, for the making and certification of which he shall be entitled to a fee of fifty cents to be paid by the applicant. For any search of the files and the records when no certified copy is made, the state registrar shall be entitled to a fee of fifty cents for each hour or fractional part of an hour employed in such search, to be paid by the applicant. But the state registrar and all local registrars shall furnish upon application certificates of the age of children to be used in attending the public schools or in obtaining employment permits without fee or compensation. The state registrar shall keep a true and correct account of all fees received by him under the provisions of this act, and turn the same over to the state treasurer on the first day of January, April, July and October. Local registrars in cities of the first, second and third class shall be entitled to charge for

certified copies of records of births and deaths and for searching of records when no certified copy is made, the same fee as hereinabove provided for the state registrar, but such fees, if any collected, shall be paid into the treasury of the city where collected. [L. '15, p. 644, § 11. Cf. L. '07, p. 155, § 20.]

§ 5443. Violations of Act—Penalties.—Every person who shall violate or willfully fail, neglect or refuse to comply with any provisions of this act shall be guilty of [a] misdemeanor and for a second offense shall be punished by a fine of not less than twenty-five dollars, and for a third and each subsequent offense shall be punished by a fine or not less than fifty dollars or more than two hundred and fifty dollars or by imprisonment for not more than ninety days, or by both fine and imprisonment, and every person who shall willfully furnish any false information for any certificate required by this act or who shall make any false statement in any such certificate shall be guilty of a gross misdemeanor. [L. '15, p. 644, § 12. Cf. L. '07, p. 156, § 21.]

§ 5444. Enforcement of Act—Who Charged With.—The local registrars are hereby charged with the strict and thorough enforcement of the provisions of this act in their districts, under the supervision and direction of the state registrar. And they shall make an immediate report to the state registrar of any violations of this law coming to their notice by observation or upon the complaint of any person, or otherwise. The state registrar is hereby charged with the thorough and efficient execution of the provisions of this act in every part of the state, and with supervisory power over local registrars, to the end that all of the requirements shall be uniformly complied with. He shall have authority to investigate cases of irregularity or violation of law, personally or by accredited representative, and all local registrars shall aid him, upon request, in such investigation. When he shall deem it necessary he shall report cases of violation of any of the provisions of this act to the prosecuting attorney of the proper county with a statement of the fact and circumstances; and when any such case is reported to them by the state registrar, all prosecuting attorneys or officials acting in such capacity shall forthwith initiate and promptly follow up the necessary court proceedings against the parties responsible for the alleged violations of law. And upon request of the state registrar the attorney general shall likewise assist in the enforcement of the provisions of this act. [L. '07, p. 157, § 22.]

"Act" refers to this chapter, except the first seven sections.

CHAPTER V.

Manufacture and Sale of Dairy Products.

§ 5446. Unlawful to Sell Impure Milk.—It shall be unlawful for any person to sell or offer for sale, or furnish or deliver to any creamery, cheese factory, corporation, person or persons whatsoever, as pure, wholesome and unskimmed, any unmerchantable, adulterated, skimmed, impure or unwholesome milk. [L. '95, p. 68, § 1; L. '99, p. 56, § 1.]

See supra, § 2513, sale of impure milk and cream.
See infra, § 5448i, penalty for violating any of the provisions of this chapter.
See infra, § 5451, sale of adulterated milk.
See infra, § 5467 et seq.; sale of milk in cities of first class.

§ 5446a. Impure Milk—Proof Necessary to Establish Impurity. In all prosecutions or other proceedings under this or any other law of this state, relating to the sale or furnishing of milk, if it shall be proven that the milk sold or offered for sale, or furnished or delivered or had in possession with intent to sell or offer for sale, or to furnish or deliver, as aforesaid, as pure, wholesome or unskimmed milk, contain less than three per centum of pure butter fat, or less than eight per centum of milk solids other than fat, when subject to chemical analysis or other satisfactory tests, or that it, or any part of it, was drawn from cows known by the person complained of, to have been within fifteen days before or four days after parturition, or to have any disease or ulcers, or other running sores, then and in either case, the said milk shall be held and judged to be unmerchantable, adulterated, impure or unwholesome, as the case may be, and if it shall appear that cows kept for the production of milk or cream, for market or for sale or exchange, or for manufacturing their milk into articles of food, are kept in a crowded or unhealthy condition, or are being fed on distillery waste or other substance in a state of putrefaction or rottenness, or upon any substance of any unhealthy nature, the milk or cream from same is hereby declared impure and unwholesome. Any milk or cream from the same that has been exposed to or contaminated by emanations, discharges or exhalations from persons or animals, or to which has been added any borax, boracic acid, salycillic [salicylic] acid, or any other poisonous substance which prevents or tends to prevent the normal bacterial actions of milk, is hereby declared to be impure and unwholesome. [L. '99, p. 57, § 2. Cf. L. '95, p. 68, § 2; L. '97, p. 14, § 1.]

§ 5446b. Unlawful to Sell Impure Cream.—No person shall sell or offer for sale any cream taken from impure or diseased milk, or any cream that contains less than eighteen per centum of pure butter fat. Any person violating the provisions of this section

shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars ($25) nor more than one hundred dollars ($100), or by imprisonment for not less than one (1) month nor more than six (6) months, or by both such fine and imprisonment. [L. '99, p. 63, § 23.]

§ 5446c. Cheese—Coloring and Other Ingredients.—It shall be unlawful for any person to sell, or offer for sale or exchange, or have in his possession for sale, any cheese containing any substance except salt, rennet and harmless coloring matter, other than that produced from pure milk or cream, or both, or from pure skimmed or pure half-skimmed milk. [L. '05, p. 71, § 6; L. '99, p. 60, § 6.]

§ 5446d. Cheese, How to be Stamped.—The state dairy and food commissioner is hereby authorized and directed to procure and issue to the cheese manufacturers of the state, and under any regulations as to the custody and use thereof as he may prescribe, a uniform stencil brand bearing a suitable device or motto and the words "Washington State Full Cream Cheese." Every brand issued shall be used on the outside of the cheese, and shall have a different number for each separate manufactory, and the commissioner shall keep a book in which shall be registered the name, location and number of each manufactory using the said brand, and the name or names of the persons at each manufactory authorized to use the same. It shall be unlawful to use or permit such stencil brand to be used upon any other than full cream cheese or packages containing the same, and such cheese only as shall contain thirty per centum of pure butter fat and have been manufactured from pure and wholesome milk, from which no portion of the butter fat shall have been removed by skimming or by other process, and in the manufacture of which neither butter nor any substance for butter, or any animal or vegetable fats or oils, have been used, or any fat which has been extracted from milk in any form and returned for the purpose of filling said cheese, shall be stamped with the "state brand." All cheese containing less than thirty per centum of pure butter fat shall be marked "skimmed cheese" in full face capital letters not less than one inch high, with such ink as is not easily removed by moisture. The manufacture or sale of any cheese containing less than fifteen per centum of pure butter fat, or so-called "filled cheese," is hereby prohibited: Provided, that nothing in this section shall be construed to apply to Edam, Brickstein, Pineapple, Limburger, Swiss or hand-made cheese, or any other fancy cheese: Provided further, that cheese not made in this state, but which shall be sold or offered for sale in this state, shall be so stamped as to indicate its true character: And provided further, that no cheese shall be stamped

"full cream" which does not in every particular comply with the requirements of "Washington full cream" cheese, as hereinbefore set forth, except as to place of manufacture. [L. '99, p. 57, § 3. Cf. L. '95, p. 69, § 3; L. '97, p. 15, § 2.]

§ 5446e. Annual Report by Dairies, etc.—Cans and Tags.—The dairy commissioner shall furnish blanks to all proprietors or managers of creameries, cheese factories, or milk dairies that ship milk and all the venders and peddlers of milk within the state, for the purpose of making a report of the amount of milk and dairy goods handled, and all owners or managers of such creameries and cheese factories, and all milk dairies, milk venders or milk peddlers, shall fill out the blank, giving a full and accurate report of the business done during the year, and send it to the dairy commissioner before the first day of November of each year, every person or corporation who shall engage in the business of purchasing or dealing in milk shall attach in a permanent manner to each can furnished by him or it to the producer a tag containing in plain figures a correct statement of the capacity thereof. Any neglect or failure or false statement on the part of any proprietor or manager of such creamery, cheese factory, dairy or milk vender or milk peddler, shall be considered a misdemeanor, and upon conviction thereof shall be punished by a fine as provided in section 5448i: Provided, that any information thus furnished shall be published only in such form as to show totals and averages, and not the details of the business of any individual or concern. [L. '99, p. 58, § 4. Cf. L. '95, p. 70, § 4.]

See infra, §§ 9527, 9529, milk cans, capacity to be stamped.

§ 5446f. Counterfeiting Butter Prohibited.—No person, by himself, his agents or his servants, shall render or manufacture, sell, offer for sale, expose for sale, or have in his possession with intent to sell or serve for patrons, guests, boarders or inmates of any hotel, eating-house, restaurant, public conveyance or boarding-house or public or private hospital, asylum, school or eleemosynary or penal institution, any article, product or compound made wholly or partly out of any fat, oil or oleaginous substance or compound thereof, not produced directly and wholly at the time of manufacture from unadulterated milk or the cream from the same, with or without harmless coloring matter, which shall be in imitation of yellow butter produced from pure, unadulterated milk or the cream from the same: Provided, that nothing in this chapter shall be construed to prohibit the manufacture and sale of oleomargarine in a separate and distinct form, and in such manner as will advise the consumer of its real character, free from coloration or ingredient that causes it to resemble butter, or the

use of the same by patrons, guests, boarders or inmates of any hotel, eating-house, restaurant, public conveyance or boarding-house, when signs are displayed in a conspicuous place that may be easily read from any part of the room. [L. '95, p. 70, § 5; L. '99, p. 59, § 5.]

Former laws cited in 14 Wash. 103, 105; 15 Wash. 599.

§ 5446g. License to Peddle Milk.—Every person who conveys milk in carriages, carts or other vehicle for the purpose of selling the same in any city or town in the state of Washington, shall annually on the first day of June, or within thirty (30) days thereafter, procure from the state dairy commissioner a license to sell milk within the limits of said city or town, and shall pay to the said dairy commissioner the sum of one dollar ($1) for each carriage, cart or other vehicle to be used as provided for in section 5447e. Licenses shall be issued only in the names of the owners of carriages, carts and other vehicles and shall, for the purpose of this chapter, be conclusive evidence of ownership. No license shall be sold, assigned or transferred; each license shall contain the name, residence, place of business, number of carriages, carts or other vehicles used, and the number of the license. Each licensee shall, before engaging in the sale of milk, cause his name, the number of the license and his place of business to be legibly placed on each outer side of all carriages, carts or other vehicles used by him in the conveyance or sale of milk. Whoever, without being first licensed under the provisions of this section, sells milk or exposes it for sale from carriages, carts or other vehicles, or has the same in his custody or possession with intent to sell, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars ($25) for each offense, nor more than one hundred dollars ($100), or by imprisonment for not less than one month or more than six months or by both such fine and imprisonment: Provided, that nothing in this section shall apply to persons handling or using the milk from not more than two cows. [L. '99, p. 64, § 24.]

§ 5447. License for Sale at Store or Stand.—Every person before selling milk or offering it for sale in a store, booth, stand or market place in any town or city, shall procure a license from the state dairy commissioner and shall pay to said commissioner the sum of one dollar ($1) yearly, within thirty days after June 1st. Any person who neglects to procure such license shall be deemed guilty of a misdemeanor, and upon conviction shall be punished for each offense by a fine of not less than twenty-five dollars ($25) nor more than one hundred dollars ($100) for each and every offense or by imprisonment for not less than one month or more than six months or by both such fine and imprisonment. [L. '99, p. 65, § 25.]

§ 5447a. "Skimmed Milk"—Must be Labeled.—No person shall sell or expose for sale in any store or place of business or in any wagon or other vehicle used in the transportation or sale of milk from which cream has been removed or milk commonly called "skimmed milk" without first marking the can or package containing said milk with the words "skimmed milk" in large plain black letters, each letter being at least one inch high and one-half inch wide, said words to be on the side not below the middle of said can or package, where they can be easily seen. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than twenty-five dollars ($25) nor more than one hundred dollars ($100) for each and every offense, or by imprisonment for not less than one month or more than six months or by both such fine and imprisonment. [L. '99, p. 65, § 26.]

See supra, § 2515, skimmed milk, defined.

§ 5447b. Disposition of License Fees, etc.—All moneys received for licenses or from the sale of any and all goods confiscated by the dairy commissioner under this chapter shall be received by said commissioner and deposited the first of every month with the state treasurer, to be placed in the general fund. [L. '99, p. 165, § 27.]

§ 5447c. Possession Prima Facie Proof of Guilt—Seizure.—Possession by any person or firm of an article or substance the sale of which is prohibited by this act shall be considered prima facie evidence that the same is kept by such person or firm in violation of the provisions of this chapter, and the commissioner shall be authorized to seize upon and take possession of such articles or substances, and upon the order of any court which has jurisdiction thereof, he shall sell the same for any purpose other than to be used for food, the proceeds to be paid to the state treasurer and placed to the credit of the general fund. [L. '99, p. 66, § 28.]

Cited in 67 Wash. 439.

§ 5447d. Uniform Brand for "Washington Creamery Butter."—The state dairy and food commissioner is hereby authorized and directed to procure and issue to the manufacturers of creamery butter of the state and under such regulations as to the custody and use thereof as he may prescribe a uniform brand bearing a suitable device or motto, and the words "Washington Creamery Butter." Every brand issued shall be used on the wrapper of each package and also on the outside of every package used by him, and shall contain a different number for each separate manufactory, and the commissioner shall keep a book in which shall be registered the name, location and number of each manufacturer using the said brand. It shall be unlawful to use or permit such brand to be used

upon any other than Washington creamery butter or packages containing the same. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined for each offense not less than twenty-five dollars ($25) nor more than one hundred dollars ($100) or by imprisonment for not less than one month or more than six months, or by both such fine and imprisonment. [L. '99, p. 66, § 29.]

§ 5447e. "Renovated Butter"—Must be Plainly Marked.—No person, firm or corporation shall maufacture, sell or offer for sale or have in his possession with intent to sell butter known as process butter, unless the package in which the butter is sold has marked on the side of it the words "renovated butter" in capital letters one inch high and one-half inch wide with ink which is not easily removed: Provided, that it shall be unlawful for any retailer to sell said butter unless a card is displayed on the package from which he is selling butter with the following words printed thereon so that it may be easily read by the purchaser "renovated butter," or if it is sold in packages on which a wrapper is used the words "renovated butter" shall be plainly printed on each and every wrapper: Provided further, that all process butter shipped from other states shall be subject to the same regulations as provided in this section. Whoever violates the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be fined for each and every offense not less than twenty-five dollars ($25) nor more than one hundred dollars ($100) or by imprisonment for not less than one month or more than six months, or by both such fine and imprisonment. [L. '99, p. 66, § 30.]

Cited in 67 Wash. 439; 76 Wash. 477.

§ 5447f. Brands—Cancellation Where Butter Inferior.—The commissioner is hereby authorized and directed to cancel all state brands issued to creameries where the butter manufactured does not score ninety points. [L. '05, p. 197, § 2.]

§ 5448. Butter Scores.—The commissioner or instructor shall have the power to score the butter and the score made by them shall be final. [L. '05, p. 197, § 3.]

§ 5448a. Instructions in Care of Milk, etc.—It shall be the duty of the commissioner or instructor to give instructions in the care of milk and cream, and in the manufacture of butter and cheese. [L. '05, p. 197, § 4.]

§ 5448c. Inspection of Apparatus.—All apparatus used for the purpose of testing milk or cream furnished to any creamery shall be inspected and tested by the dairy and food commissioner, or his deputies, and any found to be faulty or defective, to be replaced

through the dairy commissioner at cost to the user. [L. '05, p. 197, § 6.]

§ 5448d. Misreading Babcock Test.—It shall be unlawful for the owner, manufacturer, agent or any employee of a butter or cheese factory or condensory to under or over read the Babcock test, or to manipulate for the purpose of deception any other contrivance used for determining the quality or value of milk or cream. [L. '05, p. 197, § 7.]

§ 5448e. Duty of Commissioner—Enforcement of Law.—It shall be the duty of the dairy and food commissioner to devote his entire time and attention to the dairy interests of the state of Washington, to enforce all laws that now exist or that may be hereafter enacted in this state regarding the production, manufacture or sale of dairy produce, and personally to inspect any articles of milk, butter, cheese, or imitations thereof, made or offered for sale within the state, which he may suspect or have reason to believe to be impure, unhealthful, adulterated or counterfeit; and to prosecute or cause to be prosecuted any person or persons, firm or firms, corporation or corporations engaged in the manufacture or sale of any adulterated or counterfeit dairy products contrary to law. [L. '95, p. 71, § 10; L. '99, p. 60, § 10.]

See §§ 5445c, 5458, 5462, for other duties of commissioner.

§ 5448f. Analysis—Duty of Chemists of State Institutions.—It shall be the duty of the chemist of any state institution to correctly analyze, without extra compensation, and without other charge to the state than necessary traveling expenses, any and all substances that the dairy commissioner may send to any of them and to report to him without unnecessary delay the result of any analysis so made, and when called upon by said dairy commissioner, any such chemist shall assist him in prosecuting violators of the law, by giving testimony, either expert or otherwise. [L. '95, p. 72, § 11; L. '99, p. 61, § 11.]

§ 5448h. Powers of Commissioner and Deputies—Seizure—Samples.—The dairy and food commissioner or his deputies shall have power, in the performance of their official duties, to enter any creamery, cheese, or condensed milk factory, store, salesroom, warehouse, or any place or building where he has reason to believe that any dairy products or imitations of dairy products are kept, made, prepared, sold, or offered for sale or exchange; and to open any cask, tub, package or receptacle of any kind, containing or supposed to contain any such article, and to examine, or cause to be examined and analyzed, the contents thereof; he may seize or take any such article for analysis: Provided, that if the person from whom such sample is taken shall request him to do so, he shall at the

same time and in the presence of the person from whom such property was taken, seal up two samples of the article seized or taken, one of which shall be for examination or analysis under the direction of said commissioner, and the other of which shall be delivered to the person from whom the article is taken. [L. '95, p. 72, § 13; L. '99, p. 61, § 12.]

§ 5448i. Penalty for Violations.—Any person who shall violate any of the provisions of this chapter or who shall obstruct the commissioner or instructor in the performance of their duties under this chapter, by refusing him entrance to any place enumerated in the preceding sections, or by refusing to deliver to him any dairy products or imitations thereof upon demand, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars or by imprisonment for not less than one month or more than six months, or by both such fine and imprisonment. [L. '95, p. 72, § 14; L. '99, p. 62, § 13; L. '05, p. 198, § 9.]

§ 5448j. Certain Persons must Assist Commissioner.—All clerks, bookkeepers, express agents, railroad officials, employees, or employees of common carriers shall render to the dairy and food commissioner and his deputies all the assistance in their power in tracing, finding, or discovering the presence of any article named in this chapter. Any refusal or neglect on the part of such clerks, bookkeepers, express agents, railroad officials, employees, or employees of common carriers to render such friendly aid, shall be a misdemeanor, punishable by fine of not less than twenty-five ($25) nor more than one hundred dollars ($100), or by imprisonment for not less than one month or more than six months, or by both such fine and imprisonment for each and every offense. [L. '99, p. 63, § 22.]

§ 5448 l. Jurisdiction.—Any superior court, municipal court or justice of the peace in this state shall have jurisdiction over all prosecutions arising under this chapter. [L. '95, p. 73, § 15.]

This section was not included in the act of 1899, and may be impliedly repealed.

§ 5448–1. Registration of Dealers' Brands—Right to Marks.—Any person, firm or corporation engaged in the manufacture, sale or transportation of milk, cream, ice-cream or any other dairy product may adopt a mark or marks of ownership to be stamped, marked or otherwise affixed to any can or tub used in the manufacture, sale or transportation of any such products and may upon the payment of a fee of five dollars file an application for the exclusive right to use such mark or marks in the office of the department of agriculture, which application shall contain the name and

address of the applicant, a description of the mark or marks proposed and the use to be made of the cans or tubs by such applicant. The department of agriculture shall refuse such application if such mark or marks of ownership shall be the same or so nearly similar to any mark or marks of ownership theretofore registered as to be misleading. Otherwise such application shall be granted and such fact, together with a description of the mark or marks of ownership, shall be entered in a register to be kept by said department of agriculture. [L. '15, p. 296, § 1.]

§ 5448–2. Character of Marks.—The mark or marks of ownership so selected and adopted may consist of a name, design or other mark or marks to be used upon the cans or tubs of the applicant. [L. '15, p. 297, § 2.]

§ 5448–3. Prohibition of Use by Others.—No person, firm or corporation shall use or adopt any name, design, mark or marks registered by any other person, firm or corporation under the provisions of this act. [L. '15, p. 297, § 3.]

§ 5448–4. Other Use of Cans or Tubs.—No person shall use any can or tub marked as herein provided, for any other purpose than the transportation of the products herein mentioned to or from the rightful owner of said cans or tubs. [L. '15, p. 297, § 4.]

§ 5448–5. Defacement of Marks.—No person other than the owner thereof shall deface any registered mark upon any can or tub nor remove the same. [L. '15, p. 297, § 5.]

§ 5448–6. Enforcement.—It shall be the duty of the commissioner of agriculture to enforce the provisions of this act. [L. '15, p. 297, § 6.]

§ 5448–7. Penalty.—Any person, firm or corporation who shall violate any of the provisions of this act shall be guilty of a misdemeanor. [L. '15, p. 297, § 7.]

CHAPTER VI.

Adulteration of Foods, Drinks and Drugs.

§ 5449. Combination of Poisonous Substances With Bread.—It shall be unlawful for any person to sell, offer for sale, use, distribute, or leave in any place, any crackers, biscuit, bread or any other preparation resembling or in similitude, of any edible product, containing arsenic, strychnine or any other poison. [L. '05, p. 259, § 1.]

See supra, § 2516, willfully poisoning food.

§ 5450. Penalty.—Any person violating the provisions of the preceding section shall upon conviction be punished by a fine of not

less than ten ($10) dollars nor more than five hundred dollars ($500). [L. '05, p. 259, § 2.]

§ 5451. Sale of Adulterated Milk, a Felony.—Any person who shall sell, offer to sell, or have in his possession for the purpose of sale, either as owner, proprietor, or assistant, or in any manner whatsoever, whether for hire or otherwise, any milk or any food products, containing the chemical ingredient commonly known as formaldehyde, or in which any formaldehyde or other poisonous substance has been mixed, for the purpose of preservation or otherwise, shall be guilty of a felony, and upon conviction thereof shall be imprisoned in the penitentiary for the period of not less than one (1) year nor more than three (3) years. [L. '05, p. 79, § 1.]

§ 5452. Act Supplementary to Existing Laws—Enforcement.—This and the preceding section shall be supplementary to the laws of this state now in force prohibiting the adulteration of food and fraud in the sale thereof; and the state dairy and food commissioner, the chemist of the State Agricultural Experiment Station, the state attorney general and the prosecuting attorneys of the several counties of this state are hereby required, without additional compensation, to assist in the execution of this act, and in the prosecution of all persons charged with the violation thereof, in like manner and with like powers as they are now authorized and required by law to enforce the laws of this state against the adulteration of food and fraud in the sale thereof. [L. '05, p. 79, § 2.]

"Act" refers to the following sections of this chapter, to § 5466.

§ 5453. Sale of Adulterated Articles Prohibited.—No person, firm or corporation shall, within this state, sell, offer for sale, have in his possession with intent to sell, or manufacture for sale, any article of food or drug which is adulterated or misbranded within the meaning of this act. [L. '01, p. 194, § 1; L. '07, p. 478, § 1.]

Cited in 64 Wash. 48; 81 Wash. 242; 86 Wash. 434.
"This act": See note to § 5452.

§ 5454. "Drug" and "Food" Defined.—The term "drug," as used in this act, shall include all medicines and preparations recognized in the United States Pharmacopoeia or National Formulary for internal or external use, and any substance or mixture of substances intended to be used for the cure, mitigation or prevention of disease of either man or other animals. The term "food," as used herein, shall include all articles used for food, drink, confectionery or condiment by man or other animals, whether simple, mixed or compound. [L. '07, p. 478, § 2.]

"This act": See note to § 5452.

§ 5455. Adulterated, What Deemed.—For the purposes of this act an article shall be deemed to be adulterated: In the case of

drugs: First.—If, when a drug is sold under or by a name recognized in the United States Pharmacopoeia or National Formulary, it differs from the standard of strength, quality or purity, as determined by the test laid down in the United States Pharmacopoeia or National Formulary official at the time of investigation: Provided that no drug defined in the United States Pharmacopoeia or National Formulary shall be deemed to be adulterated under this provision if the standard of strength, quality or purity be plainly stated upon the bottle, box or other container thereof, although the standard may differ from that determined by the test laid down in the United States Pharmacopoeia or National Formulary. Second.—If its strength or purity fall below the professed standard or quality under which it is sold:

In case of confectionery: If it contains terra alba, baytes, talc, chrome yellow or other mineral substance or poisonous color or flavor, or other ingredient deleterious or detrimental to health, or any vinous, malt or spirituous liquor or compound or narcotic drug.

In case of food: First.—If any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength. Second.—If any substance has been substituted wholly or in part for the article. Third.—If any valuable constituent of the article has been wholly or in part abstracted. Fourth.—If it be mixed, colored, powdered, coated or stained in a manner whereby damage or inferiority is concealed. Fifth.—If it contains any added poisonous or other added deleterious ingredient which may render such article injurious to health: Provided, that when in the preparation of food products for shipment they are preserved by any external application applied in such manner that the preservative is necessarily removed mechanically or by maceration in water, or otherwise, and directions for the removal of said preservatives shall be printed on the covering or the package, the provisions of this act shall be construed as applying only when said products are ready for consumption. Sixth.—If it consists in whole or in part of a filthy, decomposed or putrid animal or vegetable substance, or any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that has died otherwise than by slaughter. [L. '07, p. 478, § 3. Cf. L. '01, p. 195, § 3.]

Cited in 64 Wash. 48; 81 Wash. 242.

"This act": See note to § 5152.

§ 5456. Misbranded Articles—What are.—The term "misbranded," as used herein, shall apply to all drugs, or articles of food, or articles which enter into the composition of food, the package or label of which shall bear any statement, design or device regarding such article, or the ingredients or substances contained therein which

shall be false or misleading in any particular, and to any food or drug product which is falsely branded as to the state, territory or country in which it is manufactured or produced.

For the purposes of this act an article shall also be deemed to be misbranded: In the case of drugs: First.—If it be an imitation of or offered for sale under the name of another article. Second.—If the contents of the package as originally put up shall have been removed, in whole or in part, and other contents shall have been placed in such package, or if the package fail to bear a statement on the label of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate or acetanilide or any derivative or preparation of any such substances contained therein.

In the case of food: First.—If it be an imitation of or offered for sale under the distinctive name of any other article. Second.—If it be labeled or branded so as to deceive or mislead the purchaser, or purport to be a foreign product when not so, or if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package, or if it fail to bear a statement on the label of the quantity or proportion of any morphine, opium, cocaine, heroin, alpha, or beta eucaine, chloroform, cannabis indica, chloral hydrate or acetanilide, or any derivative or preparation of any substances contained therein. Third.—If the net weight or net measure of such package, bottle or container be given, and it shall not be the true net weight or net measure. Fourth.—If the package containing it or its label shall bear any statement, design or device regarding the ingredients or the substances contained therein, which statement, design or device shall be false or misleading in any particular: Provided, that an article of food which does not contain any added poisonous or deleterious ingredients shall not be deemed to be adulterated or misbranded in the following cases: First.—In the cases of mixtures or compounds which may be now or from time to time hereafter known as articles of food, under their own distinctive names, and not an imitation of or offered for sale under the distinctive name of another article, if the name be accompanied on the same label or brand with a statement of the place where the said article has been manufactured or produced. Second.—In the case of articles labeled, branded or tagged so as plainly to indicate that they are compounds, imitations or blends, and the word "compound," "imitation," or "blend," as the case may be, is plainly stated on the package in which it is offered for sale: Provided, that the term "blend" as used herein shall be construed to mean a mixture of like substances, not excluding harmless coloring and flavoring ingredients used for the purpose of color-

ing and flavoring only: And provided further, that nothing in this act shall be construed as requiring or compelling proprietors or manufacturers of proprietary foods which contain no unwholesome added ingredient to disclose their trade formulas, except in so far as the provisions of this act may require to secure freedom from adulteration or misbranding. [L. '07, p. 480, § 4.]

"This act": See note to § 5452.
See supra, § 2597, displaying goods with false trademark.

§ 5457. Guaranty of Purity—Guarantor Liable.—No dealer shall be prosecuted under the provisions of this act if he shall prove a written guaranty of purity in a form approved by the dairy and food commissioner: Provided, that the guarantor is a resident of the state of Washington. The guaranty referred to herein shall contain the full name and address of the person, firm or corporation making the sale to the dealer, and such person, firm or corporation shall be held liable to all prosecutions, fines and other penalties which would attach to the dealer under the provisions of this act. [L. '07, p. 481, § 5.]

"This act": See note to § 5452.

§ 5458. Possession Prima Facie Evidence—Seizure by Commissioner—Procedure as to Disposal.—Possession by any person, firm or corporation of any article of food or drug, the sale of which [is] prohibited by this act, or being the consignee thereof, shall be prima facie evidence that the same is kept or shipped to the said person, firm or corporation in violation of the provisions of this act, and the dairy and food commissioner is hereby authorized to seize upon and take into his possession such articles of food and thereupon apply to the superior court of the county in which such food is seized for an order directing him to dispose of or sell the same and apply the proceeds of the same to the general fund, less the amount required to reimburse the purchaser for actual loss as shown by the bill, provided he or they have a guaranty as required in the preceding section: Provided, however, that the dairy and food commissioner shall first give notice to the person, firm or corporation in whose possession such goods are found, if in the possession of a common carrier, then the consignee of such food or drug, notifying such person, firm or corporation that he has seized such foods or drugs, and the reasons therefor, and that he has made an application to the superior court for an order to sell or dispose of the same, and that he will call up said application for hearing on a day certain, which shall not be less than ten days from the service of such notice, and that at the hearing of said application the said person, firm or corporation shall show cause, if any they have, why the prayer of the petition should not be granted. Upon the hearing of said petition the affidavits or oral

testimony may be introduced to establish the contention of the respective parties. Hearing, however, may be had at an earlier date by mutual consent of the parties to said application. [L. '07, p. 482, § 6. Cf. L. '01, p. 196, § 5; L. '05, p. 80, § 1.]

"This act": See note to § 5452.

§ 5459. Samples to be Furnished for Analysis.—Every person selling, exhibiting or offering for sale, manufacturing or having in his possession with intent to sell or serve, or delivering to a purchaser, any article of food or drugs included in the provisions of this act, shall furnish the dairy and food commissioner or any of his deputies or any person authorized by him and demanding the same, who shall apply to him for the purpose and shall tender him the price at which the article of food is sold, a sample sufficient for the analysis of any such article of food which is in his possession. [L. '07, p. 483, § 7. Cf. L. '01, p. 197, § 6; L. '05, p. 81, § 2.]

"This act": See note to § 5452.

§ 5461. Prosecutions—By Whom.—It shall be the duty of the attorney general and the prosecuting attorneys in the counties of this state to prosecute all cases arising under the provisions of this act. [L. '07, p. 483, § 10. Cf. L. '95, p. 73, § 17; L. '99, p. 62, § 15; L. '01, p. 198, § 9.]

"This act": See note to § 5452.

§ 5462. Taking Samples — Possession, Prima Façie Evidence of Intent.—The dairy and food commissioner, or his deputies, shall have power in the performance of their official duties to enter any restaurant, eating-house, hotel, public conveyance, public or private hospital, asylum, school, eleemosynary or penal institution, where foods or drugs are served or used, and take for analysis any article of food or drug, or ingredients which enter into the composition of food or drugs, there used. Any article of food, drugs, or ingredients which enter into the composition of foods or drugs therein used and so taken, if found to be adulterated, shall be prima facie evidence that the same is kept to be used or served to patrons, guests, boarders, patients or inmates of such institution, and the person, firm or corporation owning and operating said restaurant, eating-house, hotel, public conveyance, public or private hospital, asylum, school, eleemosynary or penal institution, and having in his or its possession adulterated foods or drugs shall be deemed to have such adulterated food or drugs contrary to the provisions of this act. [L. '07, p. 483, § 11. Cf. L. '01, p. 198, § 10.]

"This act": See note to § 5452.

§ 5463. Penalties — Payment and Disposal of. — Every person, firm or corporation violating the provisions of this act or refusing

to comply upon demand with any of the provisions thereof, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five dollars ($25) and not to exceed five hundred dollars ($500), or, in case of second offense, to be imprisoned not less than thirty days and not to exceed ninety days, or both such fine and imprisonment. Any person found guilty of selling, offering for sale, having in his possession with intent to sell or serve, or manufacturing for sale any adulterated article of food or drug under the provisions of this act, shall pay, in addition to the penalties herein provided for, all necessary costs and expenses incurred in inspecting and analyzing such adulterated articles of food or drugs, in addition to the costs of such action: Provided, that all penalties and costs for the violation of the provisions of this act shall be paid to the board of state dairy and food commission, or to their agent, and by them paid into the state treasury and applied to the general fund: And provided further, that the dealers having goods in stock on the passage of this act, which do not comply with its provisions relating to branding or labeling, may inventory the same and stamp them with a mark for identification, and shall have the right thereafter to sell the goods so inventoried and marked, in ordinary course of business until disposed of: And provided further, that this act shall go into effect on the first day of October, 1907. [L. '07, p. 484, § 12. Cf. L. '01, p. 198, § 11.]

"This act": See note to § 5452.

§ 5466. Monthly Report of Commissioner.—The dairy and food commissioner shall publish each month a report of the work of his office, including the brand, name and address of manufacturer, analysis and fines of food and drugs found to be adulterated, and the necessary expense, if any, of said publication, shall be defrayed as provided in section 5465. [L. '01, p. 199, § 14; L. '07, p. 485, § 15.]

§ 5466–1. Classifying and Labeling Eggs.—For the purposes of this act, eggs shall be classified and branded as follows:

(a) Cold-storage eggs shall include all eggs which have been in cold storage for more than ninety days, and before being offered for sale shall be branded or stamped with the words "storage."

(b) Preserved eggs shall include eggs in which the natural deterioration has been prevented or retarded by any means, process or treatment whatsoever, and before being offered for sale shall be branded or stamped with the word "preserved."

(c) All eggs imported into the state of Washington from foreign countries shall be sold as such. The case or container in which they are shipped shall have the words "foreign eggs" displayed thereon in letters two inches high. All retailers of said eggs shall sell them from the container in which he received them and shall inform each

purchaser that said eggs are foreign eggs. All restaurants, hotels, cafes, bakeries and confectioners using or serving foreign eggs must place a sign in letters not less than four (4) inches in size in some conspicuous place where the consumer entering their place of business can see it, to read "we use foreign eggs."

(d) Incubated eggs shall include all eggs which have been subjected to incubation whether natural or artificial for more than forty-eight hours and it shall be unlawful to expose or offer for sale or sell incubated eggs. [L. '15, p. 274, § 1.]

§ 5466–2. Branding by Venders.—Every person, firm or corporation having in his possession for the purpose of sale or offering for sale or selling any eggs shall classify and brand the same with the classification provided for in section 5466–1. [L. '15, p. 275, § 2.]

§ 5466–3. "Branded" and "Stamped" Defined.—The term "branded" or "stamped" as used in this act shall mean a mark, imprint or impression made by means of a rubber stamp, stencil or other method upon the package containing eggs offered for sale or upon the receptacle from which eggs are offered for sale and such brand shall be legible and in gothic letters not smaller than one inch in height, except foreign eggs, and they shall be marked as provided for in paragraph c of section 5466–1. [L. '15, p. 275, § 3.]

§ 5466–4. "Person" Defined.—The word "person" as used in this act shall mean and include individuals and employees or agents of individuals, firms and members of firms and their employees and agents, corporations and officers of corporations and their employees and agents. [L. '15, p. 275, § 4.]

§ 5466–5. Penalty.—Every person who shall violate any provision of this act shall be guilty of a misdemeanor. [L. '15, p. 275, § 5.]

CHAPTER VII.

Sale of Milk in Cities of the First Class.

§ 5467. Milk Inspectors—Qualifications—Salary.—The board of health or health officer of any city of the first class of the state of Washington shall annually appoint one or more inspectors of milk for their respective cities. All inspectors hereafter appointed shall be graduates of a recognized dairy school or shall have completed a course in dairying in a college where such instruction is given. Each inspector shall be sworn before entering upon the performance of his official duty and shall publish a notice of his appointment for two weeks in a newspaper published in said city, and shall be under the direction and supervision of the board of health of such city. He shall receive such compensation as the city council of such city may determine. [L. '07, p. 575, § 1.]

§ 5468. Office and Records—Analysis of Sample.—Such inspector shall keep an office and shall record in books kept for the purpose, the names and places of business of all persons engaged in the sale of milk within the limits of said city. He may with the approval of the city council employ collectors of samples of milk who shall be sworn before entering upon their duties. The inspectors or collectors may enter all places in which milk is stored or kept for sale and all carriages used for the conveyance of milk and may take therefrom samples for analysis. They shall upon request made at the time such sample is taken, seal and deliver to the owner or person from whose possession the milk is taken, a portion of each sample, and a receipt therefor shall be given to the inspector or collector. Inspectors shall cause such samples to be analyzed or otherwise satisfactorily tested as to its quality and purity. Such sample shall be kept by such inspector under ice so that the temperature of said sample shall not be over the degree of forty degrees Fahrenheit until such analysis is made, and shall record and preserve as evidence the result thereof, and no evidence of the result of such analysis or test shall be received if the inspector or collector upon request refuses or neglects to seal and deliver a portion of the sample taken as aforesaid, to the owner or person from whose possession it is taken. [L. '07, p. 576, § 2.]

Cited in 71 Wash. 203.

§ 5469. Permits to Sell Milk—Unlawful Sale—Penalty.—Whoever in such city in which an inspector of milk is appointed conveys milk in carriages or otherwise for the purpose of selling it in such city shall annually before the first day of June obtain a permit from the inspector of milk of such city to sell within the limits thereof, said permit to be furnished without cost upon the production of a license from the state dairy and food commission. A permit shall be issued only in the name of the owner of the carriage or other vehicle. They shall for the purposes of this chapter be conclusive evidence of ownership and shall not be sold, assigned or transferred without the consent of the city council of such city. Each permit shall contain the number thereof, the name, residence, place of business, number of carriage or other vehicle used by the person obtaining a permit, the name of every driver or other person employed by him in carrying or selling milk. Each person obtaining a permit shall before engaging in the sale of milk cause his name, the number of his permit and his place of business to be legibly placed on each side of all carriages or vehicles used by him in the conveyance and sale of milk, and he shall report to the inspector any change of driver or other person who may be employed by him occurring during the term of his permit. And it shall be unlawful for any person under an assumed name or representing himself to be the person named in permit

above mentioned to engage in the business of selling or conveying milk or cream, and upon conviction thereof shall be subject to the penalty prescribed in this section.

Whoever without first being permitted to sell milk or dispose of it for sale from carriages or other vehicles or has in his custody or possession with intent to sell, or whoever violates any of the provisions of this section, shall for the first offense be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, and for a second offense by a fine of not less than fifty dollars, nor more than three hundred dollars, and for a subsequent offense by a fine of fifty dollars and by imprisonment for not less than thirty days nor more than sixty days. [L. '07, p. 576, § 3.]

§ 5470. **Registration of Places of Business—Penalty.**—Every person before selling milk or cream or offering it for sale in a booth, store, stand or market place in any such city in which an inspector of milk is appointed, shall register in the book of such inspector his name and proposed place of sale.

Whoever refuses or neglects to register shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. [L. '07, p. 577, § 4.]

§ 5471. **Selling Impure Milk—Penalty.**—Whoever by himself or by his agent or servant or as the agent or servant of another person sells, exchanges or delivers, or has in his custody or possession with intent to sell, exchange or deliver or expose or offer for sale or exchange, impure, infected or adulterated milk or milk to which water or any foreign substance has been added, or milk produced from a cow which has been fed on refuse or unwholesome food, or from a sick or diseased cow, or from a cow kept in an unclean shed, barn or barnyard, or from a cow within fifteen days before or five days after parturition or in any case before fever has left said cow, as pure milk, or milk from which the cream or a part thereof has been removed, and whoever sells, exchanges or delivers or has in his custody or possession with intent to sell, exchange or deliver, skimmed milk containing less than nine and three-tenths per cent of milk solids, exclusive of fat, shall for the first offense be punished by a fine of not less than fifty dollars nor more than one hundred dollars, and for a second offense by a fine of not less than one hundred dollars nor more than three hundred dollars, and for a subsequent offense by a fine of fifty dollars and by imprisonment for not less than sixty days nor more than ninety days. [L. '07, p. 578, § 5.]

See supra, §§ 2512, 2513, 5448i, penalty for selling impure milk.
See infra, §§ 5472, 5473, penalty for selling below standard.

§ 5472. **Definition of Standard Milk—Penalty.**—In prosecutions under the provisions of sections 5470 and 5471 of this chapter, milk,

normal and of standard quality, is defined as milk, pure, healthy; wholesome and uninfected, free from any foreign substance whatsoever, including coloring matter or preservatives, free from all pathogenic bacteria or germs, pus cells, or blood cells, and which does not contain more than four hundred thousand bacteria or germs of all kinds to the cubic centimeter, and which has not been infected by or exposed to the infections of any contagious or infectious disease and which comes from cows healthy and free from all kinds of diseases and kept in a healthy, sanitary condition and fed upon wholesome food, and which contains not less than twelve per cent of milk solids and not less than eight and seventy-five hundredths per cent of solids exclusive of fat, or not less than three and twenty-five hundredths per cent of fat. Any dealer therein who shall sell milk not normal and up to said standard shall be subject to prosecution and fine as provided in section 5471 of this chapter. [L. '07, p. 578, § 6.]

See supra, § 2512, standard milk in cities defined.
See supra, § 2513, unwholesome milk defined.

§ 5473. Selling Milk not of Standard Quality—Penalty.—Whoever by himself or by his servant or agent or as the servant or agent of another, sells, exchanges or delivers, or has in his custody or possession with intent to sell, exchange or deliver milk which is not of good standard quality, free from infection and from contamination, by any unwholesome substance or substances, shall for the first offense be punished by a fine of not less than fifty dollars, and for the second offense by a fine of not less than one hundred dollars nor more than two hundred dollars, and for a subsequent offense, by a fine of fifty dollars and by imprisonment for not less than sixty days nor more than ninety days. [L. '07, p. 579, § 7.]

See, also, supra, § 2512.

§ 5474. Sale of Cream Below Standard — Penalty. — No cream shall be sold, offered for sale, exchanged, delivered or shipped, transported or carried for purposes of sale, exchange or delivery, that contains less than eighteen per cent of butter fat, or which contains any pathogenic bacteria or germs, pus cells, blood cells or more than four hundred thousand bacteria or germs of all kinds to the cubic centimeter, and any person who shall adulterate cream or reduce or change it in any respect by the addition of water or any foreign substance with the intention of selling or offering the same for sale or exchange, shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars, or imprisonment for not less than thirty nor more than sixty days. [L. '07, p. 579, § 8.]

See, also, supra, § 2512.

§ 5475. Counterfeiting Seal—Tampering with Samples.—Whoever makes or causes to be made, uses or has in his possession an imita-

tion or counterfeit of seal used by an inspector of milk, collector of samples or other person engaged in the inspection of milk, and whoever changes or tampers with the sample taken or sealed as provided in section 5468, shall be punished by a fine of one hundred dollars or imprisonment for not less than three nor more than six months. [L. '07, p. 579, § 9.]

§ 5476. Willful Connivance of Inspector—Penalty.—An inspector of milk or his servant or agent who willfully connives at or assents to the violation of the provisions of this chapter, or whoever hinders, obstructs or interferes with an inspector of milk or his agent, in the performance of his duty, shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars, or by imprisonment for not less than thirty nor more than sixty days. [L. '07, p. 580, § 10.]

§ 5477. Producers—Liability to Prosecution.—A producer of milk shall not be liable to prosecution for the reason that the milk produced by him is not of good standard quality, unless such milk was taken upon his premises or while in his possession or under his control by an inspector or by a collector of samples or by an agent, and a sealed sample thereof given to him. [L. '07, p. 580, § 11.]

Cited in 71 Wash. 203.

§ 5478. Results of Analysis Sent to Dealer.—An inspector of milk or a collector of samples or other state or city officer who obtains a sample of milk for analysis, shall within ten days after obtaining the result of the analysis, send said result to the person from whom the sample was taken or to the person responsible for the condition of such milk. [L. '07, p. 580, § 12.]

Cited in 71 Wash. 202, 203.

§ 5479. Inspector Shall Prosecute — Costs. — An inspector shall make a complaint for a violation of any of the provisions of any of the sections of this chapter upon the information of any person who lays before him satisfactory evidence by which to sustain such complaint, and the cost of the prosecution for the violation of any of the provisions of this chapter shall be borne by the city in which said inspector is appointed. [L. '07, p. 580, § 13.]

§ 5480. Analysis by Chemists at State Institutions.—It shall be the duty of the chemist of any state institution to correctly analyze without extra compensation and without other charge to cities having milk inspectors any and all cream or milk that such inspector may send to them and to report to said inspector without unnecessary delay the result of any analysis so made: Provided, however, that analysis as to standard of quality of milk and for adulteration, contamination and unwholesomeness may be made by the bacteriologist

or chemist employed by any such city, which analysis shall have the same force and effect as though made by an official of a state institution or said chemist. [L. '07, p. 580, § 14.]

§ 5481. Penalty.—Whoever violates any of the provisions of the six preceding sections shall be punished by a fine of not less than twenty-five dollars for the first offense and not more than one hundred dollars for each subsequent offense. [L. '07, p. 581, § 15.]

§ 5481–1. Sale in Bottles—Label.—Hereafter no bottled milk or bottled cream shall be offered for sale, sold or otherwise disposed of in cities of the first class in the state of Washington, unless the caps on all such bottles containing the milk or cream indicate and have inscribed thereon the name of the dairy, person, firm or corporation offering the same for sale. [L. '11, p. 133, § 1.]

§ 5481–2. Penalty.—Any person, firm or corporation in the state of Washington selling or offering for sale any bottled milk or bottled cream which do not have inscribed on the caps of the bottles the name of the dairy, person, firm or corporation offering the same for sale, shall be guilty of a misdemeanor. [L. '11, p. 133, § 2.]

The title of this act limits the operation of this and the next section to cities of the first class.

§ 5481–3. Substituting Label—Penalty.—Any person, firm or corporation in the state selling or offering for sale any bottled milk or bottled cream with caps containing the name of some person, firm or corporation other than the owner of the same, for the purpose of inducing or securing a sale, or in any other way wrongfully or fraudulently brand the same as to name, or otherwise, shall be guilty of a misdemeanor. [L. '11, p. 133, § 3.]

See note to § 5481–2.

CHAPTER VIII.

Regulation and Conduct of Bakeries.

§ 5482. Bakeries—Drainage, Plumbing, and Ventilation of.—All buildings or rooms occupied as biscuit, bread or cake bakeries shall be drained or plumbed in a manner conducive to the proper healthful and sanitary condition thereof, and constructed with air shafts and windows or ventilating pipes sufficient to insure ventilation as the commissioner of labor shall direct, and no cellar or basement, not now used as a bakery, shall hereafter be used and occupied as a bakery and a cellar or basement heretofore occupied as a bakery shall, when once closed, not be reopened for use as a bakery. [L. '03, p. 258, § 1.]

§ 5483. Wash-rooms, etc., to be Apart from Bake-room.—Every such bakery shall be provided with a proper wash-room and water-closet, or closets, apart from the bake-room or rooms where the

manufacturing of such products is conducted; and no water-closet, earth-closet, privy or ash-pit shall be within or communicate directly with a bake-shop. [L. '03, p. 259, § 2.]

§ 5484. Baking-rooms—Size, Plastering, etc.—Every room used for the manufacture of flour or meal food shall be at least eight feet in height, the side walls of such room shall be plastered or wainscoted, the ceiling plastered or ceiled with lumber or metal, and if required by the commissioner of labor, shall be whitewashed at least once in three months; the furniture and utensils of such room shall be so arranged as to be easily moved in order that the furniture and floor may at all times be kept in proper healthful sanitary condition. [L. '03, p. 259, § 3.]

§ 5485. Food Products—How Kept.—The manufactured flour or meal food products shall be kept in perfectly dry and airy rooms, so arranged that the floors, shelves and all other facilities for storing the same can be easily and perfectly cleaned. [L. '03, p. 259, § 4.]

§ 5486. Sleeping-rooms to be Separated from Storage-rooms.—The sleeping places for persons employed in a bakery shall be kept separate from the room or rooms where flour or meal food products are manufactured or stored. [L. '03, p. 259, § 5.]

§ 5487. Inspection—Certificate to Owner.—After an inspection of a bakery has been made by the commissioner of labor and it is found to conform to the provisions of this chapter, said commissioner shall issue a certificate to the owner or operator of such bakery, that it is conducted in compliance with all the provisions of this chapter, but where orders are issued by said commissioner to improve the condition of a bakery, no such certificate shall be issued until such order and the provisions of this chapter have been complied with. [L. '03, p. 259, § 6.]

§ 5488. Order to Alter, Service of Notice of.—The owner, agent or lessee of any property affected by the provisions of this chapter, shall, within thirty days after the service of notice upon him, of an order issued by the commissioner of labor requiring any alterations to be made in or upon such premises, comply therewith, or cease to use or allow the use of such premises as a bake-shop; such notice shall be in writing and may be served upon such owner, agent, or lessee, either personally or by mail, and a notice by registered letter, postage prepaid, mailed to the last known address of such owner, agent, or lessee shall be deemed sufficient for the purposes of this chapter. [L. '03, p. 259, § 7.]

§ 5489. Diseased Persons, Employment of, Prohibited.—No employer shall require, permit or suffer any person to work in his bake-shop who is affected with tuberculosis, or with scrofulous diseases, or

with any venereal disease, or with any communicable skin affection or contagious disease and no person so affected shall work or remain in a bake-shop. Every employer is hereby required to maintain himself and his employees in a clean and sanitary condition while engaged in the manufacture, handling or sale of such food products. [L. '03, p. 260, § 8.]

§ 5490. Persons Under Sixteen—Work Hours for.—No employer shall require, permit or suffer any person under sixteen years of age to work in his bake-shop between the hours of 8 o'clock in the evening and 5 o'clock in the morning. [L. '03, p. 260, § 9.]

See supra, § 2447, employment of children.

§ 5491. Penalty for Violation.—Any person who violates the provisions of this chapter or refuses to comply with the requirements of the commissioner of labor, as provided herein, shall be guilty of a misdemeanor, and on conviction thereof before any court of competent jurisdiction, shall be fined not less than twenty-five nor more than fifty dollars or imprisoned not more than ten days for the first offense; and shall be fined not less than fifty nor more than one hundred dollars and imprisoned not less than ten nor more than thirty days for each offense after the first. [L. '03, p. 260, § 10.]

CHAPTER IX.

Sale of Shoddy.

§ 5492. Shoddy must be Disinfected.—No person, firm or corporation shall, within this state, sell, offer for sale, or manufacture for sale, what is commonly known as shoddy, or use the same in the manufacture of mattresses, quilts, pillows, rugs, couches, lounges or bedding of any kind or description, unless such commodity has been first properly disinfected or in some other manner rendered free from pathogenic or disease-bearing germs. [L. '09, p. 100, § 1.]

§ 5493. Shoddy Defined.—The term "shoddy," as used in this chapter shall include all materials made or manufactured of rags, old clothing, burlap, old mattresses, quilts or pillows. [L. '09, p. 100, § 2.]

§ 5494. Enforcement of Act by Health Officers.—It shall be the duty of all departments of health, health officers, commissioners of health or officials discharging similar duties in the state of Washington to enforce the provisions of this chapter, and they shall have power, in the performance of their official duties, to enter any store or manufacturing establishment where the articles mentioned in section 5492 are manufactured or are for sale and make such examination as they deem necessary in order to ascertain whether or not the provisions of this act are being violated. [L. '09, p. 100, § 3.]

§ 5495. Prosecution.—It shall be the duty of the attorney general and prosecuting attorneys of the counties of this state to prosecute all cases arising under the provisions of this chapter. [L. '09, p. 101, § 4.]

§ 5496. Penalty.—Every person, firm or corporation violating any of the provisions of this chapter shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than six months, or by both such fine and imprisonment. [L. '09, p. 101, § 5.]

CHAPTER X.

Quarantines at Seaports, Pesthouses, etc.

§ 5497. County Boards—Duties—Health Officer—Bond and Oath of.—The county commissioners of the several counties of the state of Washington shall be and the same are hereby created and constituted a board of health for said county, whose duty it shall be to make such regulations respecting the quarantine of ships or vessels, prescribing in what case it shall be performed by vessels arriving at any port in said state as may be just and reasonable, and the same modify or change as in their opinion the public safety requires; and the board of health so constituted shall appoint a health officer, who shall, before entering upon the duties of his office, give bonds, with good and sufficient sureties, to the county commissioners of the county where appointed, in the sum of one thousand dollars, conditioned for the faithful performance of his duties as such health officer, and shall be sworn before such officer qualified to administer oaths to perform the duties of his office to the best of his ability, and which bond and oath shall be filed in the office of the county auditor. [L. '88, p. 46, § 1; 1 H. C., § 2621.]

§ 5498. Duties of Health Officer—Vessels to be Disinfected, etc.—The health officer shall reside in the county where appointed, and shall require all vessels having on board any person or persons infected with smallpox, plague, pestilential or malignant fever, or other malignant, infectious, or contagious diseases, or who shall have been so infected during the voyage, or having on board any goods reasonably supposed to have any infections of such disease, to perform quarantine at some safe, suitable, and convenient place selected and designated for the purpose by the board of health, and order the master or other person having charge or control of such vessel to proceed with such vessel and anchor at such designated place, there to remain and be purified and cleansed as he may direct, and a suitable place on shore may be prescribed and properly limited for the land-

ing, care, treatment, and purification of any person or passenger of such vessel. [L. '88, p. 46, § 2; 1 H. C., § 2622.]

§ 5499. Purification of Goods from Infected Vessel—Expenses—Fees.—The board of health may, and it shall be their duty to, seize any goods landed from any such infected vessel without the permission of the health officer, and remove and keep the same until they have caused them, the said goods, to be thoroughly cleansed and purified, and which cleansing and purification shall be performed by or under the direction of the health officer, with all possible dispatch, at which time such goods shall be turned over to the care and custody of the person properly claiming the same, upon payment by the person so claiming of the expense of such removal and purification; and upon the failure of the health officer to turn over to such person any such goods, agreeably to the provisions of this section, he shall be liable for all damages that may arise from such failure, and which may be recovered by suit in any court of competent jurisdiction, together with costs of suit; that the fees of the health officer shall be fixed by the board of health provided for in this act, but shall not exceed the sum of five dollars for each vessel boarded or examined in the day-time, and ten dollars in the night-time, between the hours of 10 P. M., and 5 A. M., nor the sum of fifteen dollars for fumigating a vessel, which fee shall be paid [by the owner or agent of said] vessel, and shall be a lien on said vessel until paid, and no vessel shall receive a bill of health or clearance until such fee is paid, and the health officer may recover such fee, together with the cost of suit, in any court having jurisdiction. [L. '88, p. 47, § 3; 1 H. C., § 2623.]

Sections 5497–5510, constitute this act.

§ 5500. Disobedience of Regulations—Penalty for.—Any owner, master, supercargo, officer, seaman, consignee, or any other person who shall refuse or neglect to obey the orders and regulations of the board of health in regard to such quarantine on the purification and cleansing of such vessel shall be punished by fine not exceeding one thousand dollars, or by imprisonment not exceeding three months, or both. [L. '88, p. 47, § 4; 1 H. C., § 2624.]

§ 5501. Infected Person Taken Ashore—Expenses of.—Any person sick on board any such vessel may be sent on shore by said health officer, at some place appointed and limited for the purpose, and shall there be maintained, provided for, and cleansed by or under the direction of the health officer, at the expense of such sick or infected person, if able, otherwise at the expense of the vessel in which the person or persons may have been brought into any of the ports or waters of the state of Washington, or bordering on said state. [L. '88, p. 47, § 5; 1 H. C., § 2625.]

§ 5502. Violation of Quarantine—Penalty.—If any person shall come on shore from any vessel, infected or justly suspected of being so, subjected to or performing quarantine, or shall leave the place appointed for the sick or for purification, being employed or placed there by the health officer, without permission of such officer, he or she shall be fined not exceeding one thousand dollars, or imprisoned not exceeding three months, or both. [L. '88, p. 47, § 6; 1 H. C., § 2626.]

See supra, § 2539, exposing contagious disease.

§ 5503. Penalty for Going on Quarantined Vessel or District.—If any person shall, without permission of the health officer, go on board any vessel ordered for or performing quarantine, or go within the limits appointed by the health officer for the reception of infected persons and property on shore, he or she shall be considered as infected, and shall be held to undergo purification in the same manner and under the same regulations and penalties as those who are performing quarantine, and shall remain there at his or her own expense until discharged by the health officer, and any person coming into any such place having been previously disguised [designated] as a place for infected persons or property, or on board any vessel ordered to or performing quarantine, and having at the time the lawful flag, as hereinafter described, hoisted to the masthead, without permission of the health officer, he may be forcibly detained by the person or persons there employed by the health officer till he shall have undergone purification in the same manner and under the same regulations as those performing quarantine. [L. '88, p. 48, § 7; 1 H. C., § 2627.]

§ 5504. Quarantine Flags—Penalty for not Hoisting.—A red flag, at least six feet long and four feet wide, shall be hoisted from sunrise to sunset at the main truck of any and all vessels ordered for and performing quarantine, failing in which the vessel shall be liable to a fine of five hundred dollars: Provided, the master or other person having the care and custody of any such vessel shall first be notified of such regulation, and have sufficient time and opportunity to procure said flag. A flag, as hereinbefore described, shall also be conspicuously displayed at the place designated by the board of health for the reception of infected persons and property on shore, in default of which the officer or officers having the control of such infected place shall forfeit his appointment, and shall also be liable to a fine of fifty dollars, to be recovered before any justice of the peace by any person suing for the same. [L. '88, p. 48, § 8; 1 H. C., § 2628.]

§ 5505. Landing Infected Vessels or Making False Declarations—Penalty.—If any master, owner, supercargo, officer, seaman, or consignee of any vessel, or any other person knowing such vessel to be

subject to quarantine, shall bring or suffer the same to be brought to or near any wharf, store, or dwelling-house, or other building not in use for the purpose of the health officer in his official capacity as such, or shall make any false declaration as to the port or place from which such vessel came, or in regard to the condition and health of any person on board any such vessel, or shall cause, aid, or permit the landing of any person or property, of any nature or kind whatever, from such vessel without the permission of the health officer, he shall be punished by fine not exceeding five thousand dollars, or imprisonment not exceeding three months, or both. [L. '88, p. 48, § 9; 1 H. C., § 2629.]

§ 5506. Failure to Remove Vessel to Place of Quarantine—Liability.—If any such vessel shall not be removed to the place of quarantine agreeably to the directions of the health officer, or shall be brought near any wharf, store or dwelling-house, or other building without his permission, the health officer shall cause such vessel to be forthwith removed to such place, there to remain at the risk of the owners till expiration of the time limited by the health officer, and the expense of removal shall be paid by the master, owner, or consignee, who shall severally be liable therefor, and may be recovered by the board of health, together with costs of suit, in any court having jurisdiction. [L. '88, p. 49, § 10; 1 H. C., § 2630.]

§ 5507. Master to Notify Health Officer—Penalty for Failure.—The master of every vessel arriving at any port in any county in the state of Washington, or at any port in the waters bordering on said state, having on board any person infected with plague, smallpox, or other malignant, infectious, or pestilential disease, or who have been so infected during the voyage, or having on board any goods which may reasonably be supposed to have any infection of such disease, shall forthwith give notice thereof to the health officer; if any such master or other person having charge of such vessel shall neglect to give such notice, he shall be fined not exceeding five thousand dollars, or may be imprisoned not exceeding six months, or both. [L. '88, p. 49, § 11; 1 H. C., § 2631.]

§ 5508. Pesthouse—Expenses for.—It shall be the duty of the health [officers] to appoint [appointed] under the provisions of this chapter, when by them deemed necessary, to procure a suitable building, either by lease or construction, to be used exclusively by the health officers as a pesthouse, and to approve all necessary expenses of said health officer in procuring a building and keeping the same in proper repair, and obtaining necessary furniture therefor, and in carrying into effect the provisions of this act; and the county commissioners of any of the several counties of the state

of Washington constituting said board of health shall appropriate a sufficient sum out of any money in the treasury of said county not otherwise appropriated, to pay the health officer a just and reasonable compensation for the services performed in the discharge of his duty as such health officer, and the county auditor shall issue an order, countersigned by said board of health, on the county treasurer, who shall pay the same out of any money in the treasury not otherwise appropriated. [L. '88, p. 49, § 12; 1 H. C., § 2632.]

Cited in 28 Wash. 352.

See, also, § 5543, infra.

See note to § 5499. The above section is incomplete.

§ 5509. Notice of Regulations.—The board of health shall give notice, in such manner as they may think reasonable and most for the public good, of any and all regulations made by them under the provisions of this chapter, the expense or cost of which shall be paid out of the county treasury, and the county auditor is hereby authorized to draw his warrant, countersigned by said board of health, on the county treasurer for the same, who shall pay such bill out of any money in the treasury not otherwise appropriated. [L. '88, p. 49, § 13; 1 H. C., § 2633.]

See note to § 5499.

§ 5510. Disposition of Fines.—All fines recovered under the provisions of this chapter, and not otherwise provided for, be and the same shall be paid into the county treasury. [L. '88, p. 50, § 14; 1 H. C., § 2634.]

See note to § 5499. See "Proviso" to § 16, L. '88, p. 50.

§ 5511. Infected Persons may be Quarantined by City.—When any person is or has recently been infected with any disease or sickness dangerous to the public health, the municipal officers of the town or city where he or she is shall provide for the safety of the inhabitants as they think best, by removing him or her to a separate house, if it can be done without great danger to his or her health, and by providing nurses and other assistants, and necessaries, at his or her charge, or that of his or her parent or master, if able; otherwise, that of the town or city to which he or she belongs. [Cd. '81, § 2204; 1 H. C., § 2635.]

See supra, § 2539, exposing contagious disease.

§ 5512. Persons Arriving from Infected District must Give Notice.—When any infectious or malignant disease is known to exist in any place out of the state, the municipal officers of any town or city in the state, by giving public notice therein as they find convenient, may require any person coming from such place to inform one of them or the town or city clerk of their arrival, and from what place, and if he or she does not within two hours after his

or her arrival, or after actual notice of such requirement, give such information, he or she shall forfeit one hundred dollars to the use of the town or city. [Cd. '81, § 2205; 1 H. C., § 2636.]

§ 5513. Municipal Officers may Remove Such Persons from State. Said officers may prohibit a person required to give such information from going to any part of their town where they may think his presence would be unsafe for the inhabitants, and if he does not comply, they may order him, unless disabled by sickness, forthwith to leave the town or city, in the manner and by the road they may direct; and if he neglects or refuses so to do, any justice of any town or city, on complaint of either of said officers, may issue a warrant to any proper officer or other person named therein, and cause him to be removed out of the state; and if, during the prevalence of such disease in the place where he resides, he returns to any town or city in this state, without the permission of the municipal officers thereof, he shall forfeit not exceeding one hundred dollars; and if said forfeiture is not paid, he shall be imprisoned not less than three months nor more than six months. [Cd. '81, § 2206; 1 H. C., § 2637.]

§ 5514. Travelers Suspected may be Examined—License.—The municipal officers of any town or city near to or adjoining the line of this state may appoint, by writing under their hands, suitable persons to attend at any places by which travelers may pass into such town or city from infected places in other states, territories, and provinces, who may examine such passengers as they suspect of bringing with them any infection dangerous to the public health, and if need be, may restrain them from traveling until licensed thereto by a justice of the peace in the town or city, or one of said officers, and any such passenger who, without such license, travels in this state, except to return by the most direct way to the state, territory, or province whence he came, after he has been cautioned to depart by the persons so appointed, shall forfeit one hundred dollars or be imprisoned three months. [Cd. '81, § 2207; 1 H. C., § 2638.]

§ 5515. Baggage Suspected may be Quarantined.—When, on the application of the municipal officers of any town or city it appears to any justice of the peace that there is just cause to suspect that any baggage, clothing, or goods of any kind within such town or city are infected with any malignant contagious disease, by a warrant directed to a proper officer, he shall require him to impress so many men as the justice thinks necessary to secure such infected articles, and to post said men as a guard over the house or place where the articles are lodged, who shall prevent any person removing or coming near such articles, until due inquiry is made into the circumstances thereof. [Cd. '81, § 2208; 1 H. C., § 2639.]

§ 5516. Houses may be Impressed for Safekeeping of Infected Articles.—He may by the same warrant, if it appears to him necessary, require said officers, under the direction of the municipal officers, to impress and take up convenient houses or other buildings for the safekeeping of such infected articles, and cause them to be removed thereto or otherwise detained until municipal officers think they are free from infection. [Cd. '81, § 2209; 1 H. C., § 2640.]

§ 5517. Officer may Break Buildings Containing Infected Goods. Said officers, if need be, may break open any house, shop, or other place mentioned in the warrant where infected articles are and require such aid as is necessary to execute it, and all persons at the command of either of said officers shall assist in such execution, under a penalty for refusal of not exceeding ten dollars. [Cd. '81, § 2210; 1 H. C., § 2641.]

§ 5518. Expense of Securing Infected Articles to be Paid by Owner.—The charges of securing such infected articles, and of transporting and purifying them, shall be paid by the owners thereof at the price determined by the municipal officers. [Cd. '81, § 2211; 1 H. C., § 2642.]

§ 5519. Compensation for Services and Buildings.—When the officer impresses or takes up any house or other building, or other necessaries, or impresses any man as herein provided, the parties interested shall have just compensation therefor, to be paid by the town or city in which such persons or property were impressed. [Cd. '81, § 2212; 1 H. C., § 2643.]

§ 5520. Courts may Adjourn When and to What Place.—When a malignant infectious disease prevails in any town or city wherein the supreme or judicial court is to be held, said courts may be adjourned and may be held in any town or city in said county, by proclamation made in such public manner as the courts judge best, as near their usual place of meeting as they think safety permits. [Cd. '81, § 2213; 1 H. C., § 2644.]

§ 5521. Prisoners to be Removed When Diseased, etc.—When any person in any jail or prison or workhouse in this state is attacked with any disease which the municipal officers of his town, upon medical advice, consider dangerous to the safety and health of other prisoners, or of the inhabitants of the town or city, they shall, by their order in writing, direct his removal to some place of safety, there to be securely kept and provided for until their further order; and if he recovers from such disease, he shall be returned to his place of confinement. [Cd. '81, § 2214; 1 H. C., § 2645.]

§ 5522. Order of Removal—Escape.—If he was committed by order of a court or under a judicial process, the order for his re-

moval, or a copy thereof attested by the municipal officers, shall be returned by them with the [their] doings thereon, into the office of the clerk of the court from which such order or process was issued. No such removal shall be deemed an escape. [Cd. '81, § 2215; 1 H. C., § 2646.]

§ 5523. Cities may Elect Health Committees—Number of—Powers. A town or city may, at its annual meeting, choose or elect a health committee, of not less than three nor more than five, or one person to be a health officer, who shall remove, at the expense of their town or city, all filth found in any place therein, which in their judgment endangers the lives or health of any inhabitant, and require the owner or occupant, when they think necessary, to remove or discontinue any drain or other source of filth. [Cd. '81, § 2216; 1 H. C., § 2647.]

§ 5524. Municipal Officers to Constitute Health Committee, When. If any town or city, at its annual election, omits to choose or elect such committee or officer, the municipal officers shall be a health committee and have all their powers and perform all their duties. [Cd. '81, § 2217; 1 H. C., § 2648.]

§ 5525. Source of Filth to be Removed—Forfeiture.—When any source of filth or other cause of sickness is found on private property, the owners or occupant thereof shall, within twenty-four hours after notice from the said committee or officers, at his own expense, remove or discontinue it; and if he neglects or unreasonably delays to do so, he shall forfeit not exceeding fifty dollars; and said committee or officers shall cause said nuisance to be removed or discontinued, and all expenses shall be repaid to the town or city by such owner or occupant, or by the person who caused or permitted it. [Cd. '81, § 2218; 1 H. C., § 2649.]

Cited in 55 Wash. 221.

§ 5526. Person from Infected District must Answer Questions—Forfeiture.—If any master, seaman, or passenger of any vessel or steamer in which there is any infection, or has lately been, or is suspected to have been, or which has come from a port where any infectious disease prevails, dangerous to the public health, refuses to answer, on oath, such questions as are asked him relating to such infection or disease, by the municipal or health officer of the town or city to which such vessel comes, which oath either of said officers may administer, he shall forfeit not exceeding two hundred dollars, or be imprisoned not more than six months. [Cd. '81, § 2219; 1 H. C., § 2650.]

§ 5527. Vessels to Anchor Below City, When—Permits to Come Ashore.—When a vessel or steamer arrives at any seaport in this

state, having on board any person infected with any malignant disease, the master, commander, or pilot thereof shall anchor it at some convenient place below the town or city of such seaport, at a distance safe for the inhabitants thereof and the persons on board other vessels or steamers in the port; and no person or thing on board shall be brought on shore until the municipal or health officers give them written permit so to do. [Cd. '81, § 2221; 1 H. C., § 2651.]

§ 5528. Willful Violation of Preceding Section, Forfeiture for.—For the willful violation of the provisions of the preceding section, such master or commander shall forfeit not exceeding two hundred dollars, and the pilot not exceeding fifty dollars, for such offense. [Cd. '81, § 2221; 1 H. C., § 2652.]

§ 5529. Vessel to Perform Quarantine When Required.—The municipal or health officers of any seaport town or city may cause any vessel or steamer arriving there to perform quarantine at such place and under such regulations as they may judge expedient, when they think the safety of the inhabitants requires it; and whoever neglects or refuses to obey such orders and regulations shall forfeit not exceeding five hundred dollars, or be imprisoned not exceeding six months. [Cd. '81, § 2222; 1 H. C., § 2653.]

§ 5530. Quarantine Notices to Pilots, etc.—Forfeiture.—When such officers of a seaport town or city think it necessary to order all vessels or steamers, arriving there from any particular port or ports, to perform quarantine, they shall give notice thereof to the pilots of their port, who shall make it known to the master or commander of all vessels or steamers which they board. If any pilot neglects to do so, or, contrary thereto, pilots any vessel or steamer up to said seaport town or city, he shall forfeit not exceeding one hundred dollars. [Cd. '81, § 2223; 1 H. C., § 2654.]

§ 5531. Entering Contrary to Quarantine After Notice.—When the master or commander of any vessel or steamer takes either of them up to any seaport town or city after notice that a quarantine has been so directed for all vessels or steamers coming from the port or place whence his vessel or steamer sailed, or by false declaration, or otherwise, fraudulently attempts to elude such directions, or lands or suffers to be landed from his vessel or steamer any person or thing, without permission of the municipal or health officer, he shall be punished as provided in section 5528. [Cd. '81, § 2224; 1 H. C., § 2655.]

§ 5532. Municipality to Provide Flags—Duty of Master, etc.—The municipal or health officer of any seaport town or city requiring vessels or steamers to perform quarantine shall provide, at the

expense of such town or city, a suitable number of red flags, at least three yards in length; and the master or commander of every vessel or steamer ordered to perform quarantine shall cause one of them to be continually kept, during the term thereof, at the head of the mainmast of his vessel or steamer, and no person shall go on board such vessel or steamer during said term unless by permission of said officers. If he does, he shall be thereafter held liable to the same regulations and restrictions as those belonging to said vessel or steamer, and shall there be detained by force if necessary, until duly discharged by said officers. [Cd. '81, § 2225; 1 H. C., § 2656.]

§ 5533. Health Officers to Perform Quarantine Duties, When.—In every seaport town or city where there is a health committee or health officer, he or they may perform all the duties and exercise all the authority of municipal officers in requiring vessels or steamers to perform quarantine. [Cd. '81, § 2226; 1 H. C., § 2657.]

§ 5534. Expense of Quarantine to be Paid by Whom.—All the expenses incurred on account of any person, vessel, or steamer or goods under quarantine regulations shall be paid by him or the owner of the vessel or steamer, or goods, as the case may be. [Cd. '81, § 2227; 1 H. C., § 2658.]

CHAPTER XI.

City Boards of Health.

See next chapter.

§ 5535. Board of Health—Health Officer.—The town board or common council of every town or city in this state shall hereafter, within thirty days after the adjournment of this legislature and each year thereafter, organize as a board of health, or shall appoint wholly or partially from its own members a suitable number of competent persons who shall organize as a board of health for such town or city. Such organization shall include the election of a chairman and a clerk, and every board of health organized as provided in this chapter shall immediately after its organization appoint a health officer for the town or city, who shall be ex officio a member of the board of health, and its executive officer, and the board of health as thus constituted shall, until their successors in office are duly organized, perform all the duties and have all powers that are given to the boards of health by the general statutes of the state. Every health officer appointed under the provisions of this chapter shall be, whenever the same is practicable, a reputable physician, and shall hold his office during the pleasure of the board, and until his successor shall have been duly appointed and qualified, and in case of the occurrence of a vacancy in his office the board of health

shall immediately fill the same by a new appointment: Provided, that the foregoing provisions shall not apply to any town, city or village in which a health board is organized and a health officer appointed under the provisions of a special charter, but every local board of health, whether organized under the provisions of this chapter or otherwise, shall immediately after each annual or other organization report to the state board of health the names, postoffice addresses and occupations of the chairman, clerk and health officer thereof, and shall make a similar report whenever, for any reason, a new health officer is appointed. [L. '93, p. 79, § 1.]

Cited in 67 Wash. 241.

Appointment of health officers in cities other than first class: See infra, § 5542.

§ 5536. Duties of Health Officers.—It shall be the duty of every health officer appointed under the provisions of this chapter, or by the provisions of special charters, upon the appearance of smallpox, diphtheria, scarlet fever, Asiatic cholera or other dangerous contagious disease in the town or city under his supervision, immediately to investigate all the circumstances attendant upon the appearance of such diseases and to make full report thereof to the board of which he is an executive officer, and also to the state board of health; and it shall be the duty of such health officer at all times promptly to take such measures for the prevention, suppression and control of the diseases herein named, as may in his judgment be needful and proper, subject to the approval of the board of which he is a member, and it shall be the duty of every health officer to keep and transmit to his successor in office a record of all his official acts; and the salary or other compensation to be paid to every health officer appointed under the provisions of this chapter, shall be established by the board of health by whom such officer shall be appointed. The term "dangerous contagious disease" as used in this chapter shall be construed and understood to mean such diseases as the state board of health shall designate as contagious and dangerous to the public health; and health officers shall make report to the state board of health concerning the progress of such diseases and concerning the measures used for their prevention and control with such frequency as to keep the board fully informed with regard thereto, or at such intervals as the said board may direct. [L. '93, p. 80, § 2.]

§ 5537. Physicians to Report—Penalty.—Whenever any physician residing and practicing in the state shall know that any person whom he shall be called upon to visit is sick with smallpox, scarlet fever, diphtheria, Asiatic cholera or other dangerous contagious diseases he shall immediately give notice thereof to the board of health of the town, village or city in which such sick person shall be at the time,

and any physician who shall refuse or neglect to give such notice for a period of forty-eight hours shall, on conviction thereof, be liable to a penalty of not less than five nor more than twenty-five dollars for each day of such refusal or neglect after the expiration of said forty-eight hours: Provided, that the notices herein required may be sent by mail, or except in the case of cities may be given to or left at the residence of any member of the board of health, and notices so mailed or given within the time specified shall be deemed a compliance with the provisions of this section. [L. '93, p. 80, § 3.]

§ 5538. Expenses, How Paid.—All expenses incurred in carrying out the provisions of this chapter, or any of them, shall be paid by the town, village or city by which, or on behalf of which, such expenses shall have been incurred. [L. '93, p. 81, § 4.]

§ 5539. Violations, How Prosecuted. — Upon complaint made in writing, under oath, by any citizen of the state, before any magistrate or justice of the peace charging the commission of an offense against any of the provisions of this chapter in his county, it shall be the duty of the county or district attorney to prosecute the offender, and all sums recovered under the provisions of this chapter shall be for the benefit of the school fund. [L. '93, p. 81, § 5.]

§ 5540. Report to State Board.—It shall be the duty of every health officer appointed under the provisions of this chapter and of each member of every board of health of any city or town, to report to the state board of health any information he may receive of any case of smallpox, cholera, yellow fever or typhus fever within three days after receiving any notification or information of the existence of such disease; and any health officer or member of any board of health of any city or town who shall fail or neglect to comply with the provisions of this section shall be liable to a penalty of not less than ten dollars nor more than one hundred dollars for each day of such neglect or refusal to comply with the provisions of this section. [L. '93, p. 81, § 6.]

Cited in 67 Wash. 241.

CHAPTER XII.

County and City Boards of Health.

§ 5541. County Board — Jurisdiction — Officers — County Health Officer.—The board of county commissioners of each and every county in this state shall be constituted a county board of health for such county, and said county board of health's jurisdiction shall be coextensive with the boundaries of said county, except that nothing herein contained shall give said board jurisdiction in cities of the first class. The chairman of the board of county commissioners shall be the president of the county board of health, and the county audi-

tor shall be the clerk thereof. They shall on or before July 1st, next following each general election, appoint a legally qualified physician county health officer whose term of office shall be for two years from July 1st, next following each general election and shall fix his compensation.

The county health officer shall be ex-officio member of the county board of health and shall be the executive officer thereof and may be county physician. The county board of health may appoint as many sanitary officers as they deem necessary and fix the compensation of all appointees, who shall serve during the pleasure of the board. In case of refusal or neglect of any county board of health to appoint a county health officer for thirty days after July 1st, next following any general election, or if a vacancy shall exist in the office of county health officer for a period exceeding thirty days, the state board of health may make such appointment for such county for that term and fix the compensation and a health officer so appointed shall have the same duty, power and authority as though appointed by the county board of health. The county board of health shall be subject to the supervision of the state board of health and shall make such reports to the state board of health as the state board may require. [L. '03, p. 83, § 1; L. '07, p. 162, § 1.]

§ 5542. **City Health Officers—Appointment—Term.**—The mayor of every incorporated city and town except cities of the first class, shall each year appoint a legally qualified physician city health officer whose compensation shall be fixed by the city council and whose term of office shall be until January 31st of the year following that in which he is appointed or until his successor is appointed and qualified: Provided, that in cities of the second class having a board of health the board of health shall appoint the health officer: Provided further, that health officers of cities of the third class elected at the last city election shall hold such office until the expiration of the term for which they were elected. [L. '07, p. 163, § 2.]

§ 5543. **Regulations by County Board—Approval by State Board—Pesthouses.**—It shall be the duty of the county board of health to make such rules and regulations as in their opinion may be necessary for the prevention, suppression and control of any dangerous, contagious or infectious disease, which rules and regulations shall take effect from and after the approval of the state board of health. They shall have the authority to establish and maintain a pesthouse or isolation hospital or quarantine station, and to restrain, quarantine, vaccinate or disinfect any person or persons sick with or exposed to any dangerous, contagious or infectious disease, in accordance with their rules and regulations, and the rules and regulations of the state board of health. [L. '03, p. 83, § 2.]

§ 5544. Powers and Duties of Health Officers.—The county health officer shall have supervision over all matters pertaining to the preservation of life and health of the people of his jurisdiction, subject to the supervision and control of the state board of health. He shall have authority to order the abatement or removal of any nuisance detrimental to the public health, and if such nuisance is not properly abated or removed to cause its removal or abatement at the expense of the owners of the property on which the nuisance is maintained. Said expenses, if not promptly paid, to be collected, with costs, by due process of law. He shall cause proper measures, in accordance with the rules and regulations and orders of the state board of health, to be taken to prevent, suppress or control any dangerous contagious or infectious disease that may occur within the county. All city health officers except those of cities of the first class shall report immediately to the state board of health every new outbreak of any contagious or infectious disease and shall make weekly reports to the county health officer of all contagious or infectious diseases occurring within the city.

It shall be the duty of all health officers, upon the appearance of any dangerous contagious or infectious diseases within their jurisdiction, immediately to investigate all circumstances concerning such diseases, and to make a full report thereof as required above and at all times, promptly, to take such measures for the prevention, suppression and control of such diseases as may be needful and proper. Every health officer shall have the power to remove to and restrain in a pesthouse or isolation hospital, or to quarantine or isolate, any person sick with any dangerous, contagious or infectious disease until such sick person shall have thoroughly recovered and been disinfected: Provided, that no person shall be removed to or restrained in a pesthouse or isolation hospital until such person has been examined by the health officer or a medical deputy. He shall also quarantine, isolate, restrain, vaccinate or disinfect any person or persons exposed to any dangerous contagious or infectious disease in such manner and for such time as he may deem best or the state board of health may direct. He shall disinfect any room or house or building and the contents thereof or any clothing, bedding, furniture or other articles that may be infected, in such a manner that the danger of conveying any disease by such means shall be destroyed. [L. '03, p. 84, § 3; L. '07, p. 163, § 3.]

§ 5545. Physicians to Report Diseases.—Whenever any physician shall attend any person sick with any dangerous contagious or infectious disease, or with any diseases, required by the state board of health to be reported, he shall, within twenty-four hours, give notice thereof to the health officer within whose jurisdiction such sick person may then be. [L. '03, p. 84, § 4; L. '07, p. 164, § 4.]

§ 5546. Determination of Character of Disease—When Final.—In case of the question arising as to whether or not any person is affected or is sick with a dangerous, contagious or infectious disease, the opinion of the health officer shall prevail until the state board of health can be notified, and then the opinion of the executive officer of the state board of health, or any member or physician he may appoint to examine such case, shall be final. [L. '03, p. 84, § 5.]

§ 5547. "Dangerous, etc., Diseases" Defined.—The term, "dangerous, contagious or infectious diseases," as used in this chapter shall be construed and understood to mean such disease or diseases as the state board of health shall designate as contagious or infectious and dangerous to the public health. [L. '03, p. 84, § 6.]

§ 5548. Violations—Removal of Officers—Penalties.—Any health officer who shall refuse or neglect to obey or enforce the provisions of this chapter or the rules or regulations or orders of the state board of health or who shall refuse or neglect to make prompt and accurate reports to the county health officer or to the state board of health may be removed as health officer by the state board of health and shall not again be reappointed except with the consent of the state board of health.

Any member of a city or county board of health who shall violate any of the provisions of this chapter or refuse or neglect to obey or enforce any of the rules, regulations or orders of the state or county boards of health made for the prevention, suppression or control of any dangerous, contagious or infectious disease or for the protection of the health of the people of this state, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars nor more than two hundred dollars. Any physician who shall refuse or neglect to report to the proper health officer within twelve hours after first attending any case of contagious or infectious disease or any diseases, required by the state board of health to be reported or any case suspicious of being one of such diseases, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars nor more than two hundred dollars for each case that is not reported.

Any person violating any of the provisions of this chapter or violating or refusing or neglecting to obey any of the rules and regulations or orders made for the prevention, suppression and control of dangerous contagious and infectious diseases by the county board of health or health officer or state board of health, or who shall leave any pesthouse or isolation hospital or quarantined house or place without the consent of the proper health officer, or who evades or breaks quarantine or conceals a case of contagious or infectious disease or assists in evading or breaking any quarantine or concealing

any case of contagious or infectious disease, shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not less than twenty-five dollars nor more than one hundred dollars or to imprisonment in the county jail not to exceed ninety days or to both fine and imprisonment. [L. '03, p. 85, § 7; L. '07, p. 164, § 5 Cf. L. '01, p. 59, §§ 1, 2.]

§ 5549. Payment of Expenses.—All expenses incurred in carrying out the provisions of this chapter, or any of them, shall be paid by the county or city by which or in behalf of which such expenses shall have been incurred. [L. '03, p. 85, § 8; L. '07, p. 166, § 6.]

CHAPTER XIII.

Tuberculosis in Cities of First and Second Class.

§ 5550. Physician to Report Tuberculosis.—All practicing physicians in cities of the first and second class in said state are hereby required to report to the local boards of health of such cities, in writing, the name, age, sex, occupation and residence of every person having tuberculosis who has been attended by, or who has come under the observation of such physician for the first time, within five days of such time. [L. '99, p. 117, § 1.]

§ 5551. Board of Health to Keep Record.—All local boards of health of cities of the first and second class in this state are hereby required to receive and keep a permanent record of the reports required by section 5550 to be made to them; such records shall not be open to public inspection, but shall be submitted to the proper inspection of other local and state boards of health alone, and such records shall not be published nor made public. [L. '99, p. 117, § 2.]

§ 5552. Duties of Board—Disinfection Expenses.—It shall be the duty of such local boards of health unless requested by the attending physician not to do so, to furnish to each patient or to the head of the family where such patient resides, printed instructions for the prevention of the communication of such disease to other persons; to enforce compliance with section 5550; to see that the premises occupied by any such patient are kept in good sanitary condition, and within five days after the death or removal of any such patient, to see that such premises are thoroughly and properly disinfected. The expense of such disinfection shall be a charge against the owner of such premises; and, on the failure of such owner to properly disinfect such premises within five days after notice to do so given him by such board of health, it shall be the duty of such board to have such disinfection done, at the expense of such city, and the costs thereof shall be a lien on said premises in favor of such city and may be enforced by the city by proper action. [L. '99, p. 117, § 3.]

§ 5553. **Penalty.**—Any practicing physician who shall willfully fail to comply with the provisions of section 5550 shall be guilty of a misdemeanor, and on conviction thereof may be fined for the first offense not exceeding five dollars, and for any subsequent offense not exceeding one hundred dollars. [L. '99, p. 118, § 4.]

§ 5554. **Prevention of Spread of Tuberculosis.**—It is hereby made the duty of every person having tuberculosis and of every one attending such person, and of the authorities of public and private institutions, hospitals or dispensaries, to observe and enforce the sanitary rules and regulations prescribed from time to time by the boards of health, of such cities and of the state for the prevention of the spread of pulmonary tuberculosis. [L. '99, p. 118, § 5.]

CHAPTER XIII–A.

County Tuberculosis Hospitals.

§ 5554–1. **County may Maintain—Buildings—Funds.**—The board of county commissioners of any county shall have power to establish, provide and maintain hospitals and to employ visiting nurses for the care and treatment of persons suffering from tuberculosis, but whenever a hospital is established as herein provided, such visiting nurse or nurses shall be under the control of and subject to the directions of the board hereinafter designated as the board of managers of such hospital.

For these purposes, said board of county commissioners shall have the following powers:

To purchase or lease real property therefor or to use for this purpose lands already owned by the county, providing such site shall first be approved by the state board of health.

To erect all necessary buildings, make all necessary improvements or repairs and alter any existing building for the use of said hospital: Provided, that such buildings be separate and apart from those designated as almshouses, or county infirmaries: And provided further, that the plans for such erection or alteration shall first be approved by the state board of health.

To use county moneys, to levy taxes and to issue bonds as authorized by law to raise a sufficient amount of money to cover the cost of procuring a site, constructing and equipping hospitals and for the maintenance thereof, and all other necessary and proper expenses herein authorized, and create a fund to be known as the "Tuberculosis Fund," from which all expenses herein provided for shall be paid.

To appoint a board of managers for said hospitals as hereinafter provided. To accept and hold in trust for the county any grant of land, gift or bequest of money, or any donation for the benefit of

the purposes of this act, and apply the same in accordance with the terms of the gift. [L. '13, p. 592, § 1.]

§ 5554-2. Board of Managers—Term.—When the board of commissioners shall have determined to establish a hospital for the care and treatment of persons suffering from tuberculosis and shall have acquired a site therefor and shall have awarded contracts for the necessary buildings and improvements thereon, it may appoint three citizens of the county, only one of whom may be a physician, who shall constitute the board of managers of said hospital. The term of office of each member of said board shall be three years, and the term of one of such managers may expire annually, the first appointments shall be made for the respective terms of three, two and one years. Appointments of successors shall be for the full term of three years, except that appointment of persons to fill vacancies occurring by death, resignation or other cause shall be made for the unexpired term. Failure of any manager to attend four consecutive meetings of the board shall cause a vacancy in his office, unless said absence is excused by formal action of the board of managers.

The managers shall receive no compensation for their services, but shall be allowed their actual and necessary traveling and other expenses, to be audited and paid in the same manner as the other expenses of the hospital. No manager shall be removed from office except for cause shown and after a public hearing on charges reduced to writing. A copy of said charges and the verdict thereon shall be filed with the county auditor. [L. '13, p. 593, § 2.]

§ 5554-3. Superintendent — Salaries. — The board of managers shall appoint a superintendent of the hospital, who shall be the secretary of the board and shall hold office at the pleasure of said board. Said superintendent shall not be a member of the board of managers, and shall be a qualified practitioner of medicine.

Said board of managers shall fix the salaries of the superintendent and all other officers and employees and the management of said hospital shall be entirely in the hands of such board. [L. '13, p. 593, § 3.]

§ 5554-4. County Treasurer to be Treasurer.—The county treasurer of any county which establishes such an institution shall be the treasurer of such institution, and shall receive all moneys raised by taxation or otherwise or paid for the maintenance of inmates of such institution, and shall disburse all moneys to be paid on account of such institution upon warrants drawn upon such fund by the county auditor, as approved by the board of managers. [L. '13, p. 594, § 4.]

§ 5554-5. Application for Admission to Hospital. — Any person having resided one year within the county in which the hospital is

situated desiring treatment in such hospital, may apply in person to superintendent or to any reputable physician for examination and such physician, if he finds that said person is suffering from tuberculosis in any form may apply to the superintendent of the hospital for admission of said person. Upon receipt of such application, if there be a vacancy in said hospital, the superintendent shall notify the person named in such application to appear in person at the hospital. If upon personal examination the superintendent and board of managers are satisfied that such person is suffering from tuberculosis he shall be admitted. All applications shall be in writing and shall state whether applicant can pay in whole or in part for his care and treatment while at the hospital, and every application shall be filed and recorded in a book kept for the purpose in the order of receipt. When said hospital is completed and ready for the treatment of patients, or whenever thereafter [there] are vacancies therein, admission to said hospital shall be made in the order in which the names of applicants shall appear upon the application book to be kept as above provided, in so far as such applicants are certified to by the superintendent to be suffering from tuberculosis, except that advanced cases shall always be provided for first. No discrimination shall be made in the accommodation, care or treatment of any patient because of the fact that the patient or his relatives contribute to the cost of his maintenance in whole or in part, and no patient shall be permitted to pay for his maintenance in such hospital a greater sum than the average per capita cost of maintenance therein, including a reasonable allowance for the interest on the cost of the hospital; and no officer or employee of such hospital shall accept from any patient thereof, any fee, payment or gratuity whatsoever for his services. When all persons who are otherwise qualified to admission to any hospital provided by this act are accommodated and provided for, persons who have not resided in the state for one year prior to applying shall be eligible to admission. [L. 13, p. 594, § 5.]

§ 5554–6. Support of Patients. — Whenever a patient has been admitted to said hospital from the county in which the hospital is situated, the superintendent shall cause inquiry to be made as to his circumstances, and of the relatives of such patient legally liable for his support. If he find that such patient or said relatives legally liable for his support, are able to pay for his treatment in whole or in part, an order shall be made directing such patient, or said relatives to pay to the county treasurer for the support of such patient, a specified sum per week, in proportion to their financial ability, but such sum shall not exceed the actual per capita cost of maintenance. The county commissioners shall have the power and authority to collect such sum from said patient or his estate, or from his relatives

legally liable for his support. If the superintendent find that such patient, or said relatives, are not able to pay, either in whole or in part, for his care and treatment in such hospital, said patient shall be admitted free of charge. [L. '13, p. 595, § 6.]

§ 5554–7. State Board of Health to Inspect.—All hospitals established or maintained under the provisions of this act shall be subject to inspection by any authorized representative of the state board of health, the bureau of inspection and supervision of public offices, and the board of county commissioners, and the resident officers shall admit such representatives into every part of the hospitals and its buildings, and give them access on demand to all records, reports, books, papers and accounts pertaining to the hospital. [L. '15, p. 253, § 1. Cf. L. '13, p. 595, § 7.]

§ 5554–8. Government for Hospital.—Wherever a hospital for the care and treatment of persons suffering from tuberculosis exists in connection with, or on the grounds of a county almshouse, the board of commissioners may appoint a board of managers for such a hospital, and such hospital and its board of managers shall thereafter be subject to all provisions of this act, in like manner as if it had been originally established hereunder. [L. '13, p. 596, § 8.]

§ 5554–9. Cities or Counties may Contract for Care.—Any resident of the state of Washington living outside of a county maintaining a tuberculosis hospital may apply for treatment, or any city, village or county may apply on behalf of its charges and the same may be provided for under a stipulated agreement by the party, municipality or county to pay a weekly sum designated by the board of managers of such hospital, but nonresidents of a county shall not be provided for to the exclusion of residents of said county. [L. '13, p. 596, § 9.]

§ 5554–10. Payments by State.—There shall be paid by the state treasurer quarterly to the counties maintaining such hospitals, three dollars per week for each person in such institution during the time of confinement as hereinafter provided; except those paying full maintenance. [L. '13, p. 596, § 10.]

§ 5554–11. Manager's Report.—On the first day of July and quarterly thereafter the board of managers of any county operating such institution shall certify to the state auditor and the county auditor the number of persons cared for at public expense in such institution, the date when each person was admitted and the number of weeks each person was cared for during the preceding quarter, which certificates shall be attested by the board of managers and sworn to by the superintendent, and the state auditor shall draw a warrant for the amount due according to the provisions of this act. [L. '15, p. 254, § 2. Cf. L. '13, p. 596, § 11.]

§ 5554–12. County Commissioners may be Managers.—Whenever the board of county commissioners shall manage such hospitals, such board shall have the same powers and be subject to the same regulations as herein provided for a board of managers. [L. '13, p. 596, § 12.]

§ 5554–13. State Aid.—Hospitals operated by municipalities of the first class, now existing, or hereafter established and maintained for the treatment of tuberculosis exclusively, may receive state aid by complying with the provisions of this act, except such institutions shall not be required to operate under a board of managers as provided herein, nor shall said institutions be subject to the provisions of this act regarding charge to patients, except those patients for whom said institutions receive state aid. [L. '13, p. 597, § 14.]

§ 5554–14. Supervision by State Board of Control.—No institution operating under the provisions of this act shall be entitled to participation in the state aid herein provided for, if said institution shall be disapproved by the state board of health and such disapproval certified to the state auditor. [L. '15, p. 254, § 3. Cf. L. '13, p. 597. § 15.]

§ 5554–15. Use of Hospital.—After the establishment in any county of a hospital as herein provided for, no person suffering from tuberculosis shall be taken care of or treated at any almshouse or county institution, other than such hospital, except in cases of emergency. [L. '13, p. 597, § 16.]

CHAPTER XIV.

Plumbing in Cities of the First Class.

§ 5555. Plumbing Inspectors. — The board of health of each city [of the first class in this state having a system of water supply and sewerage], shall, within three months from and after this act, appoint one or more inspectors of plumbing (if such appointment has not already been made) who shall be practical plumbers, and shall hold office until removed by such board of health for cause, which must be shown. The compensation of such inspectors shall be determined by the city council of said city, and be paid from the treasury of their respective cities. Said inspectors so appointed shall inspect all plumbing work for which permits are hereafter granted within their respective jurisdictions, in process of construction, alteration or repair, and shall report to said board of health all violations of any law, ordinance or by-law relating to plumbing works, and also perform such other appropriate duties as may be required by said board. [L. '97, p. 211, § 5; L. '01, p. 96, § 5.]

The words in brackets substituted for "mentioned in § 3 of this act." These sections are retained; but §§ 1–4 of this act, and Bal. Code,

§§ 1247–1250, are believed to be void, in view of State ex rel. Richey v. Smith, 42 Wash. 237, 84 Pac. 851, declaring the plumber's act, L. '05, p. 126, unconstitutional.

§ 5556. Rules and Regulations—Permit for Plumbing.—The board of health of each city of the first class in this state having a system of water supply and sewerage, shall, within three months from the passage of this act, prescribe rules and regulations for the construction, alteration and inspection of plumbing and sewerage placed in or in connection with any building in such city, which shall be approved by ordinance by the council of such city, and the board of health shall further provide that no plumbing work shall be done, except in the case of repairs or leaks, without a permit being issued first therefor, upon such terms and conditions as such board of health of said city shall prescribe. [L. '97, p. 212, § 6; L. '01, p. 96, § 6.]

§ 5557. Penalty. — Any person violating any provision of this chapter shall be deemed guilty of a misdemeanor, and be subject to a fine not exceeding fifty dollars, nor less than five dollars, for each and every violation thereof. [L. '97, p. 212, § 7; L. '01, p. 97, § 7.]

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CHAPTER I.

The Law of Travel.

§ 5558. Vehicle to Turn to the Right. — Whenever any persons driving any vehicle shall meet on any public highway in this state, whether owned or kept by a corporation or private person, the persons so meeting shall seasonably turn their vehicles to the right of the center of the road, so as to permit each vehicle to pass without interfering with or interrupting the other. [L. '69, p. 288, § 68; L. '79, p. 67, § 66; Cd. '81, § 3030; 1 H. C., § 2064.]

Cited in 3 Wash. 663; 64 Wash. 247; 81 Wash. 122.

See, also, § 5562–26, infra.

§ 5559. Penalty for Violation of Last Section.—If any person shall willfully violate the provisions of this chapter, he shall forfeit and pay the sum of five dollars for every such violation, to the party injured, to be recovered by a civil action, and such further damage in the same action as such party may directly sustain by reason of such violation. [L. '69, p. 288, § 69; L. '79, p. 67, § 67; Cd. '81, § 3031; 1 H. C., § 2065.]

§ 5560. Liability of Master. — Whenever any person driving a vehicle, who shall violate the provisions of this chapter, is at the time in the employ of another, such other person is liable for the penalty herein provided, the same as if he were the driver of such vehicle at the time of such violation; but an election to sue the driver or employer is a bar to an action against the other. [L. '69, p. 288, § 70; L. '79, p. 58, § 68; Cd. '81, § 3032; 1 H. C., § 2066.]

§ 5561-1. Width of Tires.—It shall be unlawful for any person or corporation to transport in any cart, wagon, automobile truck or other vehicle over and along roads in any county where the character of the material of which the roads in such county are constructed and the climatic conditions prevailing in such county render the transportation of greater loads per inch of width of tire injurious to such roads, any load that shall not be so limited and adjusted that the bearing of the load, including the weight of the vehicle, upon the road as transmitted through the axle to any tire, shall not exceed four hundred pounds per inch of width of such tire, for tires two inches in width or less; and for tires in excess of two inches in width, but not to exceed five inches in width, the load per inch per width of tire shall not exceed four hundred pounds per inch of width of tire plus fifty pounds per inch of width in excess of two inches; and for tires five inches in width the load shall not exceed five hundred fifty pounds per inch of width of such tire; and for tires in excess of five inches in width the load per inch of width shall not exceed five hundred fifty pounds per inch of width of tire plus seventy pounds per inch of width in excess of five inches: Provided, that if the diameter of the wheels bearing the load exceed three feet, an additional load of fifty pounds per inch of width of tire may be carried on such wheels for each foot of diameter of such wheel in excess of three feet. [L. '13, p. 482, § 1.]

§ 5561-2. Roads Requiring Wide Tires.—It shall be the duty of the board of county commissioners of the respective counties of the state to determine whether or not the character of the material of which the roads of such county are constructed and the climatic conditions prevailing in such county render it necessary that the provisions of this act be enforced in such county, and to enter such determination in the record of the proceedings of the board, and when such determination shall be that the character of the material of which the roads of such county are constructed and the climatic conditions prevailing in such county are such as to render it injurious to such roads to allow greater loads per inch of width of tire to be transported over and along the roads of such county, the provisions of this act shall be effective in such county, provided, that the provisions of this act shall not apply to vehicles merely passing through and not commonly used therein. [L. '13, p. 483, § 2.]

§ 5561-3. Penalty. — Every person or corporation transporting greater loads per inch of width of tire over and along the state and county roads within any county where the board of county commissioners has determined that this act shall be effective, shall be guilty of a misdemeanor and for a third violation of the provisions of this act shall be guilty of a gross misdemeanor. [L. '13, p. 483, § 3.]

§ 5561-4. Prohibiting Heavy Loads and Spiked or Cleated Wheels. It shall be unlawful for any person to drive, propel, draw, move, convey or transport, or cause to be driven, propelled, drawn, moved, conveyed or transported, over, upon, along or across any public street, road or highway, without the corporate limits of any city of the first class, any vehicle or object which, with or without its load, shall be of such weight, or which shall have any wheel or tire so made, constructed, formed or shaped, or so equipped with spikes, cleats, lugs or other attachments or projections, as to destroy or permanently injure such street, road or highway or the surface, foundation or other part thereof, and it shall be unlawful for any person to drive, propel, draw, move, convey or transport, or cause to be driven, propelled, drawn, moved, conveyed or transported, over, upon, along or across any public street, without the corporate limits of cities of the first class, road or highway, any automobile, auto truck or motor propelled vehicle which with or without its load shall weigh more than twenty-four thousand pounds. All road supervisors, county and municipal officers and their deputies are hereby vested with the powers and duties of sheriffs in preventing violations of this act and in making arrests therefor. [L. '15, p. 65, § 1.]

§ 5561-5. Penalty.—Any person violating any of the provisions of this act shall be guilty of a misdemeanor. [L. '15, p. 66, § 2.]

§ 5561-6. Disposition of Fines.—All fines collected under the provisions of this act shall be paid into the "general road and bridge fund" of the county where the misdemeanor is committed. [L. '15, p. 66, § 3.]

CHAPTER II.

Automobiles and Motorcycles.

§ 5562-1. Scope of Act.—Except as otherwise provided by law this act shall be controlling:

(1) Upon the registration and numbering of motor vehicles;

(2) Upon the use of motor vehicles upon the public highways;

(3) Upon penalties for the violation of any of the provisions of this act. [L. '15, p. 385, § 1.]

§ 5562-2. Terms Defined.—The words and phrases herein used, unless the same be clearly contrary to or inconsistent with the context of the act or section in which used, shall be construed as follows:

(1) "Motor vehicle" shall include all vehicles or machines propelled by any power other than muscular, used upon the public highways for the transportation of persons, freight, produce or any commodity, except traction engines, temporarily upon the public highway, road-rollers or road-making machines, and motor vehicles that run upon rails or tracks.

(2) "Automobile" shall mean the ordinary four-wheeled motor vehicle, and shall be synonymous with the term "motor vehicle" except as otherwise herein provided;

(3) "Motorcycle" shall mean a motor vehicle of two or three wheels intended for the carrying of one, two or three persons, or operated by one person for the carrying of small parcels or packages;

(4) "Auto stage" as distinguished from "automobile" shall mean a motor vehicle used for the purpose of carrying passengers, baggage or freight on a regular schedule of time and rates;

(5) "Motor truck" shall mean a motor vehicle intended for the purpose of transporting any commodity, produce or freight;

(6) "Public highway" or "public highways" shall include any highway, state road, county road, public street, avenue, alley, driveway, boulevard or other place built, supported, maintained, controlled or used by the public or by the state, county, district or municipal officers for the use of the public as a highway, or for the transportation of persons or freight, or as a place of travel or communication between different localities or communities;

(7) "Local authorities" shall include the officers of counties, cities or towns or other municipal subdivisions of the state having control, power or authority over any of the subject matter embraced within this act;

(8) "Peace officer" or "peace officers" shall be taken to mean any officer or officers authorized by law to execute criminal process or to make arrests for the violation of the statutes generally or of any particular statutes relative to the public highways of the state;

(9) "Dealer" shall be taken to mean any person, firm or corporation engaged in the sale of new or second-hand motor vehicles.

(10) "Privately owned" shall include all motor vehicles not offered for hire.

(11) "For hire" shall be taken to mean all motor vehicles, other than auto stages, operated for hire. [L. '15, p. 386, § 2.]

§ 5562–3. Fees and Licenses—Secretary of State—Duties.—The secretary of state, acting through the county auditors of the several counties of the state of Washington, as hereinafter provided, shall have the general supervision of the issuing of motor vehicle licenses and of the collecting of fees therefor and shall have full power to do all things necessary and proper to carry out the provisions of this

act; he shall have the power to appoint a deputy and such clerk or clerks as may be required from time to time, and may purchase all materials and make all expenditures as may be necessary hereunder.

It shall be the duty of the secretary of state to make and furnish to each county auditor, and to such other persons as may be in any manner responsible for the collecting of the motor tax hereinafter provided for, a tabulated list of all motor vehicles, except motorcycles, giving the make, model, the year built, the weight and horsepower and setting opposite each such description the license fee charged therefor. [L. '15, p. 387, § 3.]

§ 5562–4. Operation by Person Under Fifteen Years of Age.—No person under fifteen years of age shall operate or drive a motor vehicle upon a public highway unless such person is accompanied by his or her parent, guardian or the owner of such vehicle; no motor vehicle shall be operated upon a public highway without a license having been first obtained therefor, except as hereinafter provided. [L. '15, p. 387, § 4.]

§ 5562–5. License Application in Triplicate—Contents.—Application for a motor vehicle license shall be made in triplicate to the county auditor of the county in which the applicant resides, on blanks to be furnished by the secretary of state.

Such application shall be made by the owner of the vehicle, or his duly authorized agent, over the signature of such owner or agent, and he shall certify that the statements therein are true to the best of his knowledge; such signature shall be attested without charge by the county auditor or by one of his deputies, but it may be attested by a notary public or other officer authorized to administer oaths.

The application must show:

(1) The name of the owner, with the business or residence address thereof, or both if there be such;

(2) The nature of the license required; whether a license has heretofore been issued for such vehicle, and if so, the number of such license;

(3) The trade name of such vehicle, the factory number thereof and the name and address of the manufacturer;

(4) The kind of vehicle, whether a motorcycle, automobile, auto stage, auto truck or other motor vehicle;

(5) The rated carrying capacity of such vehicle;

(6) The purpose for which the same is to be used, and whether for public or private use; if for public, the nature of the same and the city or community to be served;

(7) The power to be used, whether electric, steam, gas or other power;

(8) The horse-power rating, which in case of internal combustion engines, shall be determined in accordance with the formulae of the

association of American licensed automobile manufacturers, and in all other engines or motor vehicles, the rating as advertised by the maker thereof, and if two ratings are claimed, the highest one stated shall be given in the application, and in case fractional horse-power rating is claimed, the whole number next above such fractional number shall be the one given;

(9) Such other information as shall be required by the secretary of state. [L. '15, p. 388, § 5.]

§ 5562–6. Filing Application—Temporary Number Plates.—Upon receipt of such application accompanied by the proper fee, the county auditor shall give one copy to the applicant, retain one for the county files, and immediately forward the original together with the proper fee, to the secretary of state.

The county auditor shall, at the expense of the county issuing the same, furnish the applicant with a temporary number printed upon durable cardboard, which number shall be displayed always on the vehicle and shall entitle the licensee to operate the same for a period of thirty days from and after the date of such application, or until the permanent number shall have been received from the secretary of state at which time it must be replaced by the permanent number, and the temporary number card returned to the county auditor.

All temporary number plates shall contain the name of the county issuing the same; the letters "Wn" and the year in which such license shall expire; and shall be displayed upon said vehicle in the same relative position as is hereinafter provided for the displaying of the permanent number. [L. '15, p. 389, § 6.]

§ 5562–7. License Issued by Secretary of State.—The secretary of state shall, upon receipt of the application for a motor vehicle license accompanied by the required fee, place the original application on file in his office and thereupon issue to such applicant a license for such motor vehicle, stating therein the number to be displayed on such motor vehicle, as hereinafter provided, and authorizing the use of such vehicle upon the public highways until and including the last day of February after the issuance of such license. [L. '15, p. 389, § 7.]

§ 5562–8. Transfer of Licenses to Other Vehicles.—No license shall be transferred from one person to another person, but may be transferred from one vehicle to another vehicle, when duly authorized by the secretary of state on application therefor, through the county auditor, accompanied by the proper fee, and in case such vehicle to which it is desired to have such license transferred if of higher horse-power rating than the vehicle for which the original license was issued, the applicant shall accompany such application

with the additional amount required to cover the difference between the license fees for the two ratings. [L. '15, p. 389, § 8.]

§ 5562–9. Duty to Carry License — Right of Inspection — Duplicates.—A license to be valid must have indorsed thereon the signature of the owner or the duly authorized agent of such owner. Such license must be carried upon the vehicle for which it was issued at all times when such vehicle is being operated on the public highways. Any person in charge of such vehicle shall, upon demand of any of the local authorities or of any peace officer, or of any representative of the secretary of state's office permit an inspection of the same. Upon application supported by affidavit of loss or destruction of a license and upon payment of a fee required therefor, a duplicate copy thereof shall be issued. [L. '15, p. 390, § 9.]

§ 5562–10. Demonstrating License to Dealers. — A demonstrating license shall be issued to an actual dealer only for any make of motor vehicle handled or dealt in by him, and for the fee as hereinafter specified, but shall not be used upon any vehicle while the same is being operated for hire; nor shall more than one vehicle be operated at the same time under such license, except that an additional license may be issued as hereinafter provided. [L. '15, p. 390, § 10.]

§ 5562–11. Right of Foreign Residents.—Any person resident of another state or country may bring into this state any motor vehicle and operate the same without obtaining a license therefor for a period of ninety (90) days in any one calendar year: Provided, such person has complied in all respects with the laws of his own state or country as to the registration or licensing of motor vehicles: And provided further, that such motor vehicle is not used in this state for hire. [L. '15, p. 390, § 11.]

§ 5562–12. Number Plates.—The secretary of state shall furnish to each licensee of a motor vehicle two number plates containing the number to be displayed on such vehicle [to be displayed upon such vehicle], as hereinafter provided. The number shall be in Arabic numerals not less than four inches in height nor less than one-half inch stroke, and shall be preceded by the letters "Wn" and followed by the year in which such license shall expire, and such number plates if issued to a dealer shall contain the word "dealer." The secretary of state may put such other marks or characters on such plates or fix the color of same as he may determine to properly identify the kind of license issued or the period for which the same was issued; and the size of the numerals for motorcycles shall be two and one-half inches high and three-eighths inch stroke. [L. '15, p. 390, § 12.]

§ 5562–13. Removal of Number on Sale.—Upon the sale of any motor vehicle the delivery thereof shall not be deemed to have been made until the vendor shall have removed his number plates there-

from and the vendee shall have secured a license therefor and placed the new number plates thereon. [L. '15, p. 391, § 13.]

§ 5562–14. Duplicate Plates in Case of Loss.—Upon the loss of any number plate or the defacement or destruction thereof, the secretary of state shall be notified without delay. The notice shall be accompanied by the requisite fee and upon receipt of the same the secretary of state shall issue a duplicate of such plate, and in case such duplication cannot be furnished at once the secretary of state shall furnish to such person a certificate stating therein the loss or destruction of such plate and authorizing the applicant to use a temporary number plate until the receipt of such duplicate from the secretary of state, which shall be immediately placed on such vehicle. [L. '15, p. 391, § 14.]

§ 5562–15. Schedule of Fees.—All fees herein authorized to be collected shall be as follows:

ANNUAL FEES.

Motorcycles.

All	$ 2 50

Automobiles.

Automobiles—25 horse-power, or under	3 00
Over 25 horse-power and under 40 horse-power	5 00
40 horse-power and over	7 50

Automobiles for Hire.

Automobiles for hire shall pay at the rate of, per horse-power	50

Motor Trucks.

Under 2-ton capacity	10 00
2 ton and under 3 ton	15 00
3 ton and under 4 ton	20 00
4 ton and (not over 5 ton capacity)	25 00

Motor Trucks for Hire.

Under 2-ton capacity	20 00
2 ton and under 3 ton	30 00
3 ton and under 4 ton	40 00
4 ton and not over 5 ton	50 00

Auto Stages.

Auto stages for hire shall pay at the rate of, per horse-power	50
And in addition thereto $1.00 per passenger capacity of any such auto stage.	

Demonstration.

Motorcycles	3 00
All other motor vehicles regardless of horse-power or capacity	5 00
Additional demonstrating license, except motorcycle demonstrating license	3 00

General Fees.

Duplication of number plates, each	50
Duplication of motor vehicle license	50
Transfer of motor vehicle license, each	50

Provided, that the provisions of this section relating to automobiles for hire shall not apply to private automobiles that shall be operated for hire for a period of ten days or less, and for which a special permit so to operate shall have been obtained from the county auditor. The fee for any such permit shall be for each automobile the sum of 1 00

[L. '15, p. 391, § 15.]

§ 5562–16. **Half Rates for Partial Year.**—For all motor vehicle licenses except those on motorcycles and privately owned automobiles issued after the first day of September of any year only one-half the rates named in section 15 shall be charged. [L. '15, p. 392, § 16.]

§ 5562–17. **Exemption from License.**—Motor vehicles owned by any city for the police or fire department thereof, and used exclusively in these departments; and all motor vehicles owned by the United States government and used exclusively in its service, shall be exempt from payment of license fees as herein provided: Provided, however, they must be registered as provided for in this act and display the number assigned by the secretary of state upon the machine; nor shall the said motor vehicles or any motor ambulance for the relief of sick or injured persons, when the emergencies of the occasion demand, be limited to the speed regulations provided as authorized. [L. '15, p. 392, § 17.]

§ 5562–18. **Disposition of Fees.**—All fees collected by the secretary of state as herein provided shall be paid into the state treasury as other funds are paid and after returning to the general fund the amounts appropriated therefrom each biennium for the expenses of the issuing of such licenses the surplus shall go to the permanent highway fund, for the maintenance and repair of permanent highways in addition to the fund heretofore provided by law, to be distributed in accordance with the amounts of money paid in to the permanent highway fund by the various counties of the state. [L. '15, p. 393, § 18.]

§ 5562–19. Number Plates, How Attached.—The authorized number plate of each motor vehicle shall be attached conspicuously to both the front and rear of such vehicle, at least two feet above the ground and so fastened as to prevent swinging thereof, and each number plate shall be kept clean so as to be plainly seen and read at all times. [L. '15, p. 393, § 19.]

§ 5562–20. Use of Exhaust Muffler.—Every motor vehicle, using an internal combustion engine, shall use an exhaust muffler, and the same shall not be cut out or disconnected within the limits of any incorporated city within the state. [L. '15, p. 393, § 20.]

§ 5562–21. Exhibition of Lights.—Every motor vehicle shall exhibit during the hours of darkness, at least two lamps showing white lights visible two hundred feet or more in advance of said vehicle, and one or more lamps in the rear thereof, showing a red light visible at least two hundred feet in the rear of such machine, and the same light or additional light casting white rays of sufficient strength on the rear number plate thereof so that such number plate may be easily read at a distance of at least sixty feet: Provided, that motorcycles shall be required to carry only one light in the front thereof, which shall show white rays visible at least two hundred feet in advance of such motor vehicle: Provided, further, that it shall be unlawful to display any light showing red to the front of any motor vehicle. [L. '15, p. 393, § 21.]

§ 5562–22. Brakes and Danger Signals.—Every motor vehicle shall be provided with good and sufficient brakes, and with a suitable bell, horn or other signal which shall be rung or blown as a signal or warning to any person, or whenever there is danger of collision or accident. [L. '15, p. 394, § 22.]

§ 5562–23. Careful Driving.—No person driving or operating any motor vehicle shall drive or operate the same in any other than a careful and prudent manner, nor at any greater speed than is reasonable or proper, having due regard to the traffic and use of the way by others, or so as to endanger the life and limb of any person. [L. '15, p. 394, § 23.]

§ 5562–24. Rate of Speed.—In no case shall any motor vehicle be driven, operated or moved at a rate of speed faster than one (1) mile in five (5) minutes within the thickly settled or business portion of any city or town of the third or fourth class, nor within one hundred yards of any schoolhouse, on school days between 8 o'clock in the morning and 6 o'clock in the afternoon within this state, nor outside of such thickly settled or business portion of any city or town on any road, street or public place at a rate of speed faster than one mile in two (2) minutes. [L. '15, p. 394, § 24.]

§ 5562–25. Racing on Public Highways.—The racing of automobiles on public highways is hereby forbidden: Provided, however, local authorities may designate and set aside certain portions of the public highways for limited periods to be used for speed trials or speed contests. [L. '15, p. 394, § 25.]

§ 5562–26. Rule of the Road.—It shall be the rule of the road that every person driving a motor or other vehicle or riding or driving any animal or animals upon the public highway or in any other similar use of such highway shall, upon meeting any other person so using such highway, seasonably turn to the right of the center of the highway so as to pass without interference, and any person so using the highway shall, upon overtaking any other person so using the highway, pass to the left side thereof and the person so overtaken shall as soon as practicable turn to the right so as to allow free passage on the left. Any person operating a motor or other vehicle shall, at the intersection of public highways, keep to the right of the intersections of the centers of such highways when turning to the right and pass to the right of such intersection when turning to the left: Provided, however, a variance from the rules contained in this section in good faith, believing that such variance to be necessary or desirable shall not subject the offender to arrest under the criminal provisions of this act. [L. '15, p. 394, § 26.]

See, also, § 5558, supra.

§ 5562–27. Precaution Against Frightening Horses.—Every person driving or operating a motor vehicle on approaching any vehicle drawn by a horse or horses or any horse upon which any person is riding, shall operate, manage and control such vehicle in such manner as to exercise reasonable precaution to prevent frightening of any such horse or horses and to insure the safety and protection of any person riding or driving the same. If such horse or horses appear frightened, the person in control of said motor vehicle shall reduce the speed thereof, and if requested by the raising of the hand or other signal of the driver of such horse or horses shall bring such motor vehicle to a full stop and shall not proceed further unless such movement be necessary to avoid accident or injury or unless such animal appears to be under the control of its rider or driver. [L. '15, p. 395, § 27.]

§ 5562–28. Must Stop on Inflicting Accident.—In case of accident to a person or property on the public highways due to the operation thereon of a motor vehicle, the person operating such vehicle shall stop, and upon request of the person injured or of any person present, shall give to such person his name and address, and if not the owner of such vehicle, the name and address of such owner,

and the name and address of other persons accompanying him. [L. '15, p. 395, § 28.]

§ 5562–29. Acts and Statements of Owners.—Every act or statement required to be made by the owner of any motor vehicle, or by the agent of such owner, shall be made or done by the owner in person unless such owner is a company or corporation or otherwise incapable of acting in person, and if the same is made or done by the agent the necessity thereof shall be stated or shown. [L. '15, p. 395, § 29.]

§ 5562–30. Penalty for Misrepresentation, or Violations of Act.—Any person who shall make falsely any statement herein required to be made or who shall obtain any license by any misrepresentation or deceit, or who shall display any number or license not authorized by law to be used, or who shall in violation of the provisions of this act, loan or permit to be used any license or number issued to him, or who shall in any manner violate the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished accordingly: Provided, that in no event shall the minimum fine be less than fifteen dollars. [L. '15, p. 396, § 30.]

§ 5562–31. Disposition of Fines.—All moneys derived from fines assessed for the violation of any of the provisions of this act shall be paid into the permanent highway fund, for the maintenance and repair of permanent highways in addition to the funds heretofore provided by law, to be distributed in accordance with the amounts of money paid into the permanent highway fund by the various counties of the state. [L. '15, p. 396, § 31.]

§ 5562–32. Arrests by Peace Officers.—Any peace officer may make arrests for any violation of this act with or without warrant therefor upon showing his authority as such officer, and for the purpose of enforcing the provisions of this act the secretary of state, or his appointed deputies shall be deemed peace officers and shall have the same power and authority as any peace officer within the county, city or town in which such violation occurs. [L. '15, p. 396, § 32.]

§ 5562–33. Right of Civil Action.—Nothing in this act shall be construed to curtail or abridge the right of any person to prosecute a civil action for damages by reason of injury to person or property resulting from the negligent use of the public highways by the driver or operator of any motor vehicle or its owner or his employee or agent, and the owner of such vehicle shall be equally liable for the negligent operation thereof, when at the time of such injury the vehicle was operated by the agent of such owner, or by any person employed by him for the purpose of operating such vehicle. [L. '15, p. 396, § 33.]

§ 5562–34. Restriction on Local License Taxing.—The local authorities shall have no power to pass or enforce any ordinance, rule or regulation requiring of the owner or operator of any motor vehicle, any license other than an occupation license or tax which may be levied in only one city or town when such motor vehicle is engaged in inter-city service, or permit to use the public highways except as herein provided or to exclude or to prohibit any motor vehicle whose owner has complied with the provisions of this act from the free use of the public highways, and all such rules, ordinances and regulations now in force are hereby declared to be of no validity or effect: Provided, however, that nothing herein shall be construed as limiting the power of the county commissioners or local authorities to make, enforce and maintain ordinances, rules and regulations governing traffic in addition to the provisions of this act affecting motor vehicles. [L. '15, p. 396, § 34.]

§ 5562–35. Repealing Clause—Saving Clause.—That sections 5562, 5563, 5564, 5565, 5566, 5567, 5568, 5569, 5570, 5571, 5572, 5573 and 5574 of Rem. & Bal. Code, relating to the licensing of automobiles, be and the same is hereby repealed: Provided, however, that all licenses granted under this act, and the regulations imposed thereby shall be valid and the compliance with the conditions imposed therein shall be sufficient until this act takes effect, without further payment of any fee or fees. [L. '15, p. 397, § 35.]

§ 5562–36. Partial Invalidity.—If any portion of this act should be declared unconstitutional, it shall not thereby affect the constitutionality of the remaining portions. [L. '15, p. 397, § 36.]

§ 5562–37. Motor Vehicles as Passenger Carriers in Cities of First Class.—It shall be unlawful for any person, firm or corporation, other than a steam, street or interurban railway company to engage in or carry on the business of carrying or transporting passengers for hire in any motor propelled vehicle along any public street, road or highway, within the corporate limits of any city of the first class, without having first obtained a permit so to do as hereinafter provided: Provided, that any street or interurban railway or other transportation company engaging in the business of transporting passengers for hire in any motor propelled vehicle except streetcars along any public street, road or highway in this state, shall come under the provisions of this act: Provided, further, that the provisions of this act shall not apply to carriers of United States mail. [L. '15, p. 227, § 1.]

§ 5562–38. Secretary of State to Issue—Bond—License Fee.—Every person, firm or corporation other than a steam, street or interurban railway company, desiring to engage in the business of carrying or transporting passengers for hire in any motor propelled v[illegible]

over or along any public street, road or highway in any city of the first class and every street or interurban railway or other transportation company desiring to engage in the business of transporting passengers for hire in any motor propelled vehicle except street-cars, shall apply to the secretary of state for a permit so to do, and such applicant for each motor vehicle intended to be so operated shall deposit and keep on file with the secretary of state a bond running to the state of Washington in the penal sum of twenty-five hundred dollars, with good and sufficient surety company licensed to do business in this state as surety to be approved by the secretary of state, conditioned for the faithful compliance by the principal of said bond with the provisions of this act and to pay all damages which may be sustained by any person injured by reason of any careless, negligent or unlawful act on the part of said principal, his agents or employees in the conduct of said business or in the operation of any motor propelled vehicle used in transporting passengers for hire over or along any public street, road or highway, and shall pay to the secretary of state a fee of five dollars and thereupon such license shall be issued to the applicant. [L. '15, p. 228, § 2.]

§ 5562–39. Rights of Action for Personal Injuries.—Every person injured by any careless, negligent or unlawful act of any person, firm or corporation receiving a permit under the provisions of this act, or his, their, or its agents, or employees in conducting or carrying on said business or in operating any motor propelled vehicle used for the carrying and transporting of passengers over and along any public street, road or highway, and his heirs, executors and administrators shall have a cause of action against the principal and surety upon the bond provided for in the preceding section for all damages sustained and in any such action the full amount of damages sustained may be recovered against the principal, but the recovery against the surety shall be limited to the amount of the bond and a surviving husband and child or children or if no husband, then the child or children shall have action for the death of the wife or mother caused by any such negligence. [L. '15, p. 228, § 3.]

§ 5562–40. Penalty for Operating Without Permit.—Every person, firm or corporation, other than a steam, street or interurban railway company, engaging in the business of carrying or transporting any passengers for hire in any motor propelled vehicle along or over any public street, road or highway or carrying or transporting any passengers for hire along or over any public street, road or highway in any city of the first class, and every street or interurban railway or transportation company engaging in the business

of transporting passengers for hire in any motor propelled vehicle except street-cars, without having first obtained and having a permit so to do as in this act provided shall be guilty of a gross misdemeanor. [L. '15, p. 229, § 4.]

§ 5562–41. Partial Invalidity.—If any part of this act be held invalid by any court, the remainder of this act shall nevertheless be valid. [L. '15, p. 229, § 5.]

CHAPTER III.

Control and Management of County Roads.

Franchises and rights in: See infra, §§ 5611–5622.

§ 5575. County Commissioners to have General Supervision.—The boards of county commissioners of the several counties in the state shall have general supervision over the roads in their respective counties. They must cause to be opened and worked such roads as are necessary for public convenience, which have been laid out and established according to law; levy such taxes for road and bridge purposes as are by law provided for; order and direct road supervisors especially in regard to work to be done on particular roads in their districts; in their discretion cause to be erected and maintained on such public roads as they may designate, guide-posts, properly inscribed; in their discretion let out by contract to the lowest bidder, the construction or improvement of any road or bridge on the public roads, when the expense of such construction or improvement will exceed the sum of fifty dollars; remove any road supervisor for inefficiency or neglect of duty or malfeasance in office; order such warrants drawn on the county treasurer and payable out of the funds to the credit of any district as are necessary to pay for labor performed in said district under the direction of the road supervisor, except such work as may be performed by residents of the district in payment of road poll tax or property road tax as hereinafter provided. [L. '90, p. 619, § 3; 1 H. C., § 1936; L. '93, p. 149, § 3.]

Cited in 7 Wash. 115; 20 Wash. 113; 22 Wash. 108; 34 Wash. 505; 38 Wash. 110; 45 Wash. 492; 50 Wash. 330; 60 Wash. 317; 68 Wash. 235; 85 Wash. 495.

For former laws on this subject see L. '54, pp. 341–357; L. '55, pp. 48–52; L. '57, pp. 35–46; L. '59, pp. 7–18, and L. '59, p. 24, military roads; L. '60, p. 329; L. '63, pp. 509–520; L. 67, pp. 11–22; L. 68, pp. 5–17; L. '69, pp. 266–290; L. '71, pp. 31–34; L. '75, p. 117, § 1 and § 24; L. '77, pp. 315–317; L. '79, pp. 49–61; Cd. '81, §§ 2970–3001; L. '81, pp. 9, 10; L. '83, pp. 40–42; L. '88, p. 195.

See infra, § 5623, and notes, laying out and opening county roads.

§ 5576. Shall Divide Counties into Road Districts.—The board of county commissioners shall, as often as they deem it necessary.

but not oftener than once each year, divide their respective counties or any part thereof into suitable and convenient road districts, not exceeding twenty-four in number, and cause a description thereof to be entered upon the county records: Provided, that the size and form of each road district shall be such as to permit personal oversight and management by one road supervisor. [L. '07, p. 679, § 1. Cf. L. '03, p. 224, § 7; and references to next section.]

Cited in 1 Wash. 484, 485; 7 Wash. 115; 20 Wash. 113, 264; 22 Wash. 108.

The body of the act of 1907 purports to amend § 1 of the act of 1903, although it is apparent from the title and context that § 7 is amended.

§ 5577. Districts to be Apportioned Among Commissioners.—Each county commissioner shall be ex-officio road commissioner of the several road districts in his commissioner district, and shall see that all of the orders of the board of county commissioners pertaining to roads in his district are properly executed: Provided, when in any county the members of the board of county commissioners are not elected by districts, it shall be the duty of the board of county commissioners, by proper order to be entered on its records, to divide such county into commissioners' districts to correspond with the number of members of such board, and to assign to each member of the board one of such districts, of which he shall be such road commissioner: Provided, that no member of the board of county commissioners shall receive any compensation for any service whatever, performed by him, or required of him by any of the provisions of this act other than his salary or per diem as county commissioner. [L. '90, p. 617, § 1; 1 H. C., § 1937; L. '93, p. 147, § 1.]

"This act" seems to refer to §§ 5575-5577, 5579 and 5580.

The first part of this section is omitted as superseded by the previous sections.

See infra, § 9107, boundaries of to conform to school districts.

§ 5578. Road Supervisors—Appointment, Compensation, etc.—The board of county commissioners may appoint from among the qualified electors in each county for such time as they may determine, with compensation not to exceed four dollars per diem for time and labor actually performed, a road supervisor who shall enter into a bond satisfactory to the commissioners: Provided, however, that in counties wherein any road district has a good roads association, the membership of which shall own not less than seventy-five per cent in area of the land contained within the district, then such road supervisor shall be appointed from a list of not less than four names furnished by such association. [L. '15, p. 340, § 1. Cf. L. '01, p. 276, § 12; L. '03, p. 225, § 12; L. '07, p. 680, § 2.]

Cited in 72 Wash. 479.

§ 5579. Supervisors—Bond and Oath of Office.—All road supervisors elected or appointed under the provisions of this chapter shall give their official bond in such sum as the board of county commissioners may fix, conditioned that they will faithfully perform all the duties required by law or the orders of the county commissioners, and that they will account for all money received by them in their official capacity, and they shall take the usual oath of office. The bond and oath of office required to be filed by road supervisors shall be filed within twenty days after they receive notice of their election or appointment from the county auditor, and when such bond and oath of office is filed and the bond approved by the county auditor as clerk of the board of county commissioners, the county auditor shall furnish to each road supervisor a certificate that such bond and oath of office has been filed and the bond approved, and such certificate shall authorize the person to whom it is issued to perform the duties and exercise the powers of road supervisor for the district in and for which he has been elected or appointed. [L. '90, p. 618, §§ 2–4; 1 H. C., §§ 1938, 1939; L. '93, p. 148, § 2; L. '95, p. 422, § 13.]

Cited in 7 Wash. 115.

All or parts of this section may be superseded, but portions are retained.

§ 5580. Duties of Supervisor.—The road supervisor must take charge of all the public roads in his district, and keep them clear from obstructions, and in good repair, and destroy or cause to be destroyed, at least once a year, all Canada, Chinese and bull thistles or other noxious weeds growing or being on any of the roads in his district; he shall have general supervision of all work ordered done in his district by the board of county commissioners, [and shall apply such labor as may be due the district from persons entitled to perform labor on the roads in such district in payment of such taxes as are provided may be paid in labor by residents of the district, in the manner most conducive to the interest of the district and in the way to get the best results from such labor]. [L. '90, p. 62, § 5; 1 H. C., § 1940; L. '93, p. 150, § 4.]

Cited in 20 Wash. 264; 34 Wash. 595; 45 Wash. 592.

The last part of this section seems to be superseded by § 5593, infra.

See supra, § 2718, penalty for fast driving on road or bridge.

See supra, § 2719, penalty for using traction engines on highways.

See supra, §§ 3040, 3041, duty as to noxious weeds on private property.

See infra, § 8322, public nuisance to obstruct highway.

§ 5581. Road Supervisors to Destroy Thistles on Highway.—It shall be the duty of each supervisor of roads in each road district under the same penalties, for noncompliance as prescribed in section 3036, to call out a sufficient number of laborers to cut down and

destroy any Chinese or Canada thistles found growing in the public highways in his road district; said supervisor to have said thistles cut down and destroyed before the seed shall have matured, and said supervisor shall credit each and every person or laborer so called out with the amount of labor so performed at the rate of two dollars per day on his road tax: Provided, that the counties of Cowlitz, Skamania, Pacific, Clarke, and Wahkiakum shall not be included in the provisions of this chapter. [Cd. '81, § 2239; 1 H. C., § 2425.]

See supra, § 5580, duty of road supervisor to destroy Canada thistles.
The extent to which this section is superseded by later laws is not entirely clear.

§ 5582. To Destroy Noxious Weeds.—Each road supervisor shall destroy all noxious weeds and prevent the same from going to seed, in the highways of his district and shall be paid therefor in the same manner as in doing other work upon the public highways. [L. '99, p. 75, § 7; L. '07, p. 161, § 9.]

See the two preceding sections.
See supra, §§ 3040, 3041, duty as to weeds on private property. See, also, note to § 3044.
See supra, § 3043, these duties by whom performed in cities and towns.

§ 5583. Duties of Road Supervisors.—It shall be the duty of the road supervisor, under the direction of the county commissioners, to keep the roads and bridges in his district in as good repair as the funds available will allow, and keep all roads open for travel at all times, and make a detailed monthly report of all work performed in his district during the previous month to the board of county commissioners; examine and certify all bills for labor and material in his district; and perform such other duties as may be required by the commissioners for the proper maintenance of the highways. [L. '01, p. 276, § 13; L. '03, p. 225, § 13.]

§ 5584. Meeting of Supervisors—Work Outlined.—The county engineer and the supervisors of the several road districts shall meet with the county commissioners on the first Tuesday of the board's regular session in April, to outline the road improvements to be made. [L. '01, p. 276, § 14; L. '03, p. 225, § 14.]

"Engineer" substituted for "surveyor."

§ 5585. Expenditure of Funds.—All the funds in the county treasury raised by the taxation herein provided shall be expended by the county commissioners and all road and bridge construction, improvements or repairs shall be made by the county commissioners in the following manner:

First. All road construction, improvement or repairs of which the estimated cost shall be under two thousand five hundred dollars, and all bridge construction, improvement or repairs of which the estimated cost shall be under five hundred dollars, may be done

under the direction of the county commissioners and the county engineer.

Second. All road construction, improvement or repairs, of which the estimated cost shall be two thousand five hundred dollars or more shall be let by contract by the county commissioners on plans and specifications previously prepared by the county engineer under the direction of the board of county commissioners to the lowest and best bidder; calls for said bids to be made by publication in the official county paper for not less than three consecutive weeks prior to the time set by the county commissioners for the opening of bids: Provided, that in any county having no official county paper, such notice shall be given by posting for ten days a notice in three of the most public places in such counties. The county commissioners shall require a bond of the successful bidder for the full amount of the contract price of construction, improvement or repair of roads conditioned for the faithful performance of the contract according to law, and any requirements the county commissioners may impose at the time of advertising for bids. The board of county commissioners shall have the right to reject any and all bids, and in the event of the rejection of all bids, said board of county commissioners may in its discretion, by a unanimous vote, cause such road construction, improvement or repairs to be made by day labor or force account according to the plans and specifications: Provided further, that the board of county commissioners may in its discretion provide for the surfacing of any road with crushed rock, macadam, gravel or other material by day labor or force account without advertising for bids as herein provided.

Third. All bridge construction, improvement or repair, of which the estimated cost shall be five hundred dollars or more except in case of emergency as hereinafter provided, shall be let by contract by the board of county commissioners in the same manner as provided for road construction, improvements or repairs under this sectio..: Provided further, that in the event of an emergency whereby the delay of advertising for and letting bids would endanger property and unduly cut off communication by travel over such bridge, such contract may be made and entered into without the publication of notice as herein provided.

Fourth. Each bidder shall deposit with his bid a certified check in an amount equal to five per cent of his bid. Should the bidder to whom the contract is awarded fail to enter into a contract with the commissioners and furnish the bond hereinbefore provided within five days after notice of such award, the amount of said check shall be forfeited to the general road and bridge fund of the county. [L. '11, p. 308, § 1. Cf. L. '01, p. 276, § 15; L. '03, p. 225, § 15.]

Cited in 60 Wash. 317; 68 Wash. 211, 235.

§ 5586. Payments Limited Until Work Completed.—No money shall be paid by the county commissioners to exceed seventy-five per cent of the value of any work done at any time until the entire work is completed by the contractor approved by the county engineer and accepted by the commissioners. [L. '01, p. 278, § 16; L. '03, p. 226, § 16.]

§ 5587. Transfer of Funds to New District.—After the establishment of the districts as herein provided, the county treasurer shall transfer all funds to the credit of the several road districts now existing to the road and bridge fund of the respective district in which the present road districts are situated, and such newly created districts shall assume all liabilities and indebtedness of the present road districts situated within their respective limits. [L. '03, p. 227, § 17.]

§ 5588. Disposition of Certain Road Taxes.—In all cases where the treasurer of any county in this state has heretofore collected, or may hereafter collect, taxes, penalty and interest levied and assessed for road purposes on the taxable property of any road district, or any portion thereof, which has been included within the limits of any municipal corporation organized subsequently to said road district, said funds realized from said taxes, penalty and interest so collected, or so much thereof as has been collected, from the taxable property within the territory subsequently included in a city or town, which funds shall not have been paid out or expended before the organization of said city or town shall, upon demand of said city or town, be paid over to said municipal corporation, and shall be applied by the authorities of the same for street purposes. [L '97, p. 296, § 1.]

§ 5589. Taxes Applied, How and to What Purpose.—The proceeds from all taxes provided by this act for any road district shall be applied, under the direction of the road supervisor of said road district, only to the building and maintaining of public roads and bridges within said road district: Provided, that when so decided by a majority vote of all of the electors of said road district, such part of said taxes as may be so decided may be expended in an adjoining road district. [L. '95, p. 420, § 5.]

CHAPTER IV.

Levy and Collection of Road Taxes.

§ 5590-1. Levy—General Road and Bridge Fund—District Funds. For the purpose of raising revenue for the construction, maintenance and repair of county roads, bridges and wharves the board of county

commissioners shall annually at the time of making the levy for general county purposes make additional levies as follows:

(a) A tax of not more than four mills on the dollar on all taxable property in the county, which tax shall be kept in a fund known as the "General Road and Bridge Fund," and shall be kept separate and distinct from any other funds of the county.

(b) A tax of not more than ten mills on the dollar on all taxable property in each road district previously established by the board, which tax shall be kept separate and distinct from other funds of the county in a fund for each road district known as "Road District No. —— county": Provided, that the county treasurer of each county shall remit to the city or town treasurer of each incorporated city and town within such county, fifteen per cent of all money collected for the general road and bridge fund in such city or town, and said moneys so remitted shall be expended by the corporate authorities of such city or town on roads and bridges within said city or town connecting with roads leading out into the country known or designated as county roads. [L. '15, p. 545, § 1. Cf. L. '13, p. 476, § 1.]

§ 5590–2. **General Expenditures—Limitations.**—The expenditures from the general road and bridge fund shall be made only for the purpose of constructing, maintaining and repairing such county roads, bridges and wharves which are or will be main thoroughfares or lines of travel for all the inhabitants of the county, and for the purpose of purchasing, operating and maintaining machinery, quarries and gravel pits used in such construction, maintenance and repair. [L. '13, p. 476, § 2.]

§ 5590–3. **Expenditures from District Funds.**—The expenditures from the road district funds shall be made only for the purpose of constructing, maintaining and repairing such roads, bridges and wharves as are situated within the road district and which shall be in the nature of branch roads or feeders to the main highways passing through the district, and for the further purpose of purchasing, operating and maintaining machinery and equipment used in such construction, maintenance and repair within the district. All bridges herein mentioned shall include all bridges of over twenty feet in length when constructed of wood or over ten feet when constructed of concrete, in counties that have or may hereafter adopt township organization. [L. '13, p. 477, § 3.]

§ 5590–4. **General Provisions Applicable.**—All of the taxes provided for in this act shall be levied and collected by the same officers and in the same manner as taxes levied for the county current expense fund and shall be disbursed by the same officers and in the same manner as taxes levied for the county current expense fund

except that fifteen per cent of all taxes levied and collected for the general road and bridge fund within the corporate limits of any incorporated city or town shall be disbursed by the corporate authorities of such city or town as in section 5590-1 provided. [L. '15, p. 545, § 2. Cf. L. '13, p. 477, § 47.]

"Act" refers to this chapter.

§ 5590-6. **Warrants — Validation.** — All warrants outstanding issued prior to January 1, 1913, by any county of the state against either the general road and bridge fund or any district road and bridge fund are hereby validated in so far as such warrants are invalid because of the fact that the board of county commissioners did not have authority to create any indebtedness for road and bridge purposes. [L. '13, p. 478, § 6.]

§ 5590-7. **Special Indebtedness Fund.**—In any of the counties which, on the first day of January, 1913, had a warrant indebtedness in any of the road and bridge funds there is hereby created a special indebtedness fund which shall be designated as follows: "Special General Road and Bridge Indebtedness Fund, —— County," and "Special District Road and Bridge Fund of District Number ——, —— County." All warrants outstanding on the 1st of January, 1913, shall be transferred to and paid out of the special indebtedness funds hereby created. All uncollected taxes levied the year 1912 and prior years, either for general road and bridge purposes or district road and bridge purposes, shall be credited as they are collected to the special indebtedness fund or the fund for which such taxes were levied. [L. '13, p. 478, § 7.]

§ 5590-8. **Indebtedness—Special Levies.**—At the time of making the levy in October, 1913, for road and bridge purposes, the board of county commissioners of each county which on the first day of January, 1913, had any outstanding warrants against the general road and bridge fund, or any district road and bridge fund, shall make a levy of six mills on the dollar on all the taxable property in the county or district for each special indebtedness fund hereby created, or so much thereof as shall be necessary to pay the warrants with accrued interest in each indebtedness fund. The board of county commissioners shall continue to make such special levies in each succeeding year until all of the warrants in each special indebtedness fund are paid. When all of the warrants in each indebtedness fund are paid, with accrued interest, such fund shall be extinguished and the surplus, if any, together with all credits accruing thereto, shall be transferred to the regular general road and bridge fund or district road and bridge fund. [L. '13, p. 479, § 8.]

§ 5590-9. **Validation of Warrants and Obligations.**—If the officials of any county in this state have paid any warrants or incurred

any obligations in any of the road funds during the fiscal years of 1913 and 1914, which are in violation of section 5520-5 of Remington & Ballinger's Annotated Codes and Statutes of Washington, said warrants and unpaid obligations in the order as to time that they were paid and incurred are validated to the extent of the tax levy for said particular road funds for the year during which said obligations were incurred and the delinquent taxes of prior years. [L. '15, p. 480, § 1.]

§ 5590–10. Payment and Adjustment of Validated Debt. — The county treasurer is authorized to pay the warrants heretofore or hereafter issued on said obligations out of any cash in the particular fund, and the balance, if any, of said warrants may be paid out of the 1914 levy, but the amount of such latter payments shall be added to the obligations incurred during the year 1915 in determining when eighty per centum of the tax levy for the fiscal year has been expended. [L. '15, p. 480, § 2.]

CHAPTER VI.

Purchase of Quarries for County Road Building.

§ 5603. Right to Acquire—Condemnation.—The board of county commissioners of any county of this state may, out of the general road and bridge fund, acquire, by gift, purchase or condemnation, quarries of suitable road-building material and land containing deposits of suitable road-building gravel. In the event the county commissioners shall deem it expedient to acquire by condemnation, quarries of suitable road-building material or land containing deposits of suitable road-building gravel as contemplated by this chapter, then and in such case the proceedings to be taken shall be in accordance with the provisions of Chapter IX of this title, providing for viewing, laying out, surveying and establishing county roads so far as such provisions shall be applicable: Provided, however, that the board of county commissioners of any county, in the name of such county shall have the power to commence proceedings under and pursuant hereto, of its own initiative and without the petition of any freeholders. [L. '07, p. 24, § 1; L. '09, Ex. Sess., p. 55, § 1.]

See infra, § 5907 et seq., quarries for state road building.

§ 5604. Purchase of Machinery—Disposal of Surplus Product.—Said board of county commissioners are also authorized to purchase and operate, out of the general road and bridge fund, or district road fund, rock-crushing appliances and machinery, and all crushed rock and gravel not directly used or needed by such county in the construction, alteration, repair or maintenance of county roads may be sold at actual cost of production by said county commissioners to any person, firm or corporation, to be only used, however, in the construc-

tion, alteration, repair or maintenance of county roads, or used in the construction, alteration, repair or maintenance of any street or streets of any city or town in said county which directly connect with any county road: Provided, however, that the board of county commissioners of any county may sell and dispose of any surplus crushed rock or gravel at actual cost of production to any city or town of such county, to be used in the construction or improvement of any street, parkway, boulevard or public place of such city or town. [L. '07, p. 24, § 2.]

§ 5605. Disposition of Proceeds.—All proceeds of sale of crushed rock or gravel shall be paid into the general road and bridge fund or district road fund depending upon whether such quarries or gravel beds have been acquired and operated out of said respective funds. [L. '07, p. 25, § 3.]

CHAPTER VII.

Acceptance of Rights of Way.

§ 5607. Right of Way — Acceptance by Commissioners. — The boards of county commissioners in their respective counties in this state are hereby authorized and empowered to accept the grant of rights of way for the construction of highways over public lands of the United States, not reserved for public uses, contained in section 2477 of the Revised Statutes of the United States, and said rights of way shall not be less than thirty feet in width nor more than sixty feet in width as said boards of county commissioners shall determine and such acceptance shall be by resolution of such county commissioners spread upon the records of their proceedings: Provided, that nothing herein contained shall be construed to invalidate the acceptance of such grant by general public use and enjoyment, heretofore or hereafter had. [L. '03, p. 155, § 1.]

Cited in 51 Wash. 648, 649, 654; 76 Wash. 276.

§ 5608. Former Acceptances Ratified.—The action heretofore of boards of county commissioners in their respective counties purporting to accept the grant of such rights of way for the construction of highways, is hereby approved, ratified and confirmed and all such highways shall be deemed duly laid out county roads and such boards of county commissioners may at any time by recorded resolution cause any of such highways to be opened and improved for public travel. [L. '03, p. 156, § 2.]

Cited in 76 Wash. 276.

CHAPTER VIII.

Franchises and Rights in Highways.

§ 5609. Tram-roads—Commissioners may Grant Franchise for.—The county commissioners of the several counties in this state may grant to persons, companies or corporations the right to build and maintain tram-roads upon the public highways under such regulations and conditions as said county commissioners may prescribe. [L. '01, p. 192, § 1.]

§ 5610. Limit of Space of Highway to be Used.—Such tram-road shall not occupy more than eight feet of the public highway upon which the same is built and shall not be built upon the track of travel nor in such way as to interfere with the public travel upon such public highways: Provided, that nothing contained in this act shall be construed to prevent county commissioners from granting franchises for electric railways upon public highways. [L. '01, p. 192, § 2.]

"Act" refers to this and the preceding sections.

§ 5611. Franchises for Water-pipe Lines.—The county commissioners of the several counties in this state may grant to persons, companies or corporations the right to lay down, maintain and operate in, along and upon any and all of the streets, alleys, public places and public highways within their respective counties, without the limits of incorporated cities and towns, pipes and conduits for the purpose of conducting water and maintaining and operating water systems for public or private purposes, under such regulations and conditions as such county commissioners may prescribe: Provided, that no such grant or franchise shall be made for a period exceeding twenty-five years, and in all cases shall contain a provision that in the event the territory covered by the grant shall at any time during the franchise period be included within any incorporated city or town the authorities of said city or town shall have the right, to be exercised in their discretion, to acquire by purchase or condemnation any or all of such pipes, conduits and water systems at a price to be based upon the reasonable value of same at that time without any additional value for the franchise, or any unexpired period thereof, and upon such acquirement the said grant or franchise shall immediately terminate. [L. '07, p. 600, § 1.]

This section supersedes or affects the next section as far as water-pipes are concerned.

See infra, § 9442, water companies must acquire franchises from cities.

§ 5612. Grant of Franchises on Public Roads.—The county commissioners of the several counties in the state of Washington are hereby authorized and empowered to grant franchises to persons or

corporations to use the county roads and streets in their several counties outside of the incorporated towns and cities for the construction and maintenance of waterworks, gas-pipes, telephone, telegraph and electric light lines: Provided, that hereafter on application being made to the board of county commissioners for any such franchise, the board shall fix a time and place for hearing the same, and shall cause the county auditor to give public notice thereof at the expense of the applicant, by posting written or printed notices in three public places in the county seat of the county and in at least one conspicuous place on the roads or streets or parts thereof for which application is made, at least fifteen (15) days before the day fixed for such hearing, and by publishing a like notice three (3) times in some daily newspaper published in the county, or if no daily newspaper is published in the county, then the newspaper doing the county printing, the last publication to be at least five (5) days before the day fixed for such hearing, which notice shall state the name or names of the applicant or applicants, a description of the roads or streets or parts thereof for which the application is made, and the time and place fixed for the hearing. Such hearing may be adjourned from time to time by the order of the board. If, after such hearing, the board shall deem it to be for the public interest to grant such franchise in whole or in part, the board may make and enter the proper order granting the franchise applied for or such part thereof as the board deems to be for the public interest, and may require any such utility and its appurtenances to be placed in such location on or along the roads or streets as the board finds will cause the least interference with other uses of the roads or streets. Any person or corporation constructing or operating such utility on or along such county road or county street shall be liable to the county for all necessary expenses incurred in restoring such county road or county street to a suitable condition for travel. This act shall be construed as an addition to existing laws and shall not limit powers or rights which may be exercised under existing laws: Provided, that no franchise shall be granted for a period of longer than fifty years: Provided further, no exclusive franchise or privilege shall be granted. [L. '05, p. 210, § 1.]

Cited in 55 Wash. 196, 198, 201.

"Act" in this and the following section refers to §§ 5612-5614.

See note to previous section.

See infra, §§ 7612, 7614, 7615, 7731, franchises in cities.

§ 5613. Prior Grants Declared Valid.—Any and all grants, rights, privileges, franchises or powers heretofore made or attempted to be made, given or granted by the board of county commissioners of any county in this state, when such board was in regular or special session, and when the action of such board is shown by its records, to

any person or corporation, to erect, construct, maintain or operate an electric railway or poles, pole lines, wires or any other matter or thing for the furnishing, transmission, delivery, enjoyment or use of electric energy, electric power, electric light, and telephone connection therewith, or any other matter or thing relating to said matters and things or either of them, or to lay or maintain pipes for the distribution of water, or gas, in, upon, along, through or over public roads and highways, or any public road or highway, outside the limits of incorporated cities and towns, be and they are hereby confirmed and declared to be valid to the extent that such road or highway has been, prior to the passage of this act, actually occupied by the bona fide construction and operation of such utility and no further. [L. '05, p. 211, § 2.]

Cited in 55 Wash. 197.

§ 5614. Granting of Certain Franchises Confirmed.—Said rights, powers and grants so made or attempted to be made and hereby confirmed, shall have and be of the same force and effect as if the county commissioners in any county of this state, prior to the time of giving or granting said rights, privileges and franchises, had been specifically authorized and empowered to give and grant the same. [L. '05, p. 212, § 3.]

§ 5615. Part of Highways may be Reserved for Bicycles and Pedestrians.—The board of county commissioners of any county may set aside and reserve part of any public road or highway in their respective counties for the exclusive use of bicycles and pedestrians, or pedestrians only. The part so reserved shall not be less than four feet in width, and the improvement thereof shall be done under the direction of said board. [L. '15, p. 347, § 1. Cf. L. '97, p. 89, § 1.]

Cited in 34 Wash. 596.

§ 5616. Penalty for Trespass upon.—Any person who shall drive any stock upon, or drive, propel or move any vehicle except a bicycle upon the part of such road or highway so set apart; or in any way obstruct or damage the same; or shall ride a bicycle upon the same when the same has been set aside for the use of pedestrians only, shall be guilty of a misdemeanor. [L. '15, p. 348, § 2. Cf. L. '97, p. 89, § 2.]

§ 5617. Fines Collected, Disposition of.—All fines collected for violations of the provisions of the last two sections shall be paid into the "General Road and Bridge Fund" of the county where such misdemeanor is committed. [L. '15, p. 348, § 3. Cf. L. '97, p. 89, § 3.]

§ 5619. Shade Trees—Right to Plant on Highways.—Any person or company wishing to plant and cultivate shade or ornamental trees on the public highways of the state of Washington may lawfully do

so by planting the same in the said highways at a distance not greater than ten (10) feet from the lines dividing the land owned by them from the said highways when the said roads have a legal width of sixty (60) feet or more and at a distance not greater than eight (8) feet from said dividing lines when said roads have a legal width of less than sixty (60) feet: Provided, that such trees shall not be lawfully planted where the entire width of the road is required for public use by reason of heavy cuts, fills, slopes or grades. [L. '03, p. 221, § 1.]

§ 5620. Hedge Fences Along Highways.—It shall be lawful for any person or company to plant hedge fences on the line dividing their property from public highways and to use temporarily a strip of said highway not exceeding eight (8) feet in width for the protection and cultivation of such hedges and to maintain temporary fences within said strip for a period not exceeding four (4) years after the said hedges have been planted. [L. '03, p. 222, § 2.]

§ 5621. Protection by Supervisors.—It is hereby directed to be the duty of road supervisors and overseers to protect trees and hedges now growing or which may be hereafter planted in the public highways of the state when such trees and hedges are located in conformity with the provisions of this act. [L. '03, p. 222, § 3.]

"Act" refers to §§ 5619–5622.

§ 5622. Injury or Destruction — Penalty. — Willful injury to or destruction of shade or ornamental trees or hedges in or along the line of any public highway in the state of Washington is hereby declared to be a misdemeanor and the perpetrators of such injury shall be liable for each tree so injured or destroyed, to a fine not less than five dollars ($5) nor more than fifty dollars ($50) or to imprisonment in the county jail for not more than sixty (60) days or to both such fine and imprisonment. [L. '03, p. 222, § 4.]

CHAPTER IX.

Laying Out and Opening County Roads.

§ 5623. Established by County Commissioners. — County roads shall be laid out and established by order of the county commissioners of the proper counties on the application of householders in the manner provided in this chapter. [L. '95, p. 82, § 1.]

Cited in 19 Wash. 357, 573; 25 Wash. 652; 67 Wash. 236; 76 Wash. 273.

Quaere: Whether this chapter was superseded by the act of 1911, §§ 5623–1 to 5623–10.

§ 5623–1. Laying Out.—County roads shall be laid out and established by order of the county commissioners of the proper county in the manner hereinafter provided. [L. '11, p. 305, § 1.]

§ 5623–2. Resolution.—When deemed advisable that a road be established, the board of county commissioners shall, at a regular meeting, by unanimous vote pass a resolution and enter same on the minutes of the board, which resolution shall describe the terminal points of such proposed road and the width and general course of same. The resolution need not set forth the manner of construction, the cost, nor describe the several tracts or parcels of land through which the same shall run. The resolution shall declare that the laying out and establishment of the road is considered a public necessity and shall direct the county engineer to make an examination of the proposed route of said road as hereinafter provided. [L. '11, p. 305, § 2.]

§ 5623–3. Engineer's Duty.—The county engineer shall make an examination of the proposed route of such road and, if necessary, a survey of same. If, however, after an examination, he deems the same to be impracticable, he may so report to the board of county commissioners without making a survey, or he may examine or survey any other route that would subserve that purpose, and make a report thereon. [L. '11, p. 305, § 3.]

§ 5623–4. Petition of Householders.—In addition to the method hereinabove provided, ten or more householders of the county residing in the vicinity of a proposed road may petition the board of county commissioners for the establishment of such road. Such petition shall describe the terminal points of said road and the general course of same. [L. '11, p. 306, § 4.]

§ 5623–5. Bond.—If the board of county commissioners so order the petition shall be accompanied by a bond in the penal sum of three hundred dollars ($300) payable to the county, executed by one or more persons as principal or principals, with two or more sufficient sureties, and conditioned that the petitioners will pay into the county treasury the amount of all costs and expenses incurred in examining and surveying the proposed road and in the proceedings in case the road shall not be established, or in case the application is for the purpose of changing the road for the benefit of the land owner or owners, and no such change shall be made until such cost bill has been paid and the road graded. When the cost is assessed against the principal petitioner, the clerk of the board of county commissioners shall file the cost bill with the county treasurer, who shall proceed to collect the same. Before considering the petition the board may require the petitioners to secure waivers for the right of way from the land owners, and, in such case, before an examination or survey is ordered, the waivers shall be filed with the board of county commissioners. [L. '11, p. 306, § 5.]

§ 5623–6. Examination by Engineer.—Upon the filing of said petition and said bond, if required, the board of county commissioners shall examine and approve same and if found sufficient shall direct the county engineer to make an examination and survey, as provided for in section 5623–3. [L. '13, p. 306, § 6.]

§ 5623–7. Warrants for Awards—Deposit—Decree.—At the time of the hearing on the establishment of said road as provided for by law, the board of county commissioners shall direct the auditor to draw warrants in favor of the record owner or owners of said property appropriated in said proceeding for the amount of the award made by the board for the appropriation thereof. The auditor shall cash said warrants if the same be not accepted by said owner or owners by the time said petition to condemn is filed with the clerk of the superior court as provided for by law and shall deposit said moneys in court for the use and benefit of said owner or owners. If said warrants be accepted by said owner or owners, or if said money be withdrawn from the registry of the court, the county shall be entitled to a decree of appropriation vesting full title to the property in the county. [L. '11, p. 306, § 7.]

§ 5623–8. Right of Way may be Condemned.—If any award of damages is not accepted at the time of said hearing it shall be deemed rejected, and the board must then, by order, direct proceedings to procure the right of way to be instituted in the superior court of the county by the county attorney of the county in the manner provided by law for the taking of private property for public use. [L. '11, p. 307, § 8.]

§ 5623–9. Condemning Gravel-beds and Stone Quarries.—Counties shall have the right in the manner provided for in this act, to condemn land or other property for the purpose of securing gravel-beds, stone quarries or other material suitable for the construction, building or repair of county roads, and shall have the right to condemn the right of ways to reach such property and to gain access thereto. The proceedings shall be the same as provided for herein for the establishment and condemnation of county roads. [L. '11, p. 307, § 9.]

§ 5623–10. Widening County Roads.—The county shall have the right, in the manner provided for in this act, to condemn land and other property for the purpose of widening county roads already established, to any width allowed by law, and to condemn land and other property for the purpose of changing the course or location of roads already established. [L. '11, p. 307, § 10.]

§ 5624. Petition to Board.—Applications for the laying out and establishing or changing of any county road shall be by petition in

writing to the board of county commissioners, signed by at least ten householders of the county residing in the vicinity of the proposed road. [L. '95, p. 82, § 2.]

Cited in 47 Wash. 14; 76 Wash. 273.

§ 5625. Petition, Contents of.—Such petition must set forth the terminal points of the proposed road; the course, the width, which shall not be less than thirty feet nor more than one hundred feet, and that the proposed road is practicable and will be of general use and public utility. [L. '95, p. 82, § 3.]

Cited in 47 Wash. 13.

§ 5626. Bond Required—Waivers for Right of Way.—Such petition must be accompanied by a bond in the penal sum of three hundred dollars payable to the county, executed by one or more of such petitioners as principal or principals with two or more sufficient sureties, and conditioned that the petitioners will pay into the county treasury the amount of all costs and expense incurred in examining and surveying the proposed road and in the proceeding, in case the road shall not be established, or in case the application is for the purpose of changing the road for the benefit of the land owner or owners, and no such change shall be made until such cost bill has been paid and the road graded. When the cost is assessed against the principal petitioner the clerk of the board of county commissioners shall file the cost bill with the county treasurer who shall proceed to collect the same. The board may require that waivers for the right of way be secured by the principal petitioner, before an examination or survey is ordered, said petition, bond, and waiver shall be filed with the clerk of the board of county commissioners. [L. '95, p. 83, § 4; L. '01, p. 200, § 1.]

Cited in 47 Wash. 11, 12, 15, 16.

§ 5627. Examination and Survey.—The board when in session, shall consider such petition and bond, and if not rejected they shall, if such petition contains substantially the matters and things required by law, and that the said bond is sufficient, file said petition, bond and waivers with the county engineer, who shall make examination and if necessary, a survey of the proposed road. If, however, after an examination he deem the same impracticable he may so report to the board of county commissioners without a survey, or he may examine or survey any other route which would subserve the same purpose and make a report thereon. [L. '01, p. 201, § 2. Cf. L. '95, p. 83, § 5.]

Cited in 38 Wash. 690; 47 Wash. 14.

"Engineer" substituted for "surveyor" in this chapter.

§ 5628. Selection of Route—Waiver or Specification of Damages. In selecting the route the engineer shall take into consideration the

general road system, the grade, cost of construction, maintenance, utility, convenience, inconvenience, and expense which will result to individuals as well as the public, if such roads shall be established, and opened or changed. He shall as far as possible, cause notice of the route of the road as far as surveyed to be given to each resident owner, lessee, occupant or owner's agent of lands over which said road passes. He shall receive from each person interested in such land, who will give the same, a statement in writing signed by such person and file the same with his report, and (1) consenting that such road shall be established as surveyed and waiving all claims to damages on account thereof; or (2) claiming damages on account of the establishment or opening of such road, and specifying the amount so claimed. [L. '01, p. 201, § 3. Cf. L. '95, p. 83, § 6.]

§ 5629. Engineer's Report—Contents.—When the examination or survey is completed the engineer shall report in writing to the board of county commissioners (1) his opinion as to the necessity of the road, and whether the same ought to be established and opened; (2) the terminal points, general course and length of the road; (3) his recommendation as to the width of the proposed road; (4) the names of persons interested in lands over which the proposed road passes, who consent to the establishment of the same, and waive all claims to damages; (5) the names of all persons interested in said lands who refuse their consent, and the amount of damages claimed by each; (6) an estimate of damages to each tract of land of nonconsenting persons interested in such tract of land, and in determining such damages it shall be the duty of the surveyor to estimate the benefits and damages accruing to any person by reason of establishing or changing such road, and the sum estimated as benefit must be deducted from the sum estimated as damages for the amount of damages to such person or land; (7) a description of each tract of land over which such road passes, with the name and place of residence or address of the owners, lessees, claimants or encumbrancer if known, of each of said tracts of land, and the quantity of area of land to be taken from each of said tracts; (8) the probable cost of the construction of the road, including all necessary bridges, culverts, clearing, grubbing and grading; (9) such other facts, matters and things as he may deem of importance to be known by the board of county commissioners. [L. '01, p. 202, § 4.]

§ 5630. Waivers, Damage Claims, etc., to be Filed With Report.—The engineer shall file with his report the written consent and waivers of claims to damages by persons interested in the lands affected by the establishment of said road, and the claims for damages procured as provided in this chapter. [L. '01, p. 203, § 5. Cf. L. '95, p. 85, § 8.]

§ 5631. Map of Road and Field-notes to be Filed.—If a survey is made of the proposed road the engineer shall file a correctly prepared map of said road laid out and surveyed, which map must show the tracts of land over which said road passes with the name of the owner if known, of each tract written thereon, and the engineer shall also file therewith his field-notes of such survey [L. '01, p. 203, § 6. Cf. L. '95, p. 85, § 9.]

Cited in 47 Wash. 11, 12, 15.

§ 5632. Wages Paid.—The chainmen, rodmen, axmen, flagmen, and all necessary assistants employed in such survey to assist the county engineer, shall be paid such salary for their services as the board of county commissioners shall determine upon, to be paid out of the proper fund of the county. [L. '11, p. 342, § 1. Cf. L. '95, p. 85, § 10.]

§ 5633. Notice to Owners, How Given.—The board of county commissioners at their next meeting after the filing of the report of the viewers [engineer], or at the time when the same is filed, if then in session, must fix a time for the hearing of the report, and must cause notice of such hearing to be given to the owners, lessees and encumbrancers of the lands to be taken for such road, who have not consented to the establishment of the road and waived their claims to damages therefor, which notice shall be given as follows: If such owners, lessees and encumbrancers reside or are present within the county, then by serving upon them personally within the county a written notice at least twenty days before the time set for said hearing, setting forth the time and purpose of such hearing; and if any of said owners, lessees or encumbrancers are absent from said county, or for any reason cannot be served personally therein, such notice shall be given, as to them, by posting written notice of the time and purpose of such hearing, one at a conspicuous place on the land or left at the residence of the owner, lessee or encumbrancer, as the case may be, and one at a conspicuous place at the courthouse of the county, at least twenty days before the time set for said hearing. [L. '95, p. 85, § 11.]

Cited in 21 Wash. 643; 47 Wash. 15, 16; 67 Wash. 237.

§ 5634. County Commissioners to Determine Damages and Establish Roads.—On the day fixed for said hearing or to which such hearing may be postponed or adjourned, the said board, upon due proof to the satisfaction of the board, made by affidavit, of the service or posting of notice of the hearing, as by this chapter required, shall proceed to the hearing of said report, and shall examine the same, together with the map and the petition, the written claims for damages, the written consent and waivers of damages, and all other papers on file in the proceedings, and shall hear and consider all

testimony and documentary evidence adduced for or against the establishment of the road, or as to the amount of damages which should be awarded in any case, and shall, at that time or as soon thereafter as may be, declare by order the decision of the board—(1) As to whether the road shall be established in accordance with the report of viewers [engineer], or otherwise, or at all, and if the decision of the board be that the road shall be established, and if all persons interested in the lands to be taken have consented to the establishment of said road and have waived their claims to damages therefor, the said board shall, at the same time, make an order finally establishing the road, and shall order that the same be opened in the manner provided by law. If the decision of the board be that the road shall be established, and if any of the persons interested in the lands to be taken therefor shall not have consented to the establishment of the road, or waived their claims for damages therefor, or shall claim damages therefor, said board shall, at that time, by order, declare the amount of damages awarded by such board to each of such persons, and shall order the amount of such award to be set apart in the treasury out of the proper fund, to be paid to the proper owner or claimant upon his showing or establishing his right thereto, and if the awards be accepted the board of county commissioners shall make an order finally establishing such road, and directing that the same be opened in the manner provided by law. [L. '95, p. 86, § 12.]

Cited in 25 Wash. 205; 47 Wash. 15, 16; 67 Wash. 239.

§ 5635. Rejection of Awards and Subsequent Procedure.—If any award of damages is not accepted within thirty days from the date of the award, it shall be deemed rejected, and the board must then, by order, direct proceedings to procure the right of way to be instituted in the superior court of the county by the county attorney of the county, in the manner provided by law for the taking of private property for public use, and to that end are hereby authorized to institute and maintain in the name of the county the proceedings provided in sections 921 to 936 of this code, and when under such proceedings the right of way is procured, said board shall declare the road finally established, and shall order that the same be opened in the manner provided by law. [L. '95, p. 87, § 13.]

Cited in 21 Wash. 644; 67 Wash. 239.

§ 5636. Tender of Award.—Before causing condemnation proceedings to be instituted in the superior court as hereinbefore provided, it shall be the duty of the county commissioners to tender to each person interested in the land to be appropriated for the public highway as hereinbefore provided, such amount as in the judgment of such county commissioners such person is justly entitled to, and in

case a tender cannot be made by reason of the absence of such non-consenting land owner or person whose property is taken or damaged as hereinbefore provided, a warrant shall be drawn in the name of the county auditor, who shall cash the same and deposit said cash with the clerk of the court of the county wherein the road to be laid out and opened is located. [L. '95, p. 87, § 14.]

§ 5637. Award, How Paid.—The warrant hereinbefore provided for shall be drawn upon the general road and bridge fund: Provided, however, that if there is not sufficient money in said fund at any time to pay any warrant so drawn in full, said county commissioners shall provide a special fund for the purpose of paying such warrants, and shall cause such warrants to be drawn on such special fund. [L. '95, p. 87, § 15.]

§ 5638. Duty of Treasurer.—Whenever any warrant is drawn upon said general road and bridge fund for the purposes here specified, it shall be the duty of the clerk of the board of county commissioners to notify the county treasurer of the date and the amount of such warrant, and in case the said warrant is not accepted by the person to whom it is tendered, at the time of tender, the county treasurer shall set apart from the general road and bridge fund, a sum sufficient to pay such warrant with one year's interest thereon at the rate of eight per cent per annum, and said fund shall be kept intact until the claim of damages of the person in whose favor said warrant is drawn has been settled either by agreement or condemnation proceedings as hereinbefore provided. [L. '95, p. 87, § 16.]

§ 5639. Review and Resurvey Where Road has Become Uncertain. When the place of beginning or true course of a county road shall be uncertain by reason of the removal of any monument or marked tree by which such road was originally designated, or from any other cause, the county commissioners of the proper county may appoint three disinterested landholders of the county to review and find the line of the road, and if they deem it necessary, a competent surveyor to survey the same; and the reviewers and surveyor, after taking the oath required in section 5628, shall view and survey said road, and the same correctly mark throughout as in the case of new roads, and shall make a return of the survey and a plat of the road to the commissioners, who shall cause the same to be recorded as in other cases; and from thenceforth the road, surveyed as aforesaid, shall be considered a highway. [L. '90, p. 599, § 18; 1 H. C., § 1957.]

Cited in 27 Wash. 502.

The present force of this and the next section seems doubtful.

"Section 5628" substituted for "section 6" of the act of 1895, which, as amended, now requires no oath or viewers.

§ 5640. Refusal to Act as Viewer.—If a person appointed by the county commissioners as a viewer, reviewer, or surveyor of any road

refuse or neglect to perform the duties required by this act, without making satisfactory excuse for such refusal or neglect, he shall be fined in any sum not exceeding fifteen dollars, to be recovered by action by any person suing for the same before a justice of the peace within the district wherein the person so appointed and refusing or neglecting may reside; and the recovery shall be paid without delay by the justice of the peace or constable collecting the same to the treasurer of the county, taking his receipt therefor; and the county commissioners shall cause all fines which shall be paid into the county treasury under the provisions of this title to be expended on roads and bridges within the county. [L. '90, p. 601, § 27; 1 H. C., § 1969.]

This section now seems obsolete except as applicable to the last preceding section.

§ 5641. Change of Road Through Private Lands.—How Made.—If any person through whose land a county road is or may be established shall be desirous of turning the road through any other part of his land, he may, by notice and petition agreeably to the provisions of this act, apply to the commissioners of the county while in session, to permit him to turn the road through any other part of his land, on as good ground, and without increasing the distance to the injury of the public; and, upon the receipt of such petition, the commissioners shall appoint a surveyor and three disinterested freeholders of the county as viewers of the road, who shall proceed to view and survey the ground over which the same is proposed to be turned, and to ascertain the distance which it will be increased by such proposed alteration, and make a report in writing, stating the several distances so found, together with their opinion as to the utility of making the alteration. [L. '90, p. 599, § 19; 1 H. C., § 1958.]

Cited in 5 Wash. 475; 45 Wash. 592.

§ 5642. Report of Freeholders—When Road will be Changed—Costs.—If the freeholders report to the commissioners that the prayer of the petitioner is reasonable, and that the alteration will not place the road on the worse ground, or materially increase the distance to the injury of the public, they shall, upon receiving satisfactory evidence that the proposed new road has been opened a legal width, and if in their opinion the same will be just and reasonable, declare such new road a public highway, and make a record thereof, and at the same time vacate so much of the old road as is rendered necessary by the new; and the person desiring the alteration shall pay all the costs of the view, survey, and return, unless the commissioners are satisfied that the alteration is of sufficient advantage to the public to cause the same to be paid by the county. [L. '90, p. 599, § 20; 1 H. C., § 1959.]

§ 5643. Road on County Line—Procedure to Establish.—When it becomes necessary to establish a road on a county line, the inhabi-

tants along such line may petition the commissioners of their respective counties for a view of such road in the manner provided in this act, and the commissioners of each of the counties interested shall appoint two discreet landholders as viewers, who, or a majority of them, shall meet at the time and place named in the order of the commissioners of the oldest county interested, who shall appoint a surveyor, and the viewers and surveyor shall also be a jury for the assessment of damages, and shall in all respects be governed by the last preceding section, and shall make their report in writing for or against such road to the commissioners of the counties concerned, and the commissioners, upon receiving such report, shall in all respects be governed by this act. [L. '90, p. 600, § 21; 1 H. C., § 1960.]

§ 5644. Order Opening Road Shall be Made, When.—If on receiving such report there is no legal objection thereto, and the commissioners of all the counties interested are of opinion that such road, if opened, would be of public utility, they shall order the same to be opened in the manner pointed out by this act. [L. '90, p. 600, § 22; 1 H. C., § 1961.]

§ 5645. Width of Roads Within State.—All county roads hereafter laid out and established shall not be less than thirty nor more than sixty feet wide, to be determined by the viewers [engineer] as hereinafter provided, except that when the road is upon the state line the county commissioners may determine the width, not less than fifteen nor more than thirty feet of land to be taken in this state. [L. '90, p. 593, § 1; 1 H. C., § 1962.]

Cited in 13 Wash. 50; 26 Wash. 159.

"Hereinafter," this being § 1 of the act. The provisions referred to precede it in this volume.

§ 5646. Width of Road on State Line.—The commissioners of any county through which a county road has been established upon a line of the state may, upon petition and notice as hereinbefore provided, determine the width, not less than fifteen nor more than thirty feet, of the land within the county to be used for the road. [L. '90, p. 600, § 23; 1 H. C., § 1963.]

§ 5647. County and State Line Roads—How Opened and Kept in Repair.—When a road is located and ordered to be opened on any county or state line, as provided in this act, the viewers [engineer] appointed to locate, establish, and report damages shall assign a sufficient number of persons to open such road and keep the same in repair, dividing the road in such manner that the persons so assigned may work under the orders of the overseer of the road district to which they belong; and the supervisors and persons so assigned shall be governed by the provisions herein contained. [L. '90, p. 601, § 24; 1 H. C., § 1964.]

§ 5648. Highways Across Streams.—All highways, crossings, or ending on any river, creek, or stream shall be open the same width down to and across said river, creek, or stream as it is before it reaches said stream. [L. '86, p. 103, § 1; 1 H. C., § 1965.]

§ 5649. Passageway Under Road. — The passageways for stock under any road shall be covered with suitable plank, not less than sixteen feet in length, and it shall be lawful for the fences of either side to converge to the bridge over said passageway. The said passageway shall be kept securely covered by the person who owns the adjoining lands, and shall be kept in repair by said owner. The approaches to the bridges over said passageways shall also be kept in good repair by said owner. [L. '86, p. 103, § 2; 1 H. C., § 1966.]

§ 5650. Destruction or Injury to Road—Procedure in Case of.—When a county road is injured or destroyed by the washing of any lake, river, or creek, or by any washing or sliding of land occasioned by natural drainage, the supervisor of the road district in which such injury or loss of road has occurred, upon petition of any six freeholders of the district, shall call to their aid a competent surveyor, and proceed to examine such road; and if, upon such examination, the commissioners, or a majority of them, are satisfied that such road has been destroyed or so much injured that the public good requires an alteration of the same, they shall proceed to alter and lay out so much of the new road as may supply the several parts of the road thus destroyed or injured. [L. '90, p. 602, § 29; 1 H. C., § 1971.]

§ 5651. Claim for and Assessment of Damages. — If a person through whose lands any such alteration or new road is laid out feels injured thereby, he shall make application to the overseer of his road district at the time of making the alteration on his premises, to assess and determine, according to the provisions of the last preceding section, the compensation to be made in money for the property sought to be appropriated, and how much less valuable, if any, the premises will be rendered by the alteration of the road; thereafter the road overseer shall make report to the county commissioners, who shall appoint three reviewers to inspect, assess, and report the amount of damages sustained in the premises, and the clerk and commissioners of the proper county shall be governed in the reception and recording of such report in all respects as is prescribed in this act in cases of new roads. [L. '90, p. 602, § 30; 1 H. C., § 1972.]

§ 5652. Roads on Section Lines—How Opened.—When notice has been given and a road has been petitioned for as hereinbefore provided, and the petition calls for a road wholly on section lines, and where there are no damages claimed, and evidence filed that the route is practicable, the county commissioners may grant the road with-

out reviewing or surveying the same. [L. '90, p. 603, § 33; 1 H. C., § 1975.]

§ 5653. Monuments, Where to be Placed.—The county commissioners shall cause monuments of stone to be placed at the beginning and terminus of all roads established under this act. [L. '90, p. 603, § 34; 1 H. C., § 1976.]

§ 5654. Order to Open Road, When to be Executed.—No order of the county commissioners for the establishment of a county road, or for the alteration or vacation, in whole or in part, of a state or county road, for changing the width of a county road, shall be executed until twenty days have elapsed after the entry of such order in the record of the commissioners, and no order shall issue to open any county road until fifteen days after the same has been established, at which time the clerk of the board may issue such order by direction of the commissioners, unless an appeal has been perfected. [L. '90, p. 603, § 35; 1 H. C., § 1977.]

Cited in 71 Wash. 317.

§ 5655. Highway Plat-book.—If the same, or what is equivalent thereto, has not heretofore been done, the county auditor shall within six months after this act takes effect, cause every public road in his county, the legal existence of which is shown by the records and files of his office, to be platted in a book to be obtained and kept for that purpose, and to be called the "highway plat-book." Each township shall be platted separately, on a scale of not less than four inches to the mile, and such auditor shall have all changes in or additions to the highways, legally established immediately entered upon said plat-book, with appropriate references to the files in which the papers relating to the same may be found. [Cd. '81, § 3047; 1 H. C., § 2030.]

See supra, § 3979½, county engineer to keep highway plat-book, which may supersede this section.

§ 5656. Validation of Certain Claims for Road Work.—The boards of county commissioners of the several counties of the state of Washington are hereby authorized to audit and allow without interest all claims against such county for the survey, laying out, or construction of any road now used by the public and for which no compensation has ever been allowed, such survey, laying out, or construction having been made or done pursuant to chapter 98, page 237, of the Session Laws of 1893. [L. '99, p. 23, § 1.]

Cited in 67 Wash. 236.

CHAPTER X.

Roads by User.

§ 5657. Certain Roads Declared Highways.—All public roads and highways in this state that have been used as such for a period of not less than seven years, and are now so used, where the same have been worked and kept up at the expense of the public, are hereby declared to be lawful roads and highways within the meaning and intent of the laws now existing governing public roads and highways in this state. [L. '90, p. 733, § 1; 1 H. C., § 2022.]

Cited in 23 Wash. 540; 37 Wash. 122; 39 Wash. 276; 46 Wash. 204; 57 Wash. 615, 616; 72 Wash. 199, 200; 76 Wash. 273, 275; 78 Wash. 239.
See infra, § 7118, meandered rivers, etc., deemed public highways.

§ 5658. Informalities Shall not be Construed to Vacate Road.—No informalities in the records in laying out, altering, establishing, or vacating any public road or highway, such as contemplated in the last preceding section, now existing on file in the offices of the various county auditors of this state, shall be construed to invalidate or vacate such public road or highways. [L. '90, p. 733, § 2; 1 H. C., § 2023.]

CHAPTER XI.

Legalizing of County Roads.

§ 5659. Board to Order Resurvey, Plat and Record of Roads in Certain Cases.—Where by reason of the loss or destruction of the field-notes of the original survey, or in case of defective survey or record, or in case of such numerous alterations of any county road since the original location and survey that its location cannot be accurately defined by the papers on file in the proper county auditor's office, or where, through some omission or defect, doubts may exist as to the legal establishment or evidence of establishment of any county road or highway, the board of county commissioners of the proper county may, if they deem it necessary, order such highway, or any part of a county road used and traveled by the public, to be resurveyed, platted, and recorded as hereinafter provided. [L. '81, p. 11, § 1; Cd. '81, § 3041; 1 H. C., § 2024.]

Compare L. '77, pp. 325, 326.

§ 5660. Copy of Field-notes and Plat to be Filed—Approval of Survey.—A copy of the field-notes, together with a plat of any highway or county road surveyed under the provisions of the preceding section, shall be filed in the office of the county auditor, and thereupon he shall designate a day at a regular term of the board of county commissioners, not less than twenty days from the publication of said notice, upon which said board will, unless good cause be shown against so doing, approve of such survey and plat, and order them to

be recorded as in cases of the original establishment of a county road. [L. '81 p. 11, § 2; Cd. '81, § 3042; 1 H. C., § 2025.]

§ 5661. Notice of Hearing to be Published—Form of Notice.—At least twenty days before the day fixed by the auditor, as above provided, a notice in which shall be inserted the name of each resident owner or occupier of said land lying on the portion of road sought to be legalized, or abutting on the line or survey, shall be published four successive weeks in some newspaper published in the county, if any such there be, or by posting the same in five public places in the vicinity of said survey, which notice may be in the following form:—

C D, —— resident on that portion of the county road used and traveled as such for —— years, commencing at, —— in —— county, running thence (name distance and in general terms points of location), and terminating at ——, has been resurveyed, and the board of county commissioners will, at their next term, hear and determine whether the road herein described and included in said survey shall be ordered as a lawful county road and public highway, and objections thereto, or claims for damages, must be filed in the auditor's office on or before the first day of the —— term, A. D. 18—, or the road hereinabove described will be declared a county road and public highway.

A B, County Auditor.

[L. '81, p. 11, § 3; Cd. '81, § 3043; 1 H. C., § 2026.]

§ 5662. Hearing—Appraisement of Damages.—If no objections or claims for damages are filed on or before the first day of the term fixed for hearing the same, the board of county commissioners shall proceed to declare that such road included in said survey is a lawful county road. If objections are made to the establishment of the highway, or claims for damages are filed, three disinterested freeholders shall be appointed to appraise the damages, the report of whom shall be made to the next term of the county commissioners' court. [L. '81, p. 12, § 4; Cd. '81, § 3044; 1 H. C., § 2027.]

§ 5663. Allowance of Damages—In What Cases Refused.—No claim for damages will be allowed to any person who did, upon the original location of said road, receive damages, or who, or whose grantor, applied for or assented to such road passing over said land, or who, when making settlement upon the tract by him occupied, found the said road in public use and traveled. The appraisers will report any and all acts of the owners of said land or their grantors which show compensation, dedication, or assent to such land being used as a public highway. The board may increase, diminish, or refuse to allow any damages; to which order the parties may appeal within three months. [L. '81, p. 12, § 5; Cd. '81, § 3045; 1 H. C., § 2028.]

§ 5664. Objections, How Disposed of—Approval and Record—Evidence.—In case objection shall be made in writing by any person claiming to be injured by the survey made, the board of county commissioners shall have full power to hear and determine upon the matter, and may, if deemed advisable, order a change to be made in the survey. Upon the final determination of the board, or in case no objection be made at the term named in the notice of the survey, they shall approve of the same, and cause the field-notes and plat of the county road to be recorded, as in case of the establishment and alteration of highways, and thereafter such records shall be received by courts as conclusive proof of the establishment and lawful existence of such county road and public highway, according to such survey and plat. [L. '81, p. 12, § 6; Cd. '81, § 3046; 1 H. C., § 2029.]

§ 5665. Expenses Paid by County.—The expenses incurred by the provisions of this chapter shall be paid out of the county funds not otherwise appropriated. [L. '81, p. 12, § 8; Cd. '81, § 3048; 1 H. C., § 2031.]

CHAPTER XII.

Vacation of County Roads.

§ 5666. County Road may be Vacated—Petition.—When a county road, or part thereof, is considered useless, and ten freeholders residing in the vicinity of said road may petition the board of county commissioners to vacate the same, such petition shall show the land owned by each petitioner, and shall also set forth that such road will be useless as a part of the general system, that the public will be benefited by its vacation. Such petition shall be accompanied by a bond in the penal sum of one hundred dollars, payable to the county, executed by one or more of such petitioners as principal or principals, with two or more sureties, and conditioned that the petitioners will pay into the county treasury the amount of all costs and expenses incurred in the examination, report, and all other proceedings pertaining to such petition or vacation. [L. '01, p. 190, § 1. Cf. L. '90, p. 601, § 25; 1 H. C., § 1967.]

§ 5667. Hearing of Petition—Surveyor's Report and Opinion.—The county commissioners when in session shall consider such petition and bond and if not rejected shall file the same with the county surveyor with instructions to examine said road and make a report in writing on the same. The surveyor shall include in his report his opinion as to whether the road should be vacated, whether the same is in use or has been in use, whether it will be advisable to preserve the same for a general road system in the future, whether the public will be benefited by the vacation and all other facts, matters and things which will be of importance to the board of county commissioners, and also file his cost bill. [L. '01, p. 190, § 2.]

§ 5668. Hearing of Report—Notice.—The board when in session shall fix a date for hearing the said report and shall cause notice of said hearing to be published in the county official newspaper and posted in a conspicuous place on said road, at least twenty days before the day set for hearing as follows: If the road be one mile or less than one mile long there shall be one notice posted near each end of said road; if said road be more than one mile long there shall be one notice posted near each end and one notice on each mile of said road. [L. '01, p. 190, § 3.]

§ 5669. Action on Report and Petition.—On the day set for hearing of said report the commissioners shall consider the same, together with the petition, and any objection that may be made to vacating the road, and if the road may be useful as a part of the general road system it shall not be vacated, but if the public will be benefited by the vacation then the commissioners may vacate the road or any portion thereof, and not otherwise; if the commissioners shall determine to vacate the road, or any part thereof, they shall, on payment of all costs by the principal petitioner declare the road vacated and make a record of the same. [L. '01, p. 191, § 4.]

Cited in 71 Wash. 317.

§ 5670. Costs and Expenses—Statement of, Filed.—The clerk of the board of county commissioners shall make a statement in writing of all costs and expenses incurred in the proceedings and file the same with the county treasurer who shall proceed to collect the same. [L. '01, p. 191, § 5.]

§ 5671. No Vacation Unless Properly Ordered.—No public road or highway or part thereof shall be vacated or cease to be a public highway until so ordered by the proper board of county commissioners, or by operation of law, or judgment of a court of competent jurisdiction. [L. '01, p. 191, § 6.]

Cited in 71 Wash. 317.

§ 5672. Approval of Plat, not a Vacation.—The approval of any plat by the board of county commissioners or mayor and common council of any municipality shall not vacate any street, public road, or highway covered by such plat or over which such plat is laid. [L. '01, p. 191, § 7.]

§ 5673. Vacation of County Road by Nonuser.—Any county road, or part thereof, which has heretofore been, or may hereafter be authorized, which remains unopen for public use for a space of five years after the order is made or authority granted for opening the same, shall be, and the same is hereby vacated, and the authority for building the same barred by lapse of time: Provided, however, that the provisions of this section shall not apply to any highway, street,

alley, or other public place dedicated as such in any plat, whether the land included in said plat be within or without the limits of any incorporated city or town, nor to any land conveyed by deed to the state or to any town, city or county for roads, streets, alleys or other public places. [L. '90, p. 603, § 32; 1 H. C., § 1974; L. '09, p. 188, § 1.]

Cited in 45 Wash. 590, 592, 593; 65 Wash. 371, 372; 71 Wash. 316; 72 Wash. 491; 76 Wash. 144, 148; 79 Wash. 324; 80 Wash. 276; 81 Wash. 99.

CHAPTER XIII.

Bridges on County Roads and Navigable Streams.

§ 5674. Commissioners to Appropriate Money to Build Bridges. The board of county commissioners of the several counties in this state are hereby authorized to apply, in their discretion, any road money in the county treasury, not otherwise appropriated, toward defraying the expenses of building or repairing bridges on any of the county roads within their respective counties. [L. '69, p. 289, § 71; L. '79, p. 69, § 69; Cd. '81, § 3033; 1 H. C., § 2068.]

Cited in 20 Wash. 113.

It is doubtful whether this and the next two sections are not superseded by the subsequent legislation on the same subject.

§ 5675. Method of Construction.—Whenever any bridge is to be built, by any county in this state the estimated cost of which shall exceed the sum of two hundred dollars, the board of county commissioners shall advertise for sealed bids, said bids to be accompanied by plans, specifications and strain diagrams for the same, said advertisement to be published for three successive weeks in the official newspaper of the county, if a weekly, and twenty days if a daily paper. With each bid shall be deposited a bond, with a penalty equal to ten per cent of the amount of such bid, conditioned that said bond shall be forfeited to the county if the party making said bid shall fail or neglect to enter into written contract and give the requisite bond within five days from date of award. Upon the day and hour appointed by said board, to receive said sealed bids, the said board shall proceed to open said bids and award the contract to the party whose bid in their judgment, is the lowest and best. If in their judgment one is required, said board may appoint a superintendent, whose duty it shall be to superintend the construction of said bridge: Provided always, that said board of county commissioners, in its discretion, may reject any or all bids. [L. '69, p. 289; L. '79, p. 68; Cd. '81, § 3034; 1 H. C., § 2069; L. '86, p. 173, § 1.]

See note to last section.

§ 5676. Bridge at Boundary of Adjoining Counties.—Whenever it shall be deemed necessary by the board of county commissioners of any county in this state to erect or repair a bridge over any stream

which is a boundary line between two counties, the board of county commissioners of said adjoining counties are hereby authorized to unite for the purpose of erecting or repairing such bridge; and when any person or persons interested shall apply in writing to the board of county commissioners of either of the counties interested, such board shall proceed to appoint three viewers, who shall, after being first sworn to well and faithfully perform their duties as such viewers, proceed to view the bridge proposed to be repaired, or the site designated for such new bridge, and make an estimate of the cost of such repairs or erection, and of their proceedings make due report to the commissioners, together with a plan and specification of such new bridge, or a statement of proposed repairs. If the board shall decide to appropriate the amount necessary for its erection or repairs, they shall submit such estimate of costs, together with the plan of such bridge or statement of repairs, to the county commissioners of the other county interested; and if said commissioners shall approve the same and agree to defray one-half of the whole sum estimated or appropriated, together with the one-half of the necessary cost of view, then the board of county commissioners, to which application was first made, shall proceed to appoint a superintendent, and build said bridge, or make said repairs, as provided for in this chapter, the one-half of the whole costs and expenses of which shall be a legal claim against and be paid by said adjoining county. [L. '69, p. 282, § 73; L. '79, p. 68, § 71; Cd. '81, § 3035; 1 H. C., § 2070.]

Cited in 20 Wash. 113.

"This chapter": The first three sections of this chapter constitute chapter 223 of the Code of 1881. See note to § 5675.

§ 5677. Power of Commissioners to Erect Bridges Across Navigable Streams.—The power to erect bridges on public highways across navigable streams in this state is hereby granted to the boards of county commissioners of this state, under the restrictions of this act. [L. '91, p. 378, § 1; 1 H. C., § 2071.]

Sections 5677, 5678, 5680–5683, constitute "this act."

§ 5678. Commissioners may Join in Construction of Bridge Between Counties.—Where a navigable stream is the boundary line between counties, the boards of commissioners of such counties may join in the construction of a bridge upon such terms as may be agreed upon. [L. '91, p. 378, § 2; 1 H. C., § 2072.]

§ 5679. Bridges, Joint Construction by Counties and Cities.—Any county within the state of Washington, by and through its county commissioners, and any city or town, by and through its legislative body, [and the state of Washington,] or any two of such bodies, be, and they are hereby authorized to join in paying for the construction

of any bridge, trestle, or any structure which crosses any stream or body of water, when such bridge is a connection between any street or county road, or is a connection between any streets that form connections with county roads, when such stream or body of water is within or partly within such city or town: Provided, that nothing in this section shall affect pending suits or actions or rights or [of] parties thereto, but such suits or actions shall be determined as though this act had not been passed. [L. '01, p. 120, § 1; L. '09, p. 229, § 1.]

The bracketed words are included in this section [amendment of 1909], without mention of any such subject in the title of the act.

§ 5680. Notice, How to be Given—Declaration of Necessity—Construction.—Whenever the county commissioners of any county or counties desire to erect a bridge on any public highway across a navigable stream, under the provisions of this act, said board or boards shall cause to be published a notice in a newspaper of general circulation in the county or counties, if such there be; and if there be no newspaper published in the county or counties, then by posting three notices, one in the locality of the place to be bridged, and two in the most public places in the county or counties; such notice shall contain the name of the stream to be bridged and the exact point where such bridge is to [be] erected, and the date when the said board will determine the public necessity for the building of said bridge: Provided, that when such bridge is to be built by two counties, the notice shall be published in both counties. At the time fixed in such notice the board of commissioners shall declare such public necessity by an order of record, which said order shall, in addition to the other facts, prescribe the width of the draw to be made, if any draw shall be considered necessary in such bridge, and also the length of span necessary to permit the free flow of water: Provided, that such bridges shall be so constructed as not to interfere with, impede, or obstruct the navigation of such streams. [L. '91, p. 378, § 3; 1 H. C., § 2073.]

Cited in 60 Wash. 316.

"This act": See note to § 5677.

§ 5681. Appeal from Decision of Commissioners.—If any person or corporation shall feel aggrieved by the determination of said board, an appeal shall be allowed to the superior court of the county, which said court shall have jurisdiction to hear and determine all matters connected therewith. [L. '91, p. 379, § 4; 1 H. C., § 2074.]

§ 5682. Bridge may be Free or Tolls may be Charged—Rates of Toll.—When a bridge shall be built on a navigable stream by one county or two counties it may be absolutely free, or tolls, sufficient to pay in whole or in part for the construction and to keep up the repairs thereof, may be charged; the rate to be fixed by the board of commissioners of the county in which the same is located, or if

located in two counties, then by the boards of commissioners of the two counties; or if there be any disagreement between the boards as to imposing or removing tolls, or the rate, the matter in dispute shall be referred to the board of commissioners of some adjoining county for determination; and if the tolls are fixed or removed thereby, the same shall take effect on the tenth day from the date of such determination; said determination shall be final, and shall be communicated in writing to the clerks of said boards respectively. [L. '91, p. 379, § 5; 1 H. C., § 2075.]

See, also, infra, §§ 5728, 5729.

§ 5683. Construction of This Act.—Nothing contained in this act shall be held to prevent cities and towns from erecting and maintaining bridges, either toll or free, within their corporate limits, or granting franchises for that purpose. [L. '91, p. 379, § 6; 1 H. C., § 2076.]

"This act": See note to § 5677.

See infra, §§ 7507, 7612, 7731, 7862–7869, bridges in cities.

§ 5684. Duty of County Commissioners to Protect Bridges.—The county commissioners of the several counties in this state be authorized and required to pass such rules and regulations as will protect the bridges within their several counties, and preserve them from destruction or injury by fast riding, driving, and neglect: Provided, that this act shall not be so construed as to effect or extend to any bridge located within the limits of any incorporated town in said state. [L. '60, p. 331, § 1; 1 H. C., § 2077.]

"This act": This and the next two succeeding sections constitute "this act."

§ 5685. Sufficiency of Notice.—It shall be sufficient notice for the purposes of this act to have a written or printed notice posted upon or near any bridge, prohibiting fast riding or driving, and giving the amount of fine for the violation of such rule. [L. '60, p. 332, § 2; 1 H. C., § 2078.]

See note to § 5684.

§ 5686. Collection and Disposition of Fines.—All fines assessed pursuant to the provisions of this act may be collected by any citizen, upon complaint made to any justice of the peace in the county in which the bridge is located, and said fine shall go into the school fund of the county. [L. '60, p. 332, § 3; 1 H. C., § 2079.]

See note to § 5684.

CHAPTER XIII-A.

Bridges on Interstate or Intercommunity Roads.

§ 5686-1. Power to Construct.—The state of Washington and all counties, cities or towns within the state are hereby authorized and empowered to join with each other or to aid the state of Washington, the federal government, or any adjoining county, city or town in this state, or to jointly or separately join with any adjoining state, county, city or town in the purchase, construction, control, operation and maintenance of any bridge or bridges over or across any river, stream or body of water being within or constituting the boundary line of the state or of any county therein. [L. '13, p. 168, § 1.]

§ 5686-2. Highway Board to Represent State—Joint Control.—Whenever the legislature of the state of Washington shall have made provision for the purchase or construction of a bridge or bridges, jointly with counties, cities or towns in this or adjoining states, the state highway board is hereby authorized and empowered to represent and act for and on behalf of the state of Washington for the purpose of carrying into effect the provisions of this act, and any other act making an appropriation for the purchase or the construction of a bridge or bridges, which come under the provisions of this act, and when the state of Washington joins in the purchase or construction of a bridge jointly with adjoining states or with the counties, cities, or towns of any adjoining states, or jointly with counties, cities, or towns in this state, the purchase or construction of such bridge or bridges shall be under the direction, control and management of the state highway board acting jointly with the public authority legally authorized to represent and act for such adjoining state, county or city, and when counties or cities in this state shall join with the state for the purchase or construction of a bridge built or to be built in this state, or on the boundaries thereof, the money or funds furnished or provided by such county or city shall be expended under the direction, supervision and control of the state highway board, and under the provisions of this act. [L. '13, p. 168, § 2.]

§ 5686-3. Maps and Plans—Bids.—Whenever provision is made for the purchase or construction of a bridge, which comes under the provisions of this act, the state highway commissioner, upon being directed by the state highway board, shall confer with the legally authorized public authorities of any adjoining state or city or county or cities within this state, and acting jointly with such authorities make or cause designs, maps, plans, specifications, drawings, details, estimates, and all other requirements for full information with reference to the location and construction of such bridge to be made and shall determine the kind, character and dimensions of the bridge to be constructed, subject to the approval of the state highway board. That

after the plans and specifications have been agreed upon by the public authorities, representing the respective states, counties, cities or towns interested, bids shall be advertised by giving such notice as the parties interested shall agree upon, provided, that in no event shall less than thirty (30) days' notice be given. The notice shall provide that the contract shall be let to the lowest responsible bidder, and that the authorities acting jointly in giving the notice reserve the right to reject any and all bids, and the notice shall state the proportion of the total amount to be paid by each. [L. '13, p. 169, § 3.]

§ 5686-4. Contract for Construction.—Upon the final acceptance of the bid for the construction of a bridge, under the provisions of this act, the state highway board, acting jointly with the public authorities of any other state, county, or city, or county or city in this state, shall enter into a contract for the construction of the bridge and shall require the contractor to furnish a surety bond for the faithful performance of the contract, in such sum as shall be fixed by such joint authorities, and shall also require the contractor to furnish an additional bond in the sum to be fixed by the state highway board of Washington, conditioned as is provided in sections 1159 to 1161, inclusive, of Remington & Ballinger's Annotated Codes and Statutes of Washington, and shall file said last mentioned bond with the auditor of the state of Washington, which bond shall be approved by the attorney general. [L. '13, p. 169, § 4.]

§ 5686-5. Clerical Assistance—Supervising Engineer—Payments, How Made.—The highway commissioner, when directed by the highway board, is hereby authorized to rent office rooms, purchase the necessary supplies and to employ clerical and engineering assistants necessary in making the preliminary arrangements, and during the construction of the bridge; the compensation of such employees to be fixed by the state highway board. The state highway board shall have authority to act jointly with the other public authorities interested in the construction of such bridge, to employ a supervising engineer to be in charge of the work of the construction of the bridge, whose compensation shall be fixed by the state highway board, and the public authorities of any adjoining state, county or city, joining in the construction of the bridge. The payment of salaries of employees and all other expenses shall be deemed a part of the construction work, and shall, including payments on contract, be made only on vouchers approved by the state highway commissioner, and payable only out of funds provided therefor. [L. '13, p. 170, § 5.]

§ 5686-6. County Indebtedness—Bonds.—Whenever the board of county commissioners of any of the counties in this state shall deem it for the interest of the county to engage in or to aid in the purchase or construction of any bridge or bridges, under the provisions of this

act, and to incur indebtedness to meet the cost thereof and expenses connected therewith, and issue bonds of the county for the payment of such indebtedness or any thereof, such county is hereby authorized and empowered, by and through its county commissioners, to engage in or aid in any such work as aforesaid, and to incur indebtedness for such purpose or purposes to an amount which, together with the then existing indebtedness of such county, shall not exceed five (5) per centum of the taxable value of the taxable property in said county, as shown by the last previous assessment-roll thereof for state and county purposes, and to issue negotiable bonds of the county for all or any such indebtedness, and for the payment thereof, in the manner and form and as is provided in sections 5094 to 5101, inclusive, of Remington & Ballinger's Annotated Codes and Statutes of Washington, and other laws of this state which shall then be in force, and to make part or all of such payment in bonds or moneys derived from sale or sales thereof, or partly in such bonds and partly in such money, provided that said commissioners shall have first submitted the question of incurring such indebtedness to the voters of the county at a general or special election, and three-fifths of the voters voting upon the question shall have voted in favor of incurring the same. [L. '13, p. 170, § 6.]

Cited in 79 Wash. 154.

See, also, supra, § 5101, county road and bridge bonds.

§ 5686–7. Bonds are for County Purposes.—Any and every such purpose as is mentioned in the foregoing section is hereby declared to be a county purpose, and the bonds or the money derived from the sale of the same shall be deposited with the proper state authorities, as directed by the state highway board, and expended under the provisions of this act, provided that any bonds or funds so deposited and not used for such purpose shall be returned to the county making the deposit. [L. '13, p. 171, § 7.]

See, also, supra, § 5085, bonds for county purposes.

§ 5686–7½. Interest on Interstate Bridge Bonds. — Whenever any county of this state shall have issued negotiable bonds of the county for the purpose of constructing, or aiding in the construction of any bridge between such county and an adjoining state, under the provisions of chapter 56 of the Laws of 1913, and the money derived from the sale of such bonds shall exceed the proportionate cost of the construction of such bridge, chargeable to such county, and the board of county commissioners of such county shall have failed, or shall in any year fail to levy an annual tax to pay the interest on said bonds whenever the same becomes due, and there shall be in the county treasury of said county moneys derived from the sale of said bonds in excess of the proportionate cost of the

construction of such bridge, chargeable to such county, sufficient to pay the interest due on any of such bonds, the county auditor of such county is hereby authorized and empowered when authorized so to do by an order of the board of county commissioners of any such county, to draw his warrant upon the county treasurer for the purpose of paying such interest and the county treasurer for the purpose of paying such interest [and the county treasurer] is hereby authorized and empowered to pay such warrant out of any such excess funds in his hands derived from the sale of such bonds. [L. '15, p. 342, § 1.]

§ 5686–8. City Assistance—Indebtedness—Bonds.—That whenever the city council of any incorporated city or town in this state shall deem it advisable to join with or aid in the purchase or construction of any bridge or bridges within or partly within the corporate limits of such city or town, under the provisions of this act, and to contract indebtedness to meet the cost thereof and expense connected therewith, and to issue negotiable bonds of the city or town for the payment of such indebtedness or any part thereof, said city or town by and through its council is hereby authorized and empowered to engage or aid in the purchase or construction of such bridge or bridges of public work, as aforesaid, and to incur indebtedness for such purpose or purposes to an amount which together with the then existing indebtedness of such city or town shall not exceed five (5) per centum of the taxable value of the taxable property of such city or town, to be ascertained by the last assessment of such city or town for city or town purposes, previous to the incurring of such indebtedness, and to issue negotiable bonds of such city or town for all or any such indebtedness, and for the payment thereof in the manner and form, as is provided in section 8041 to 8049, inclusive, of Remington & Ballinger's Annotated Codes and Statutes of Washington, and other laws of this state which shall then be in force, and to make a part or all of such payments in bonds or money derived from sale or sales thereof, or partly in such bonds and partly in such moneys, provided that the council of said city or town shall have first submitted the question of incurring such indebtedness to the voters of said city or town at a special election held according to law, and three-fifths of the legal ballots cast on said question shall be in favor of incurring such indebtedness. [L. '13, p. 171, § 8.]

§ 5686–9. Bonds are for Municipal Purposes.—That any and every such purpose as is mentioned in the last preceding section is hereby declared to be a strictly municipal purpose, and that the bonds, or the money derived from the sale of the same, shall be deposited with the proper state authorities, as directed by the state

highway board, and expended under the provisions of this act, provided that any funds or bonds so deposited and not used for the purpose for which they were deposited shall be returned to the city or town so depositing the same. [L. '13, p. 172, § 9.]

§ 5686–10. State to Own Bridge.—That upon the purchase or construction of any bridge jointly or with any adjoining state, county or city, the same shall be accepted by the state highway board acting in conjunction with such public authorities of any adjoining state, county or city, joining in its construction, and the state shall own one-half of such bridge, and the same shall become the exclusive property of the state of Washington, and under the control and management of the state highway board. [L. '13, p. 172, § 10.]

§ 5686–11. City and County may Join—Bonds.—That whenever it is deemed advisable by the common council of any city or town and the county commissioners of any county in this state to purchase or construct a bridge within or partly within such city or town, the council and commissioners are authorized and empowered to enter into an agreement for the construction of such bridge, upon such terms as may be mutually agreed upon, each contributing such sum toward the purchase or construction of the same as may be determined to be just and proper, and enter into contract for the construction of such bridge and to spend public funds thereon, and if deemed necessary may bond the county or city or town in the manner herein specified. The contracts for letting the same and notice given to bidders, and all other matters pertaining to the construction shall be governed by the laws in force governing the construction of bridges by county commissioners in the state of Washington, provided the payments to be made on the contract by the respective municipal corporations be made direct to the contractor. [L. '13, p. 173, § 11.]

Cited in 79 Wash. 155.

§ 5686–12. Franchises—Powers of Public Service Commission.—The state highway board is authorized and empowered, acting jointly with any legally authorized body or public authority of any adjoining state, county or city joining in the construction of such bridge, to grant franchises for laying rails and the operation of electric street and suburban railways, and other public utilities, except steam railroads, and for the laying thereon and suspending therefrom pipes for the carrying of water, gas and other substance, and wires and cables for the conducting of electricity for telegraph, telephone, lighting, heating, power and other purposes, provided that no exclusive franchise shall be granted or given any person, firm or corporation for any use or purpose, but such bridge shall be for common use for all public service corporations or individuals, upon

such terms as may be prescribed. That in the granting of any right, privilege or franchise to any person, firm or corporation for the use of said bridge for any purpose, the state highway board shall fix and prescribe the compensation to be paid for the use of such bridge, subject to the approval of the public service commission: Provided, that the rates, sums or amounts which shall be fixed in the franchise, granted to any person, firm or corporation shall be subject to change, raised or lowered, at any time by the public service commission, or any other body possessing the same powers as is now possessed by the public service commission of the state of Washington, and new or different rates or charges fixed by the public service commission, acting jointly with the other public authorities herein mentioned: Provided further, that the powers and duties given to the public service commission by the laws of the state of Washington are extended to include any bridge which may have been built by the aid of the state of Washington, and which has become the property of the state of Washington under the provisions of this act. [L. '13, p. 173, § 12.]

§ 5686-13. Proceeds from Franchise Rights.—All moneys derived from any source from the use of such bridge by any persons, firm or corporation shall be paid into the public highway fund of the state of Washington. [L. '13, p. 174, § 13.]

§ 5686-14. Powers of Highway Board.—That the state highway board is hereby given power and authority to do all acts and things necessary to carry out the provisions of this act, whether mentioned herein or not, and to construct, complete and maintain any bridge which may be authorized to be constructed under the provisions of this act. [L. '13, p. 174, § 14.]

§ 5686-15. Definitions.—The meaning of words and phrases used in this act shall, unless inconsistent with the context, be as follows: "Bridge" shall include public road, and shall include bridge, bridge approach, culvert or viaduct over the state boundary line, or over a stream, river or body of water within, at, or constituting the boundary line of the state or county. "Construct" shall include to build, repair, maintain, improve, or other like work. "Construction" shall include repair, maintenance, improvement, or other like work. "Public authorities" shall mean the county commissioners of the county or the constituted authorities of any county having control of roads and bridge construction or the council, when cities or towns are referred to. Words importing the plural number may be applied in the singular, and words importing the singular may be applied in the plural. [L. '13, p. 174, § 15.]

§ 5686-16. Franchises and Tolls on Interstate Bridges.—Whenever any bridge has been or may hereafter be constructed over any

navigable river, stream or body of water which constitutes or forms the boundary line of this state, or any county therein, jointly with any state or county of an adjoining state, the county commissioners of the county of this state which has joined in the construction or has the control over any such interstate bridge with any adjoining county or state, shall have the power and authority to act concurrently and jointly with any such adjoining county or state which has joined in the construction or which under the laws of such adjoining state has the control and operation of the same, and which has power under the laws of such adjoining state to act in conjunction with the county commissioners of any county in this state, to grant franchises to any company or corporation for the laying of rails on such interstate bridge and for the operation of electric, street and suburban railways and all other public utilities except steam railroads, and for laying thereon and suspending therefrom pipes for the carrying of water, gas and other substances and wires and cables for the conducting of electricity for telegraph, telephone, lighting, heating, power and other purposes; Provided, that no franchise except such as contain adequate common user provisions shall be granted or given any person, firm or corporation for any use or purpose, but such interstate bridge shall be for common use for all municipalities, public service corporations, or individuals upon such terms as may be prescribed. [L. '15, p. 49, § 1.]

§ 5686–17. Limit of Franchises.—That all franchises granted by the county commissioners under the provisions of section 5686–16 shall be granted for such term as the commissioners acting concurrently with the authorities in such adjoining county or state may determine, but in no event shall any franchise be granted for a longer period than twenty-five years. [L. '15, p. 50, § 2.]

§ 5686–18. Tolls—Power to Fix—Joint Actions.—That whenever any interstate bridge has been constructed, or may hereafter be constructed, between any county in this state and an adjoining county or state over waters forming the boundary line of this state, the county commissioners of such county in this state which has joined in the construction of such bridge or has control over the same shall have the power, acting in conjunction and concurrently with the authorities having control of such interstate bridge under the laws of any adjoining county or state to charge and fix tolls for the transit over any such interstate bridge for all cars, street-cars, wagons, for the laying or suspending of pipes from said bridge for the carrying of water, gas or other substances, wires and cables for the conducting of electricity for telegraph, telephone, lighting, heating, power and other purposes, carriages, automobiles, trucks, vehicles, animals, foot-passengers or other passengers, and for any

and all other purposes for which such interstate bridge may be used for both public and private purposes, and such tolls so fixed shall be reasonable and just and shall be apportioned between the county of this state and such adjoining county or state on the basis of the amount contributed toward the construction of such bridge between the county of this state and such adjoining county or state. [L. '15, p. 50, § 3.]

§ 5686–19. Mode of Granting Franchises.—That franchises granted in section 5686–17, can only be granted at a joint meeting of the commissioners of the county of this state where such interstate bridge is located and the public authorities having such matters in charge in such adjoining county or state, and before any franchise can be granted over such interstate bridge for any purpose public notice thereof must be given for at least once a week for four consecutive weeks in a newspaper of general circulation in the county to be designated by the public authorities having the matter in charge, in which such interstate bridge is located, giving the time and place when such application for such franchise will be heard and containing a notice that application has been made for the granting of the franchise for the purposes desired and that the same will be heard at the time and place stated. [L. '15, p. 51, § 4.]

§ 5686–20. Regulation of Tolls.—That the tolls provided for in section 5686–18, shall be fixed at a joint meeting of the county commissioners of the county in which such interstate bridge may be located and the public authorities of any county or state having the authority to join in the fixing of tolls, and such tolls shall be reasonable and just, and the rates thus fixed shall continue for the period of one year unless otherwise changed, but such joint board shall have power to either lower or raise any such tolls, or tolls on any particular class herein mentioned, at any joint meeting of such board. [L. '15, p. 51, § 5.]

§ 5686–21. Collection and Disposal of Tolls.—The county commissioners of any county in this state in which any such interstate bridge may be located shall provide for the collection of such tolls, and the board shall have power to do whatever is necessary to arrange for the collection of such tolls, but all tolls collected from any interstate bridge in this state shall be paid over monthly to the county auditor and by him transmitted to the county treasurer, and the person collecting the same shall make the same affidavit in relation to the collection of such tolls as is now required to be made by county officers in relation to fees collected by them. [L. '15, p. 52, § 6.]

§ 5686–22. Interstate Bridge Fund.—The moneys collected shall be kept by the county treasurer in a separate fund and shall be

known as the interstate bridge fund and shall be used for the purpose of paying for the operating expenses of any such interstate bridge, and in case any such county is required to pay interest on any bonded indebtedness then to be applied upon the payment of such interest, and the remainder shall be applied toward a sinking fund to redeem any bonded indebtedness that may have been created for the construction of such bridge; or if there be no such indebtedness, then the remainder shall go into the road and bridge fund of the county: Provided, that the moneys collected from such tolls can only be expended upon warrants drawn by order of the county commissioners. [L. '15, p. 52, § 7.]

§ 5686–23. Highway Board to Control Interstate Bridges Purchased.—The foregoing provisions of this act shall not apply to bridges located upon state highways and not originally constructed by any public authorities but acquired by the state or local subdivisions thereof by purchase jointly with adjoining states or local subdivisions thereof. Such interstate bridges upon state highways so acquired by purchase shall be controlled, operated and maintained by the state highway board jointly with the public authorities within any adjoining state having the control of any portion of such bridges. The income from, and expenses of operation and maintenance of, such structures shall be apportioned between the joint owners according to such arrangements as have been or may be made by the state highway board. Franchises for the use of such bridges by electric railways and other utilities shall be granted by the public service commission acting in agreement with the public authorities having control of the portion of such structures outside this state. Such franchise shall contain adequate common user provisions and shall not be exclusive and no franchise shall be granted for a longer period than twenty-five years. [L. '15, p. 52, § 8.]

CHAPTER XIV.

Turnpike Roads.

§ 5687. Power and Discretion of Commissioners to Appoint Viewers, etc.—The county commissioners of any county, when they become satisfied that the public interests of their county demand and justify special action for the improvement of the roads therein, may appoint three disinterested freeholders of their county as commissioners, to view, survey, and locate one or more roads, beginning at and leading from the county seat of the county, or such other and eligible points as may be deemed proper, and running by such direct and eligible route as they find best for the public convenience, and terminating at any point within or at the county line; but they are not authorized or required to construct or maintain

any such road within the corporate limits of the town or city where the county seat is located, when, according to the last federal census, more than one thousand inhabitants are contained in such corporate limits. [Cf. L. '54, pp. 361, 362; L. '60, p. 328; L. '63, p. 530; L. '90, p. 612, § 1; 1 H. C., § 2032.]

§ 5688. Roads, How to be Constructed.—The roads established and constructed under this chapter shall be opened not more than sixty nor less than forty feet wide, and at least sixteen feet in width shall be turnpiked with earth so as to drain freely to the sides, and raised with stone or gravel not less than ten nor more than sixteen feet in width, nor less than twelve inches thick in the center, and not less than eight inches at the outer edges of such bed of stone or gravel, well compacted, in such manner as to secure a firm, even, and substantial road; but the commissioners may, in their discretion, cause the road to be constructed wholly of earth, plank, or timber, when stone or gravel is not accessible to the line of the road; in no case shall the grade of ascent or descent on the road be greater than seven degrees; the road shall be well provided with all necessary side drains, wasteways, and under-draining to prevent overflowing or washing by water, and with substantial bridges or culverts at all crossings of watercourses; and such roads shall be free to the public for travel. [L. '90, p. 612, § 2; 1 H. C., § 2033.]

§ 5689. Right of Way may be Secured, How.—The county commissioners may authorize the commissioners by them appointed to call to their assistance a competent surveyor or civil engineer, or both, at their discretion, with the necessary and proper assistance, and lay out, survey, and locate such turnpike road through or upon improved or unimproved lands on the best route between the points of beginning and termination, and to obtain by grant or take propositions for the purchase from the owners of land over which the road will pass, the right of way, and to take timber and other materials necessary to the construction and repair of the same. [L. '90, p. 613, § 3; 1 H. C., § 2034.]

§ 5690. Condemnation Proceedings to Secure Right of Way.—When said commissioners and the owners fail to agree as to the amount of compensation, or when the owner is unknown, nonresident, or incapable of contracting, then the same shall be ascertained and adjusted by proceedings had in the name of the county commissioners, under the law providing for the appropriation of private property by [municipal] corporations; and the commissioners may authorize the viewers or commissioners by them appointed to locate the road upon the whole or any part of any state or county road heretofore laid out and established within the county, and to widen, alter, change, or vacate the same, or any part thereof, subject to

the rules as to compensation for property appropriated as aforesaid. [L. '90, p. 613, § 4; 1 H. C., § 2035.]

§ 5691. Donation, etc., may be Required by Commissioners—Separate Fund.—Before determining upon the location or establishment of any such turnpike road, the county commissioners may require donations of money and written agreements on the part of taxpayers of the county, subjecting their taxable property to taxation annually, to aid in the location and construction of the same during the term of years named, therein specified, which agreements shall be filed and recorded in the office of the county clerk, and from the time of such filing and recording shall operate as a lien upon the real estate of the several parties joining therein as donors for the purpose therein provided. All revenues derived from donations in money and taxation shall be kept and held as a separate fund in the county treasury, and shall be applicable only to the purposes of locating and constructing such turnpike roads; and if the commissioners determine not to establish and construct such road, then any money received as donations by taxation shall be returned. [L. '90, p. 613, § 5; 1 H. C., § 2036.]

§ 5692. Restrictions upon Commissioners as to Levy of General Tax, etc.—The county commissioners shall not levy any general tax nor appropriate any money, except so far as may be necessary to pay the expense of preliminary surveys already commenced, or any other liabilities already incurred, to be expended in the construction of such turnpikes, without first submitting to the qualified voters of the county the question as to the policy of constructing such roads by general tax, which submission shall be made at any general election; and the county commissioners shall cause public notice of such vote to be given by publication in the official paper of the county, and also by causing handbills to be posted up at the usual place of holding elections in the county, at least fifteen days prior to such election. [L. '90, p. 614, § 6; 1 H. C., § 2037.]

§ 5693. Election and Returns, Law Governing—Compensation.—The judges of such election in the several precincts and wards in any county in which such question is submitted and such notice is given, as aforesaid, shall open a poll for taking such vote, receive and count the ballots cast, and within three days thereafter return to the clerk of the board of county commissioners a full and correct abstract of the votes, and shall in all respects be governed by the laws regulating general elections, and be entitled to the same compensation for returning the poll-books, which shall be paid out of the county treasury on the order of the clerk of the board. And the poll-books so returned shall, within five days of the day of holding such election, be opened and the votes counted by the commis-

sioners and the clerk of the board, and a correct statement of the result shall be kept by the clerk on file in his office for public inspection. [L. '90, p. 614, § 7; 1 H. C., § 2038.]

§ 5694. Commissioners may Resubmit Question, When.—If at such election two-fifths of the votes so cast be against the policy of constructing such turnpikes, the commissioners shall not assess any tax for that purpose, but they may, on petition of not less than one hundred taxpayers of the county, again submit the same question, at any regular annual election, to the qualified voters of the county, notice of which shall be given and the election conducted in all respects in the manner prescribed in the two preceding sections. [L. '90, p. 614, § 8; 1 H. C., § 2039.]

§ 5695. Taxes may be Levied and Bonds Issued for Construction, When.—If at any election three-fifths be found in favor of the construction of such turnpikes, the commissioners may proceed to levy taxes, issue bonds, and appropriate and expend money in the construction of such turnpike roads as, in their judgment, may be necessary to the public convenience and promotive of the public interest. [L. '90, p. 615, § 9; 1 H. C., § 2040.]

§ 5696. Amount of Donations, etc., may be Levied, When and How.—When the county commissioners receive or require donations of money, or written agreements on the part of taxpayers, subjecting their taxable property to taxation annually, to aid in the location and construction of such roads, and a majority of the taxpayers within the boundaries of the road sign such subscription or agreement, the commissioners shall thereupon be authorized to levy the amount thereof upon the taxable property within the boundaries of the road, according to the benefits to said property, taking into consideration any assessments that have heretofore been made; and the boundaries of the road shall not be taken to include any property that does not lie within two miles of such contemplated improvement. [L. '90, p. 615, § 10; 1 H. C., § 2041.]

§ 5697. Levy of Tax to Provide Permanent Fund for Road Purposes.—Upon the location and establishment of any such turnpike road by the county commissioners, and after an affirmative vote by the qualified voters, they may, for the purpose of aiding in the construction, and to provide a permanent fund for the maintenance and expense thereof, levy annually, in addition to other road taxes authorized by law, a tax for turnpike road purposes, of not more than four mills on the dollar of valuation on the taxable property in the county, and to continue such levy from year to year until the road or roads which have been commenced are completed. [L. '90, p. 615, § 11; 1 H. C., § 2042.]

§ 5698. Commissioners may Issue County Bonds for Building Roads.—No such taxes shall be levied on any lands which have heretofore been assessed for the construction of any free turnpikes or improved road or roads already constructed, or in course of construction at the time of the levy of the tax, unless the amount of such assessment, and in such case such excess only shall be levied and collected; and for the purpose of raising the money necessary to meet the expenses of such improvement, the county commissioners may, if in their opinion the same be advisable, submit to the qualified voters of the county, at any general election, the question whether the county commissioners shall be authorized to issue bonds of the county for the purpose of building roads in accordance with the provisions of this chapter, and if three-fifths of the legal votes cast be in favor of the issue of such bonds, then the county commissioners may issue the bonds of the county, payable at such times as they deem advisable, not exceeding twenty years, with interest not exceeding six per cent per annum, payable semi-annually, and which bonds shall not be sold for less than their par value. [L. '90, p. 615, § 12; 1 H. C., § 2043.]

§ 5699. Records of Road Matters to be Kept, and What to Contain.—The county commissioners shall cause to be kept by the clerk of the board a full record of all the proceedings in the location, establishment, and construction of the road, together with accurate accounts of receipts and expenditures of money, under the provisions of this chapter, and no money shall be drawn from the treasury except to pay liabilities already accrued, and then only in pursuance of orders caused by the commissioners whilst in session as a board, to be entered upon the record of their proceedings, and by orders drawn by their clerk upon the county treasury in favor of the persons to whom such money is due. [L. '90, p. 616, § 13; 1 H. C., § 2044.]

§ 5700. Road Construction Work, How to be Let—Notice, etc.—The work of the construction of such roads shall be let publicly by the county commissioners to the lowest responsible bidder, after due notice given of such letting by publication in one or more newspapers published or of general circulation in the county, or by handbills, or both; for that purpose the commissioners shall cause the same to be divided into convenient sections, and each section numbered from the county seat or other point named as the place of beginning, toward the termination, and shall let the same by sections, with proper specifications of the various kinds of labor required on each section; and bidders shall be required to separately state their bids for each class of work, in such manner as the commissioners shall provide, and each contractor shall be required to

give bond, with sufficient sureties, for the performance of his contract, payable to the county commissioners, for the use and benefit of the county, and with the necessary specifications and stipulations on the part of the contractor inserted therein. [L. '90, p. 616, § 14; 1 H. C., § 2045.]

§ 5701. Payment for Work or Material, How to be Made.—In all cases the construction of such roads shall commence at the point of beginning, and no payment for work or material shall be made except upon estimates made by the surveyor or engineer employed by the commissioners, and by him duly certified, of work actually done or material actually furnished, or both, and after reserving such per cent as may be fixed by the parties to the contract, to guarantee performance of the same. [L. '90, p. 616, § 15; 1 H. C., § 2046.]

§ 5702. Compensation for Services of Viewers and Surveyor.—The viewers, surveyor, or engineer, and their assistants, shall be entitled to receive the same compensation for their services required under the provisions of this chapter as is now allowed by law in the construction of state or county roads. [L. '90, p. 617, § 16; 1 H. C., § 2047.]

CHAPTER XV.

Toll Roads.

§ 5703. County Commissioners may Lease Public Roads.—Whenever a public road in any county in this state is or may hereafter be so located that there is little or no local labor along the line of said road, the board of county commissioners of the county where such road or any portion of the same is or may hereafter be located is authorized to lease such road or any portion of the same, to any person or corporation, to open, improve, and keep the same in repair for a period not exceeding ten years, with the right in consideration thereof to collect and receive tolls for travel thereon, in the manner provided in this chapter. [L. '64, p. 26, § 1; L. '69, p. 285, § 54; L. '79, p. 64, § 52; Cd. '81, § 3016; 1 H. C., § 2048.]

Compare Laws of 1863, pages 528–530, relating to private toll roads and bridges; parts of this act may still be in force.

Roads owned by private corporation: See next chapter.

§ 5704. Notice of Intention to Lease Road to be Published.—Whenever it becomes expedient and lawful, under the provisions of this chapter, to lease a public road, or any specific section thereof, the board of county commissioners shall make an order to that effect, specifying therein the termini thereof, and directing the county auditor to cause the same to be published in some weekly newspaper of general circulation therein, for a period not less than four weeks, and in like manner to give notice therewith that sealed bids will

be received at such auditor's office, for the leasing of such road until a particular hour of a certain day thereafter not more than ten days after the expiration of the publication of such order or notice. [L. '64, p. 27, § 2; L. '69, p. 285, § 55; L. '79, p. 65, § 53; Cd. '81, § 3017; 1 H. C., § 2049.]

§ 5705. Bids must be Accompanied With Bond.—No bid shall be considered unless accompanied by a bond, executed by two or more sureties, in the sum of two thousand dollars, to be void upon condition that the bidder, if the lease is awarded to him, will, within ten days thereafter, enter into the contract for keeping the road, and give the bond to secure the performance thereof, as hereinafter provided. [L. '64, p. 27, § 3; L. '69, p. 285, § 56; L. '79, p. 65, § 54; Cd. '81, § 3018; 1 H. C., § 2050.]

§ 5706. Execution of Lease — Bond of Lessee. — The contract for the lease shall be subscribed by the lessee and approved by the board of county commissioners and filed with the county auditor. At the time of filing the contract the lessee shall give a bond to the county in a sum to be fixed by the board of county commissioners, not less than two thousand nor more than ten thousand dollars, with two or more sufficient sureties, to be void upon the condition that the lessee will faithfully perform the contract in relation to such road, and comply with the provisions of this chapter concerning the same. [L. '64, p. 27, § 4; L. '69, p. 285, § 57; L. '79, p. 65, § 55; Cd. '81, § 3019; 1 H. C., § 2051.]

§ 5707. Justification of Sureties on Lessee's Bond.—The sureties in the bond mentioned in the last section shall have the qualifications of bail upon arrest, and shall justify in like manner before the county commissioners or the clerk thereof. [L. '69, p. 286, § 58; L. '79, p. 65, § 56; Cd. '81, § 3020; 1 H. C., § 2052.]

§ 5708. Condition in Which Road must be Kept.—A road leased under this chapter shall be cleared of standing timber and have a track for traveling, of the same width, and be kept in the same order, and the streams or other waters on the line thereof shall be bridged, or ferries established, and shall be made of such grade and of such materials as the contract shall specify. [L. '69, p. 286, § 59; L. '79, p. 65, § 57; Cd. '81, § 3021; 1 H. C., § 2053.]

§ 5709. Toll-gates and Collection of Toll. — No toll shall be collected for travel on such roads, except at a gate, nor unless a sign-board be posted at such gate, in full view of the travel on the road, with the rates of toll plainly written or printed thereon. The lease shall specify the number of gates that may be placed on the road to which it relates, and the location thereof, and thereafter the number of such gates shall not be increased; but the board of county com-

missioners, upon the application of the lessee, may, at any time, for good reasons, authorize the lessee to change the location of such gates, or any of them. [L. '69, p. 286, § 60; L. '79, p. 66, § 58; Cd. '81, § 3022; 1 H. C., § 2054.]

See infra, § 5719 et seq., railway and other corporations may collect tolls on highways when.

See infra, § 5726, bridge toll collected by corporations when.

§ 5710. Lease to Specify Rates—Refusal to Pay Toll—Illegal Toll—Penalty.—The rates of toll that the lessee may collect and receive shall be specified in the lease, and none other can be charged; and any person who shall pass through a gate upon such road without paying toll legally charged thereat, or when traveling on such road shall go around such gate with intent to avoid the payment of such toll, shall be liable to the lessee for three times the amount of such toll; and any lessee of such road who shall by himself, his agent or servant, collect or receive of any person illegal toll for traveling on such road, shall be liable to such person for three times the amount of such toll. [L. '69, p. 286, § 61; L. '79, p. 66, § 59; Cd. '81, § 3023; 1 H. C., § 2055.]

§ 5711. Road Deemed Highway — Certain Persons Exempt from Toll.—A road leased, as provided in this chapter, is nevertheless to be deemed a highway, but no footman shall be required to pay toll for traveling on such road, nor shall any person while traveling from one portion of his farm to another, with or without any stock, or vehicle, or person in his employ, or in going to or returning from church, a funeral, or an election. [L. '69, p. 287, § 62; L. '77, p. 66, § 60; Cd. '81, § 3024; 1 H. C., § 2056.]

§ 5712. Cancellation and Forfeiture of Lease. — The board of county commissioners has authority, upon the application of the lessee, to cancel or modify the lease, upon such terms as may be equitable and just, and the proper prosecuting attorney may maintain an action against the lessee, in the name of the county, to have such lease declared forfeited, whenever the lessee shall fail or neglect to comply with the provisions thereof, and of this chapter. [L. '69, p. 287, § 63; L. '79, p. 66, § 61; Cd. '81, § 3025; 1 H. C., § 2057.]

§ 5713. Classes of Property Liable for Toll.—Tolls are only chargeable by the lessee upon the following items, or classes of person or property:—

1. Sheep and hogs;
2. Horses, mules, asses, or neat cattle, whether being used for draught or led or driven loose;
3. A person other than a footman, and not traveling in a vehicle;
4. A two-wheeled vehicle, loaded or unloaded;
5. A four-wheeled vehicle, loaded or unloaded. [L. '69, p. 287, § 64; L. '79, p. 66, § 62; Cd. '81, § 3026; 1 H. C., § 2058.]

§ 5714. Criterion for Fixing Rates of Toll.—The rate of toll to be charged by lessee upon each item or class specified in the last section is as follows:—

1. The basis or unit of toll is the charge for a sheep or hog, to be known as a single toll;

2. For any animal described in subdivision 2 of such section, four such tolls may be charged;

3. For any person described in subdivision 3 of such section, ten such tolls may be charged;

4. For any vehicle described in subdivision 4 of such section, twenty such tolls may be charged;

5. For any vehicle described in subdivision 5 of such section, forty such tolls may be charged. [L. '69, p. 287, § 65; L. '79, p. 67, § 63; Cd. '81, § 3027; 1 H. C., § 2059.]

§ 5715. Order to Specify Number of Gates—Bids to Specify Rate of Toll.—The order mentioned in this chapter shall specify the number of gates to be placed on the road, the material for the construction thereof, and the period for which the same is to be let. The bid shall specify the unit or rate of toll upon a sheep or hog which the bidder is willing to accept for keeping the road; and such bid shall be deemed a bid for tolls, as to the other items or clauses mentioned in this chapter, in the proportion of such unit or rate as specified in the last preceding section. [L. '69, p. 288, § 66; L. '79, p. 67, § 64; Cd. '81, § 3028; 1 H. C., § 2060.]

§ 5716. Awarding Lease, etc. — Power of Commissioners. — Upon opening the bids, the lease shall be awarded to the lowest bidder, having due reference to the fact of which of them is best qualified for the undertaking. The board of county commissioners have the power and it is their duty to reject any or all bids, when there appears sufficient cause, and may subsequently reoffer and let the same. [L. '69, p. 288, § 67; L. '79, p. 67, § 65; Cd. '81, § 3029; 1 H. C., § 2061.]

CHAPTER XVI.

Roads Owned by Private Corporations.

§ 5717. Appropriation of Roads, Streets, etc.—When it shall be necessary or convenient in the location of any road herein mentioned to appropriate any part of any public road, street, or alley, or public grounds, the county court [commissioners] of the county wherein such road, street, alley, or public grounds may be, unless the same be within the corporate limits of a municipal corporation, is authorized to agree with the corporation constructing the road, upon the extent, terms, and conditions upon which the same may be appropriated or used and occupied by such corporation, and if such parties shall be unable to agree thereon, such corporation may appropriate so much

thereof as may be necessary and convenient in the location and construction of said road. [L. '69, p. 344, § 4; Cd. '81, § 2458; 1 H. C., § 1574.]

Cited in 6 Wash. 385, 386; 7 Wash. 164; 49 Wash. 388; 62 Wash. 102.

This section refers to any "railway, macadamized road, plank road, clay road, canal or bridge."

See § 8739, infra, for portions of the act more particularly applicable to railroad companies.

As to mode of proceeding to appropriate property, see §§ 921–936, supra.

§ 5718. Appropriation must be Made With Reference to What Locality.—Whenever a private corporation is authorized to appropriate any public highway or grounds, as mentioned in the last section, if the same be within the limits of any town, whether incorporated or not, such corporation shall locate their road upon such particular road, street, or alley, or public grounds within such town, as the local authorities mentioned in the last section and having charge thereof shall designate; but if such local authorities shall fail or refuse to make such designation within a reasonable time when requested, such corporation may make such appropriation without reference thereto. [L. '69, p. 344, § 5; Cd. '81, § 2459; 1 H. C., § 1575.]

Cited in 62 Wash. 103.

§ 5719. May Collect Tolls on Highway, When.—Whenever such public highway or grounds are taken by a private corporation by agreement with the local authorities mentioned in the last preceding section, such corporation may place such gates thereon, and charge and receive such tolls thereat, as such local authorities may consent to by such agreement, and none other; but when the same is appropriated without such agreement, as provided in said section, such corporation shall not place any gate or other obstruction upon the public highway or grounds appropriated, nor charge or receive any toll from any person passing over or along the same. [L. '69, p. 344, § 6; Cd. '81, § 2460; 1 H. C., § 1576.]

Cited in 62 Wash. 103.

See supra, § 5709 et seq., toll-gates and toll on leased roads.

§ 5720. Of Clearing and Cutting Road—Width of Road, Track, etc.—Any road other than a railroad, constructed by a corporation formed under this chapter, shall be cleared of standing timber for thirty feet in width of said road, and shall have a track in the center not less than sixteen feet wide, finished and kept in good traveling condition, except when the cutting on said road is six feet or more deep on either side, in which case such track need not be more than ten feet wide, with turnouts of sixteen feet in width for every quarter of a mile of such narrow track. [L. '69, p. 344, § 7; Cd. '81, § 2461; 1 H. C., § 1577.]

§ 5721. Streams to be Bridged or Ferries Maintained. — All streams or other waters upon the line of such roads shall be safely and securely bridged, except where the county court of the county wherein the line of such road may cross such streams or other waters, or if such stream or other water form the boundary between two counties, then the county court [commissioners] of either of said counties may authorize the corporation to place a ferry-boat upon such stream or other water, to be kept and run for such toll as the county court may prescribe, and in the manner required of ferries established under the general statutes in relation to ferries; or except where such county court may authorize such corporation to connect their road with a ferry now or hereafter established over such stream or other water, under the general statute in relation to ferries. [L. '69, p. 345, § 8; Cd. '81, § 2462; 1 H. C., § 1578.]

§ 5722. Notice of Completion of Highway.—Whenever a road of any kind herein mentioned, other than a railroad, is completed, or any particular section of it, fit for public travel, the corporation shall give notice thereof, by publication in some newspaper of general circulation, along the line of such road or section, or by posting notices along such line in some conspicuous places, not less than five miles apart; and thereafter such road or section thereof is a common highway, so that every person with his stock and vehicles of every description may travel thereon upon the payment of the tolls prescribed by the corporation, subject to the power of the corporation, by giving notice thereof in like manner, to suspend such right of travel upon all or any portion of such road, for a reasonable time, to enable it to make any necessary repairs or improvements thereon. [L. '69, p. 345, § 9; Cd. '81, § 2463; 1 H. C., § 1579.]

§ 5723. Collection of Tolls — Location of Gates. — A corporation other than railroad shall only collect and receive toll on its road at a gate established thereon, and such shall be plainly and specifically printed or written upon a sign-board, posted at such gate, in plain view of the travel on the road; but such corporation shall not establish any gate within the limits of any town, whether incorporated or not, or within one-half mile of the limits of such town, except as specially provided in section 5719; but no person traveling on foot, or going in any manner or within any property from one part of his farm to another part, or going to or from church, funerals, or elections, is liable to pay for traveling upon such roads. [L. '69, p. 345, § 10; Cd. '81, § 2464; 1 H. C., § 1580.]

§ 5724. Tolls, Failure to Pay, and Collection of Illegal—Liability. Any person traveling upon any road herein mentioned, who shall pass through a gate thereon without paying the toll legally chargeable thereat, or who shall go round such gate with the intent to avoid the

payment of such toll, shall be liable to the corporation for three times the amount thereof, and any corporation which, by its agents or servants, or in any manner, shall illegally collect any toll from any person traveling on such road shall be liable to such person for three times the amount thereof. [L. '69, p. 346, § 11; Cd. '81, § 2465; 1 H. C., § 1581.]

§ 5725. Notice to be Given of Completion of Bridge.—Any bridge constructed by a corporation formed under this act, when completed and fit for public travel, and notice thereof is posted in some conspicuous place on such bridge, or by publication in some newspaper, as in the case of a road, is a common highway, within the meaning and subject to the conditions specified in section 5722, as to roads, and subject to the further power of the corporation to prescribe, by advertisement in some conspicuous place on such bridge, the rate of speed anyone may travel on such bridge. [L. '69, p. 346, § 12; Cd. '81, § 2466; 1 H. C., § 1582.]

"Act" refers to §§ 5717–5729, 8736, 8739 and 8740.

§ 5726. Tolls, Collection and Liability for.—A corporation may collect and receive such tolls for crossing its bridge as may be plainly written or printed upon a sign-board, posted in some conspicuous place on such bridge, but no person not liable to pay toll on a road, as provided in section 5723, is liable to pay toll for crossing such bridge; and any person who shall pass over such bridge without paying the toll legally chargeable thereat, or any corporation which shall illegally collect any toll from any person crossing such bridge, shall be respectively liable to each other for three times the amount of such toll, as provided in section 5724, in case of roads. [L. '69, p. 346, § 13; Cd. '81, § 2467; 1 H. C., § 1583.]

§ 5727. To Keep Accounts and File With Auditor.—It shall be the duty of every incorporation organized for the construction of any macadamized road, plank road, clay road, or bridge, to keep an accurate statement on [or] account of the moneys expended by said corporation in the construction of any such road or bridge, and keeping the same in repair, including any sums paid for lands appropriated as necessary for said corporation, which statement or account shall be verified at the time of the annual meeting held for the election of directors, by the president of the said corporation, or one of the directors thereof, to the effect that he believes the said account to be just and correct; and a copy of such verified account shall, within ten days after such annual election be deposited with the auditor of the county with whom the articles of incorporation are filed. Said incorporation shall also keep an accurate account of the tolls received for traveling upon said road or bridge, or of other profits accruing to said corporation, which accounts shall be verified

in like manner, and a copy thereof deposited with said county auditor within ten days after such annual election. [L. '69, p. 347, § 15; Cd. '81, § 2469; 1 H. C., § 1584.]

§ 5728. Toll Road or Bridge may Become Free, When.—At any time after the expiration of ten years from the time of taking tolls on any macadamized road, plank road, clay road, or bridge, it shall be lawful for the county court [commissioners] of any county through which any such road, or part thereof, shall pass, or in which said bridge may be situated, to pay to such corporation the amount of money expended by it in the construction of such road or bridge, and keeping the same in repair, and all other necessary expenses, including any sums paid for lands appropriated by such corporation, together with interest on said account and sums of money, at the rate of twenty per centum per annum, after deducting from said amount the tolls and other profits annually received by said corporation; and after the payment of the amounts expended in constructing and keeping in repair said road or bridge, and other necessary expenses incurred in and about the same, and interest thereon, less the amount received by such corporation, the said road or bridge shall become free for public travel. [L. '69, p. 347, § 16; Cd. '81, § 2470; 1 H. C., § 1585.]

See, also, supra, § 5682.

§ 5729. County may Purchase Road or Bridge.—The foregoing section shall not be construed to prohibit said county court [commissioners] at any time before the expiration of said period of ten years, from purchasing said road or bridge, for any sum that may be agreed upon by said county court [commissioners] and corporation. [L. '69, p. 384, § 17; Cd. '81, § 2471; 1 H. C., § 1586.]

CHAPTER XVII.

Roads Improved or Paved at Expense of Land Benefited.

See, also, next two chapters.

§ 5730. County Commissioners may Establish, etc.—The commissioners of any county may, at any regular or called session, cause to be established, located and constructed, improved, straightened, widened, altered or relocated any public road or highway as herein provided, when the same is conducive to the public convenience or welfare. [L. '93, p. 301, § 1.]

Cited in 13 Wash. 54; 20 Wash. 40; 22 Wash. 107.

§ 5731. Definition and Construction of Terms.—The word "improvement" as used in this chapter shall mean a road as contemplated to be improved under this act. The word "road" as used in

this chapter shall be construed to mean a public highway or thoroughfare. The words "territory (or property) particularly benefited" as used in this chapter shall be construed to include, in addition to the lands lying within two miles on either side of the improvement, all cities, road districts or townships, which will be subject to special assessment for the improvement. The words "improvement boundary" as used in this chapter shall be construed to mean a line two miles distant from and parallel to the center line of the improvement on either side thereof, connected at the places of beginning or terminí by a line at right angles thereto, unless such line enter the corporate boundary of a city, in which case the improvement boundary shall follow the meandering of the city boundary in so far as said boundary shall come within said two-mile limit. Words used in the singular in this chapter shall include the plural, and the plural the singular. [L. '93, p. 301, § 2.]

§ 5732. Limitation on Construction.—No road improvement shall be located or commenced under this chapter unless the same has its beginning at the boundary limits of an incorporated city, or trade center located on a railroad or navigable body of water, or connect with a road or road system already improved under this chapter, or with a road which has been otherwise constructed of such a nature to permit of heavy freighting and rapid travel on the same at any time of the year. [L. '93, p. 301, § 3.]

Cited in 13 Wash. 54.

§ 5733. Description of Improved Road.—An improved road contemplated under this chapter shall be constructed as near as practicable along the center line of the established highway, and shall be uniformly graded to a width of not less than sixteen feet; the profile thereof shall not have a greater incline at any point of more than one foot perpendicular to twenty feet horizontal; proper drains, culverts and bridges shall be constructed to convey off all surface and seepage water, and when the road is located along a hillside or incline, the drainage of the surface of the roadbed shall be toward the hillside or incline; a roadway shall be constructed upon the graded road in such a manner and of such material as will permit of heavy freighting by team and rapid driving during any time of the year, and if such construction be a macadam or Telford pavement, or a roadbed of equal durability of other material, it shall not be less than twelve feet wide; if of plank, gravel, crushed stone or other material equally or less permanent, it shall be not less than eight feet wide, and shall be constructed on the grade so that the right-hand side of the roadway going out from the place of beginning shall as nearly as practicable conform to the center line of the grade. [L. '93, p. 302, § 4.]

§ 5734. Costs.—The costs and expenses of the improvements made under this chapter shall be apportioned as near as may be to the corporations, companies, persons and property benefited thereby. [L. '93, p. 302, § 5.]

§ 5735. Application to Commissioners.—Application for such improvement shall be made to the commissioners of the county, signed by two or more owners of lots or lands which will be particularly benefited thereby: Provided, that such petitioners shall appear by the assessment-rolls of the county to own property which will be particularly benefited, representing in value not less than ten thousand dollars for each mile of the improvement petitioned for, and the petitioners must represent property within the improvement boundary equivalent to not less than five thousand dollars for each mile of the proposed improvement. [L. '93, p. 302, § 6.]

§ 5736. Petition to be Filed With Clerk of County Commissioners. The petition shall be filed with the clerk of the board of county commissioners, and shall set forth the necessity of the improvement, and describe the route and termini thereof; and there shall be filed therewith a bond payable to the county with at least two good and sufficient sureties in not less than one thousand dollars, conditioned for the payment of all costs if the prayer of the petition [petitioners] be not granted, or be dismissed for any cause. [L. '93, p. 303, § 7.]

§ 5737. Approval of Bond—Hearing on Petition—Dismissal.—If the bond be approved by the clerk of the board of county commissioners, he shall immediately deliver a copy of the petition to the commissioners who may appoint a time for the hearing and consideration of said petition, and if the commissioners upon the hearing find against the improvement, they shall dismiss the petition and proceedings at the cost of the petitioners; and they shall cause an itemized bill of costs to be made up by the clerk for their examination and approval, which shall include the per diem of the engineer, together with all other costs necessarily made. [L. '93, p. 304, § 11; L. '99, p. 169, § 1.]

§ 5738. Order for Improvement—Surveyor's Plat and Estimate.—If the commissioners find for the improvement they shall cause to be entered on their journal an order directing the engineer to proceed with the construction of said improvement in the following manner:

1. The county engineer shall be the engineer and shall go upon the road described in the petition or as changed in accordance with this chapter, and survey and level the same, and set a stake at every hundred feet, numbering from the place of beginning, out; note the intersection of lines and boundaries of lands, road districts, or township lines, landmarks and road crossings, and make a report, profile and plat of the same, and estimate the number of cubic yards of

earth or other substance to be removed, cut or filled, necessary bridges, culverts and drains to be constructed, obstructions to be removed, the materials along or adjacent to said road which can be made available and used in construction of the same, the estimated cost thereof, and an estimate of the cost of each working section, as hereinafter provided, and of each section of one hundred feet.

2. The engineer shall also make and return a schedule and plat of all the lots and lands lying within the improvement boundary, which plat shall be drawn upon a scale sufficiently large to represent all the meanderings of the road proposed to be improved, and shall distinctly show the boundary lines of each lot or tract of land included in the improvement boundary, the name of the owner of each lot or tract of land as the same may appear upon the records at the time, and an estimate of the total cost of the entire improvement proposed, which estimate shall include all fees and salaries estimated to be paid for locating, supervising and appraising, together with such other matters as the engineer may deem material. The profile shall show the surface line, the grade line and gradient fixed, and the engineer shall make and file with his report an itemized bill of all costs made in the discharge of his duty under this section, and shall file his report with the clerk of the board of county commissioners within thirty days after making the survey and level. [L. '93, p. 304, § 12; L. '99, p. 170, § 2.]

§ 5739. Appraisers—Oath and Duties of.—Immediately upon the filing of the engineer's report, the county commissioners shall appoint three disinterested appraisers, residing within the county, but not within the territory particularly benefited by the proposed improvement, whose duty it shall be to at once proceed to assess the benefits of such proposed improvement to the corporations, companies, persons and property particularly benefited thereby, and estimate the damages to property over or through which the road shall be established or relocated, and award the same to the owners thereof. Before entering upon their duties, the appraisers shall severally take and subscribe to an oath to impartially and, to the best of their knowledge and ability, perform the duties required of them, and file said oath with the clerk of the board of county commissioners. Said clerk shall thereupon and forthwith deliver into the hands of the appraisers the engineer's report upon the proposed improvement, and all maps, charts and schedules pertaining thereto, taking a receipt from said appraisers therefor. The appraisers shall thereupon proceed to actually view in person all lands as shall appear from the engineer's report to lie within the improvement boundary, and obtain from the duplicate assessment-roll of the county the total assessed valuation at the time of all property within the limits of any road district or township through or into which the proposed improvement

is located, and of all property within the limits of any incorporated city whose boundary lines shall be within ten miles of the proposed improvement, or of any part thereof. They shall then prepare a schedule, which shall set forth,—

1. The benefits assessed to the county for such improvement, which shall be one-third of the whole estimated cost thereof;

2. The benefits assessed to each road district or township through or into which the improvement is located, which assessment shall be equal upon all the assessed property in the road district or township according to the value thereof as shall appear upon the duplicate assessment-roll of the county at the time, and which benefits shall not be assessed at more than one-third of the whole estimated cost of the improvement within the boundary of the road district or township;

3. The benefits assessed to all property within each incorporated city within the county, which assessment shall be equal upon all the assessed property within the city according to the value thereof as shall appear upon the duplicate county assessment-roll at the time, and which benefits shall not be assessed at more than one-sixth of the whole estimated cost of the improvements, or of that portion thereof which is located within a limit of ten miles from the corporate limits of the city, and the property within any city shall not be considered as territory particularly benefited for any improvement lying more than ten miles distant from the corporate boundary of said city;

4. The benefits assessed to the lots and lands lying within the proposed improvement boundary, listing each tract of land assessed, giving the number of acres thereof, the owner as shall appear of record, the estimated valuation of each tract exclusive of improvements, and the benefit assessed thereto, and the total amount of benefits assessed to lots and lands shall in no case exceed one-third of the whole estimated cost of the proposed improvement: Provided, that lots or tracts of land within the improvement boundary whose natural outlet will not be in whole or in part over said road, when improved, shall not be separately assessed under the provisions of this clause;

5. A list of each tract or lot or portion thereof taken and damaged by the establishment or relocation of the road proposed to be improved and the lands contiguous or lying near thereto on which is located material necessary or available to be used in the construction of the proposed improvement, and of materials available for construction on contiguous or near lying lands, which list shall recite the number of acres of each of such lands so to be taken or damaged, and the amount of such contiguous or near lying materials estimated to be required, the owner thereof as shall appear of record, the esti-

mated value thereof including improvements thereon, and the damages resulting therefrom, and the award made therefor. [L. '93, p. 305, § 13.]

§ 5740. Appraisers to File Report—Notice to Owners.—The appraisers shall, within sixty days after date of entering upon their duties, file a report of their findings, together with the engineer's report and all other papers to them delivered, with the clerk of the board of county commissioners; and the appraisers shall make and file with their report an itemized bill of all costs made in the proper discharge of their duties under this chapter; and in such bill the appraisers shall not charge for services in excess of three dollars per day for each appraiser for time actually employed, and no extra compensation shall be allowed for mileage; the clerk shall then without delay fix a date for the hearing of the reports of the engineer and appraisers; he shall prepare and deliver to the petitioners, or any one of them, a notice in writing, directed to the resident lot or land owners, officer or agent [of] any private corporation, and to the mayor or clerk of each city, and to the road overseer of each road district or board of overseers or clerk of each township affected by the improvement, setting forth the pendency, substance and prayer of the petition, together with a tabular statement of the assessments and award[s] of damages as made by the appraisers in their report; a copy of each notice shall be served upon each lot or land owner, officer or agent of private corporations, mayor or clerk of each city, each road district overseer, and the board of overseers or clerk of each township at least ten days before the day set for the hearing; and the person who serves the same shall make return on the notice under oath, of the time and manner of service, and file the same with the clerk of the board of county commissioners on or before the day set for hearing; and the clerk shall at the same time give like notice to each nonresident lot or land owner, or by publication in the official newspaper of the county for at least two consecutive weeks before the day set for the hearing, which notice shall be verified by the affidavit of the printer or other person knowing the fact and filed with the clerk on or before that day. [L. '93, p. 307, § 14.]

§ 5741. Commissioners to Examine Assessment.—The county commissioners shall meet at the clerk's office on the day so fixed by the clerk, and shall first determine whether the required notice has been given. If they find that due notice has not been given, they shall continue the hearing to a day to be fixed by them, and order the notices to be served as hereinbefore provided, and when they find that due notice has been given, they shall examine the reports of the appraisers and the assessment made and the damages awarded, and

if such apportionments are in all respects fair and just according to the benefits and damages, they shall approve and confirm the same. [L, '93, p. 308, § 15.]

§ 5742. May Amend Appraisers' Report—Proceedings. — If the commissioners find that the apportionment of assessments and awards of damages made by the appraisers is unfair and unjust, and ought not to be confirmed, they shall so order and amend the appraisers' report as to make it fair and just; and if necessary, in their opinion, they may adjourn the further hearing not exceeding twenty days, to a day to be fixed by them, and go upon the premises, and by actual view apportion the entire cost of location and construction, or any part thereof, as may seem just and proper and award damages as may seem just and proper, and on the day so fixed by them they shall again meet at the clerk's office and determine the assessment of benefits and awards of damages. [L. '93, p. 308, § 16.]

§ 5743. Who may File Exceptions to Apportionment.—Any person, company or corporation party to the proceedings may file exceptions to the apportionment of benefits or compensation for damages at any time before the time set for the final hearing of the report and apportionment; the commissioners may hear testimony and examine witnesses upon all questions made by the exceptions, and for that purpose may compel the attendance of witness by subpoena, which the clerk of the superior court shall issue on demand; and their decisions on the exceptions shall be entered on the journal, and if they sustain the exceptions, the cost of hearing thereon shall be paid out of the county treasury, and if they overrule the same, such costs shall be taxed against the person, company or corporation filing the exceptions. [L. '93, p. 309, § 17.]

§ 5744. Appeal. — Any person or corporation aggrieved thereby may appeal from any final order or judgment of the commissioners, made in the proceedings and entered upon their journal for determining either of the following matters:—

First: Whether said improved road will be conducive to the public needs, convenience and welfare;

Second: Whether the route thereof is practicable;

Third: The compensation for land or construction materials appropriated;

Fourth: The damages awarded to the owners of property affected by the improvement.

And the appellant shall file with the commissioners, at the final hearing before them, a notice in writing of his intention so to do, and specifying therein the matter appealed from. The commissioners shall fix the amount of the bond to be given by the appellant, and cause an entry thereof and of the notice to be made upon their jour-

nal. The party appealing shall, within ten days thereafter, file with the clerk a bond in the amount so fixed, with at least two sufficient sureties, to be approved by the clerk, conditioned to pay all the costs made on the appeal in case the appellant fails to sustain the same, or the appeal to be dismissed for any cause; and the clerk shall make a complete transcript of the proceedings had before the commissioners, and certify the same, together with all original papers, except bonds filed by appellant, filed in his office, and transmit them to the superior judge of the county within twenty days from the day of the final hearing. [L. '93, p. 309, § 18.]

Cited in 13 Wash. 63.

§ 5745. Superior Judge to Fix a Day, etc., for Hearing.—The superior judge shall file the transcript and original papers, and docket the case, styling the appellant plaintiff, and the county commissioners and petitioners defendants, and thereupon he shall fix a day, not exceeding five days thereafter, for the hearing of all preliminary motions and the examination of the papers so filed; on the day so fixed all preliminary motions shall be heard and determined, as well as all questions arising upon the record, and if he find that the proceedings are irregular in substance, or that the appeal has not been perfected according to law, he shall dismiss the appeal at the cost of the appellant, and certify such dismissal, with his findings thereon, back to the commissioners; but the judge may, in his discretion, order and allow the correction of any technical defect, error, or omission in such proceedings. [L. '93, p. 310, § 19.]

Cited in 13 Wash. 63.

§ 5746. Appeals.—Appeals may be tried as in cases of appeals from justices of the peace to the superior court. [L. '93, p. 310, § 20.]

§ 5747. Jurors' Oath.—The superior court shall administer to the jurors an oath, faithfully, impartially, and to the best of their ability, and from actual view of the premises along the whole route of the improvements, to examine and determine the particular matters appealed from, and to render a true verdict according to the facts appearing to them from actual view of the premises, and the evidence under the charge of the court. [L. '93, p. 310, § 21.]

§ 5748. Who may or may not Accompany the Jury.—The sheriff or his deputy, together with the engineer who surveyed, leveled, apportioned and platted the improvement, may accompany the jury and point out its route; no other person shall be permitted to interfere in any way with the jurors in the discharge of their duties, and after the jury has fully examined the premises and returned to court, either party may be heard in person or by counsel, and may

offer evidence to the jury, under the directions of the court, upon any matter given it especially in charge. [L. '93, p. 310, § 22.]

§ 5749. Verdict.—The jury shall find and return a verdict determining the matter or matters appealed from, being one or more of the following propositions, viz.:—

First: Whether said improved road will be conducive to the public needs, convenience or welfare;

Second: Whether the route thereof is practicable;

Third: The compensation due each appellant for land or construction materials appropriated;

Fourth: The damage due each appellant for property affected by the improvement.

The jury shall return their verdict in writing, signed by the jurors. As to said proposition, it shall be necessary for only nine jurors to agree. [L. '93, p. 311, § 23.]

§ 5750. Return of Verdict—Records to be Forwarded.—Upon the return of the verdict the same shall be recorded, and together with all papers and records, duly certified, forwarded to the office of the clerk of the board of county commissioners. [L. '93, p. 311, § 24.]

§ 5751. Costs.—If the verdict of the jury be in favor of the appellant the commissioners shall cause to be made on their journal an entry carrying out the findings of the jury; and if the jury find that the improvement is not necessary, or will not be conducive to the public need, convenience or welfare, or is not practicable, the commissioners shall cause an entry to be made upon the journal dismissing the proceedings at the cost of the county, which shall be paid out of the general county fund on the order of the county commissioners. [L. '93, p. 311, § 25.]

§ 5752. Improvement.—If the jury find that the improvement is necessary and that the same will be conducive to the public needs, convenience and welfare, and is practicable, the commissioners shall assess the costs to the appellant. [L. '93, p. 311, § 26.]

§ 5753. Damages.—If the jury find that the allowance of compensation and damages, as made by the commissioners, fully compensate for all land and construction materials appropriated and damages sustained, the commissioners shall assess the cost made by the appeal to the appellant. [L. '93, p. 311, § 27.]

§ 5754. Cases Consolidated, When.—If more than one party appeal, the superior judge may order the cases to be consolidated and tried together, and the rights of each party as to compensation and damages shall be separately determined by the jury in its verdict. [L. '93, p. 311, § 28.]

§ 5755. Bids for Construction — Notice for Awards, etc.—After the transcript of the proceedings before the superior judge, and all other papers in the case, are returned to the clerk of the board of county commissioners, the commissioners shall cause such entry to be made on their journal as may be necessary to give effect to the verdict and findings of the jury, and shall fix a time for the receiving and opening of sealed bids for the construction of the proposed improvement, and if in the opinion of the board of county commissioners the interest[s] of the public will be advanced thereby, they shall divide the improvement into sections of a more or less number of lineal feet, and call for bids on each of said sections, or they may call for bids for each kind of work to be done or material to be furnished, or any one or more of such kinds of labor and material as they may believe to be advisable, but in every case all of the construction shall be performed by contract, duly awarded, as provided in this section. They shall cause notice to be given, as hereinafter provided, of the time and place of awarding contracts, and direct the board of construction and the engineer who made the survey and estimates, or other competent engineer, to attend at the time and place of opening bids. The board of construction shall superintend and conduct the same, receive all bids for the construction of the improvement, and enter into agreements in the name of the county. The notice for bids shall state the location and general nature of the improvements to be done, and where the plans and specifications are filed for examination, and shall be signed by the clerk of the board of county commissioners by order of the board. The commissioners may provide in such notice, if convinced that the interests of their county will be protected or advanced thereby, that no foreign, alien or pauper labor shall be employed in the construction to be let. The notice shall be published for at least two consecutive weeks previous to the date of letting, in one or more daily or weekly papers published and of general circulation in the county, and in such other manner as the board may see fit to direct. [L. '93, p. 312, § 29.]

§ 5756. Bids to be Accompanied With Certified Check or Bond—Action on.—Every bid shall be accompanied by a certified check or bond in the sum of five hundred dollars, or not less than one-tenth of the amount of the bid, with security satisfactory to the board of construction, conditioned that if the contract be awarded to him he will, when required by the board of construction, execute an agreement in writing to perform the work according to the plans and specifications. No bid shall be received by the board of construction or any member thereof except at such meeting, and all bids then received shall be immediately, when opened, publicly read. The board of construction shall reject any or all bids if in their opinion good cause exists therefor, or if the total amount of such lettings shall

exceed the estimated cost of construction, but otherwise they shall award the contract or contracts to the lowest responsible bidder, who shall give satisfactory evidence of his ability to perform the contract. The bidder to whom contracts shall be awarded shall execute to the board of construction, for the benefit of the county, a bond to accompany each separate agreement, conditioned for the faithful performance of the contract, in a sum equal to one-half the amount of the contract, and with sureties satisfactory to the board of construction. [L. '93, p. 313, § 30.]

§ 5757. Payments, How Made.—When the amount of any contract is less than one thousand dollars, no payment shall be made thereon until the contract is fully completed to the satisfaction of the board. When partial payments are provided for in the agreement, as each payment becomes due and before payment shall be made, the board of construction shall file with the clerk of the board of county commissioners their certificate, stating as near as may be the total amount of work done or material furnished, and that such work appears to have been done in all respects as required by the contract. The clerk of the board of county commissioners shall thereupon draw a warrant on the county treasurer in favor of the contractor for the amount due: Provided, that no partial payment made during the progress of the work shall exceed eighty per centum of the estimated value of the work done: And provided further, that before final payment is made on any contract, the work shall first be examined by the engineer who prepared the estimate, or other competent engineer, and his certificate be filed with the clerk of the board of county commissioners that the work has been fully performed and completed in accordance with the contract. [L. '93, p. 313, § 31.]

Cited in 20 Wash. 44.

§ 5758. Readvertising for Bids.—If, at the time of letting, satisfactory bids are not received for the whole or any part of the improvement, a future time and place shall be fixed for again receiving bids, notice of which shall be given and the same conducted in every manner as hereinbefore provided; or, if any contractor shall fail to perform his work or complete the same, the contract shall be relet in manner as hereinbefore provided. [L. '93, p. 314, § 32.]

Cited in 49 Wash. 294.

§ 5759. County Engineer to Inspect Work.—It shall be the duty of the county engineer in charge of said work, if the county commissioners so direct, to inspect all work of construction from time to time and see that the same is being done according to contract. [L. '99, p. 171, § 3; L. '93, p. 314, § 33.]

Cited in 20 Wash. 44.

§ 5760. Cost of Improvement.—When not otherwise provided for in the petition the cost of the improvement shall be entered by the clerk of the board of county commissioners upon the duplicate assessment-roll against the persons and property as shown on the schedule of appraisement, first deducting from any assessment against a person, company or corporation to whom awards of damages have been made the amount of the same, and in case of any excess of damages over the assessment, a warrant shall be drawn on the county treasurer in favor of the person, company or corporation to whom such damage has been awarded for the balance due after deducting the assessment. And the assessment so made shall be a tax upon the persons and property, and the same shall be collected as other taxes are collected. [L. '93, p. 314, § 34.]

§ 5761. Payment in Annual Installments.—When the petition shall so request, the improvements provided for under this chapter shall be paid for in annual installments by an annual tax levied upon the property assessed for benefits. The petition shall set forth "that the improvement be paid for on the —— years installment plan," and the number of years shall not be more than ten. When the improvement is done under the provisions of this section the clerk of the board of county commissioners shall divide the total estimated cost of the improvement, including interest on deferred payments, into as many equal parts as there are installments, and shall each year when an installment is payable, enter the amount of the same upon the duplicate assessment-roll against the persons and property assessed for benefits, and it shall be the duty of the county treasurer to collect the same the same as other taxes are collected. [L. '93, p. 315, § 35.]

§ 5762. Construction Contracts.—Construction done under the yearly installment plan shall commence at the place of beginning and be completed without intermission toward the place of ending, and the payment of improvements under such installment plan shall not in any year exceed the benefit assessments for that year. The engineer shall divide the road into as many annual construction sections of equal cost as there are years of construction, and let contracts from time to time during the progress of construction in like manner as hereinbefore provided, and any excess funds appropriated to one section shall be applicable to the succeeding section. [L. '93, p. 315, § 36; L. '99, p. 171, § 4.]

§ 5763. Petition — When Payment Out of General Fund.—The petition may set forth that public welfare requires that the construction of the whole line of improvement petitioned for be begun without delay. If upon the hearing of the petition the board of county commissioners determine that public welfare calls for the construc-

tion of the whole line of improvement as soon as possible, they shall provide for paying the cost thereof out of the general road fund of the county, and if the county has not sufficient funds on hand or in process of collection they may, by resolution passed at any regular or special session, direct that an election be called and held for the purpose of submitting to the legal voters of such county the question whether the bonds of the county shall be issued to provide funds for such construction. Notice of such election shall be given by publication in some newspaper published in this state, and having a general circulation in such county, and to be designated by the board of county commissioners, at least once in each week for four successive weeks, but the first publication shall be at least thirty days prior to the day of election, and if such notice be not published in a newspaper printed in the county where such election is to be held, the notice shall be posted in twenty of the most public places in said county at least thirty days prior to the date of said election. The election notice shall state the amount of bonds proposed to be issued, and shall be signed by the county auditor. The ballots used at such election must contain the words, "Bonds, yes," and "Bonds, no," and the elector receiving the same shall cross out therefrom part of the ballot in such manner that the remaining part shall express his vote upon the question of issuing bonds. In all other respects the general election laws of the state shall control. If three-fifths of the legal voters of such county voting at such election shall deposit a ballot bearing the words "Bonds, yes," it shall thereupon be lawful for the board of county commissioners to issue the bonds of such county, not exceeding the amount so authorized, to be styled, "Road bonds of —— county." Such bonds shall be issued in denominations of not less than one hundred nor more than one thousand dollars, and shall be numbered from one up consecutively; shall bear the date of their issue; shall be made payable to the bearer at a time to be specified therein not more than twenty years from their date; and shall bear interest at the rate of not to exceed six per cent per annum, payable semi-annually, and such interest shall be evidenced by coupons attached to such bonds, and the principal and interest shall be payable at the office of the treasurer of such county, and cause the same to be specified in such bonds; subject, however, to any general law of this state regulating the place of payment of county bonds. Such bonds shall be printed, engraved or lithographed on good bond paper, and shall be signed by the chairman of the board of county commissioners, and countersigned by the county auditor, and shall have the seal of the board of county commissioners thereof affixed; and the coupons shall be executed by the autograph signatures or by engraved or lithographed facsimiles of the autograph signatures of the chairman of the board of county

commissioners and the county auditor, and need not be sealed. Nothing in this chapter contained shall be construed to authorize the issue of any bonds which would make the aggregate indebtedness of such county exceed one and one-half per cent of the value of the taxable property therein, to be ascertained by the last assessment for state and county purposes. [L. '93, p. 315, § 37.]

§ 5764. Annual Tax Levy to Meet Bonds.—When bonds are issued to defray the whole or any part of any improvement provided for under this chapter the entire estimated cost of the improvement shall be divided into as many equal parts as the bonds have years to run, and each part thereof placed annually upon the duplicate assessment-roll for collection as other taxes, as hereinbefore provided, and such taxes when collected shall be credited to the general road fund of the county. [L. '93, p. 317, § 38.]

§ 5765. Sale of Bonds.—The board of county commissioners of any county issuing bonds under this chapter are authorized to sell any such bonds to the highest bidder at a price not less than the par or face value of the same, after inviting proposals by advertising the sale thereof in such paper or papers for such period of time as such board shall direct. The proceeds of the sale of such bonds shall be paid over to the county treasurer, and remaining proceeds shall be applied only to the construction of such roads and bridges in such county as are mentioned in section 5738 of this chapter, and the construction and repair of such roads and bridges shall be deemed to be and are hereby declared to be strictly county purposes for which indebtedness of such county may lawfully be incurred as in this chapter provided. [L. '93, p. 317, § 39.]

§ 5766. Sinking Fund, etc.—The board of county commissioners of any county issuing bonds under this chapter are authorized and required annually to levy and collect a tax sufficient in amount to pay when due the interest on such bonds, and in case such bonds are issued to run longer than ten years they are further authorized and required annually to levy and collect, beginning with the annual tax levy next succeeding the expiration of ten years from the date of such bonds, an additional tax to provide a sinking fund for the payment of the principal of such bonds. Such annual sinking fund levy shall be at least equal to ten per cent of the amount of bonds issued. Such sinking fund may be invested in any bonds of the state of Washington or of any county, city, town or school district therein, or may be used to pay off the bonds issued under this chapter as hereinafter provided. [L. '93, p. 318, § 40.]

§ 5767. County Treasurer to Call in Bonds.—Whenever the sinking fund provided for by the last preceding section shall amount to the sum of two thousand dollars or more, not previously applied

as in this section provided, it shall be lawful for the county treasurer to designate sufficient bonds, bearing the lowest numbers among those outstanding, to absorb the amount of said fund on hand, as near as may be, and he shall call such bonds by publishing a notice, giving the numbers of the bonds so called for payment, and fixing a day, not less than thirty days after the first publication of the notice, when the bonds will be paid with accrued interest at the place of payment of said bonds, which notice shall be published in a daily newspaper published in the county seat once in each week for four consecutive weeks. And in case the bonds so called for payment are not presented on the day fixed therefor in such notice, interest thereon shall thereupon cease: Provided, the money for the payment thereof shall at all times thereafter be retained at the place of payment of the bonds, in readiness for payment of the same on presentation, until such bonds are presented for payment. All bonds and coupons received by the county treasurer under the provisions of this section shall be at once canceled by him and filed as vouchers with the county auditor as ex-officio clerk of the board of county commissioners. [L. '93, p. 318, § 41.]

§ 5768. Penalty.—If an engineer, clerk of the board of county commissioners, member of the board of construction, or appraiser, neglect or refuse to perform any duty imposed upon him by the provisions of this chapter, he shall forfeit and pay a fine of twenty-five dollars for every such neglect or refusal, to be recovered before any officer having competent jurisdiction, in the name of the state, for the benefit of the common schools of the county, at the suit of any person aggrieved thereby. [L. '93, p. 319, § 42.]

§ 5769. Court may Correct Error, etc.—The court in which any proceeding is brought to recover any tax or assessment paid, or declare void the proceedings to locate or establish any road, or to enjoin any tax or assessment levied or ordered to be levied to pay for the labor and expense as aforesaid shall, if there is manifest error in the proceedings, allow the plaintiff in the action to show that he has been injured thereby, and may on application of either party, appoint such person or persons to examine the premises or to survey the same, or both as may be deemed necessary, the court in which any such proceedings are begun shall allow parol proof that said improvement is necessary and will be conducive to the public needs, convenience and welfare, and that any steps required by law for any improvement have [been] substantially complied with, notwithstanding any defects or omissions in the record required to be kept by any board or officer; and with or without finding error, the court may correct any gross injustice in the apportionment made by the commissioners; the court shall, on final hearing, make such order

in the premises as shall be just and equitable, and may order that such tax and assessment remain on the duplicate assessment-roll for collection, or the same to be levied, or may perpetually enjoin the same or any part thereof; or if the same has been paid under protest may order the whole or any part thereof as is just and equitable to be refunded, and the costs of such proceedings shall be apportioned among the parties or paid out of the county treasury as justice requires. [L. '93, p. 319, § 43.]

§ 5770. Commissioners to Hear Petition for Locating Improvements.—The county commissioners may hear and determine at the same time and under the same petition the necessity of locating any new improved road, or of a road already partly improved, or of widening, straightening, relocating or altering any road previously improved, or in process of improvement under this chapter, as the necessity of the case requires, and shall cause such entry to be made on their journal as in their judgment is required. All estimates shall be made in the manner provided in this chapter. No assessment shall be made to any land, person, or property upon any principle other than that of benefits derived and in proportion thereto. [L. '93, p. 320, § 44.]

§ 5771. Bond of Engineer and Appraiser.—The board of county commissioners shall require each engineer and appraiser appointed by them under the provisions of this chapter to enter into a good and sufficient bond, with surety to be approved by them, conditioned for the faithful performance of his duties, in a sum to be fixed by the county commissioners, and an action may be brought on such bond by any person aggrieved by a failure of any such person so appointed to do his duty, in the name of such party, and recovery may be had for his benefit. [L. '93, p. 320, § 45.]

§ 5772. Officers to Take Charge of Roads.—Upon the completion of any improved road or any section thereof, for which final payment has been made, the charges and care thereof shall be assumed by the district road overseer or township road officers in each district or township in which the improvement is located, and it shall be the duty of such road officers to keep the improved roads in their respective districts or townships in constant and good repair, and any failure so to do shall justify the county commissioner in the commissioner's district in which the neglect occurs, to cause such repairs to be made at the expense of the road district or township in which repairs are done. [L. '93, p. 320, § 46.]

§ 5773. Places of Beginning, How Construed.—In case the road proposed to be improved be located so as to connect with two or more trading points located upon a railroad or body of navigable water, or with a road already improved under this chapter, or with a

road over which heavy freighting and rapid travel can be done at any time in the year, then each of said points shall be construed as "places of beginning" under this chapter, and construction may be commenced at one or more of them as the board of construction shall direct. [L. '93, p. 420, § 47.]

§ 5774. Commissioners may Vacate.—The county commissioners may, on the proper petition and bond being filed, and the same notice being given as required in cases of the location of an improved road, declare any such road vacated and abandoned and its location and establishment to be held for naught, if in their judgment the same has ceased to be of public utility, and the public need, convenience and welfare no longer demand the maintenance thereof; but private rights of persons acquired by reason of the location and establishment of such road shall not be interfered with nor in any way impaired thereby unless due compensation be made therefor. [L. '93, p. 421, § 48.]

Cited in 71 Wash. 317.

§ 5775. Public Lands Subject to Assessment.—All state, county, school, school district or other lands shall be subject to the provisions of this chapter, and the proper authorities having charge of said lands may institute proceedings to enjoin assessment of benefits hereunder or for damages herefrom as in the case of private persons: Provided, that such public authorities shall not be required to give any bond in such proceedings. [L. '93, p. 421, § 49.]

§ 5776. Record of Roads to be Made.—The clerk of the board of county commissioners shall make, in a suitable book to be provided for that purpose, at the expense of the county, a complete record of each road in his county improved under the provisions of this chapter, which record shall include the petition and all bonds, reports of the engineer, appraisers and board of construction and all journal entries made, together with all plats and other papers necessary to show a complete history of all that is done in each case up to and including the final order made by the board. [L. '93, p. 421, § 50.]

§ 5777. Road Accounts, How Kept.—The commissioners of any county wherein a road improvement is ordered shall provide a suitable book in which to keep the improved road accounts of the county. The clerks shall open therein an account with each improvement in the name by which the same is known, and charge all assessments and credit all payments made in the case. The money collected on each improvement shall constitute a special fund unless the cost of the improvement shall have been advanced out of the general road fund, in which case the money collected shall be credited to the general road fund. [L. '93, p. 321, § 51.]

§ 5778. Fees for Services of Officers.—Fees for services of officers under this chapter shall be the same as for like services in civil cases, or as is or may be provided by law. [L. '93, p. 322, § 52.]

§ 5779. Per Diem of Commissioners.—In performing their duties under this chapter, the county commissioners shall be entitled to a per diem allowance equal to that allowed by law for other services. [L. '93, p. 322, § 53.]

§ 5780. Blanks.—It shall be the duty of the prosecuting attorney in each county to prepare suitable blanks for the use of the board of county commissioners, under this chapter. [L. '93, p. 322, § 54.]

§ 5781. Reimbursement.—All fees under this chapter, when not otherwise provided for herein, shall be paid out of the county treasury as soon as the bills and items thereof are examined and allowed by the commissioners; and for all amounts so paid, except to the commissioners and clerk, the commissioners shall order the general county fund to be reimbursed from the money raised for the respective improvement. [L. '93, p. 322, § 55.]

§ 5782. Balances.—All balances remaining unexpended of any road improvement fund arising from excess of assessments made after the expenses thereof have been fully paid, shall be transferred to the general road fund of the county. [L. '93, p. 322, § 56.]

CHAPTER XVIII.

Boulevards, Highways, Cycle Paths, etc., at Expense of Land Benefited.

See, also, last preceding chapter, and next chapter.

§ 5783. Improvement of Boulevards, Cycle Paths and Highways. There shall be and is hereby conferred upon cities of the first class within the state of Washington, full power and authority to acquire, receive, condemn, lay out, grade and improve boulevards or composite highways, and walks, cycle paths and parks in connection therewith and prescribe and limit the use thereof to specified kinds of traffic; and also full power and authority to levy and provide for the collection by the county treasurer of an assessment or assessments upon all lots or parcels of land benefited thereby, and full power and authority to defray the full cost and expense thereof, including the cost of all necessary lands for right of way, whether obtained by purchase or condemnation, by issuing local improvement district bonds, as hereinafter provided, which said assessments and bonds shall become and remain a lien upon said lands until the said assessments and bonds shall have been paid, except as is herein otherwise provided; and the same full power and authority is hereby conferred upon counties where the said boulevards or composite

highways, walks, cycle paths and parks extend from and beyond the limits of any such city of the first class into such county, and prescribe and limit the use thereof to specified kinds of traffic; the authority and power hereby conferred shall be exercised in the manner pointed out by this chapter, but any failure of power herein or informality may be supplied from the general power possessed by cities and counties to lay out, grade, improve, and protect and repair roads, bridges and highways; said boulevards or composite highways shall, with the walks, cycle paths and parks connected therewith, be in no case less than one hundred feet wide, nor more than two hundred feet in general width. [L. '97, p. 266, § 1.]

Cycle paths in cities: See infra, §§ 7760–7765.

§ 5784. Petition for Improvement.—Whenever the owners of property to be benefited along the line of any proposed boulevard or composite highway, shall desire to improve the same under the provisions of this chapter, at the expense of such property benefited, and by the issuance of serial bonds to be payable in ten annual installments, with interest, they must present to the city council of such city of the first class a petition setting forth a general description of the route of the said improvement within said city, giving its terminal points, and a general description of the character of improvements desired, together with the general plan of the various roadways, walks, cycle paths and contemplated parks; if any portion of such proposed boulevard or composite highway shall extend beyond the limits of such city, a similar petition shall be filed with the board of county commissioners of the county into which it so extends covering the portion of same outside of the city; before any such petition shall be allowed and favorably acted upon, it must appear therefrom that the owners of a majority in area of the lands to be benefited along said proposed boulevard or composite highway have signed the same and requested the work to be done under the provisions of this chapter; and any administrator, executor or guardian may, upon consent of the court appointing him, sign the same, and his signature shall bind the property of the estate or ward. [L. '97, p. 267, § 2.]

§ 5785. Survey and Estimate to be Made—Notice and Hearing.—Whenever any such petition shall be filed, signed by a majority of the property owners as aforesaid, a council or board, as the case may be, shall cause a survey, plan and estimate of the entire cost within the said district to be made, which shall be filed with the city clerk or county auditor, as the case may be: Provided, that no such survey, estimate and plan shall be made without the said petitioners shall advance the cost thereof, which shall be afterward included as a part of the expense of the improvement, and refunded

if it be made; immediately after the said survey, plan and estimate is made and filed, the city clerk or county auditor, as the case may be, shall cause a notice of such filing to be published daily for ten days in the newspaper doing the city or county printing, which notice shall state that such petition has been filed, and shall give a brief and general description of the improvements proposed, the terminal points of the same and the proposed width of the same, together with the estimated cost and expense thereof, and also a description of the property included within the proposed district. Said notice shall fix a time and place at which all persons interested in the said property may appear before the said council or board and show cause, if any there be, why the said improvement ought not to be made as petitioned for. Said time shall not be less than eight days nor more than twenty days from the date of said notice. All owners who shall not make and file objections to the granting of such petition, within the time mentioned shall be deemed to have assented thereto, in the same manner as if they had signed the said petition. If any remonstrance shall be made thereto, the council or board shall hear the same, and if it shall appear that the law has not been complied with in the securing [of] a sufficient number of signers to the said petition, or that the requisite notice has not been given, or that the proposed improvement will not be a benefit to the property in the said district, or that for any other similar reason the work ought not to be done at the expense of the property owners, the said council or board shall so find, and decline and refuse to proceed further with the matter; but if it appears that the law has been in the aforesaid particulars complied with, and that the proposed improvement will be a benefit to the property in the said district, and will be a public convenience and benefit, the said council or board shall so find and shall authorize the improvements. [L. '97, p. 268, § 3.]

§ 5786. Improvements, How Ordered.—Whenever any such petition shall have been presented to the city council, and upon notice as aforesaid shall have been examined and the proposed improvement found to be a proper one to be made by local assessment, the council shall by ordinance order such improvement to be made within any city district, and shall by such ordinance create a local improvement district, which shall embrace the lands and lots described in the said notices, and which will be benefited by such improvement; such ordinance shall provide in full for the levy and collection of such assessments, the issuance and sale of the bonds, and the general outline of the improvements and the proposed method of paying therefor; when a portion of said boulevard or composite highway shall lie outside of the city limits, the board of county commissioners shall upon like petition, notice and finding,

make similar provisions for the improvement within its jurisdiction, by an order entered upon its records; the district lying within the city limits shall be known as District A, and that outside of the city, if any, as District B, and a different series of bonds shall issue in each, and the property in District A shall not be responsible for the payment of the bonds issued on District B, nor shall the property in District B be responsible for the payment of the bonds issued on District A. [L. '97, p. 269, § 4.]

§ 5787. What Constitutes a Frontage.—Each local improvement district shall include all property between the terminal points of said improvement; in case the line thereof extends beyond the city limits, the line of the city limits shall be one of the end of termini of the inner and outer districts; the inner or local improvement District A shall include all property between its termini parallel to and within three hundred feet on each side of the average central line of the said boulevard or composite highway; and all property included within said limits shall be considered and held to have a frontage upon such improvement, and shall be the property benefited by said local improvement, and shall be the property to be assessed to pay the cost thereof, which cost shall be assessed by the said city council upon all the property so benefited in proportion to the benefits obtained thereby; the outer or local improvement District B shall include all property between its terminal points, one of which shall be the line of the city limits, and all property parallel thereto and within six hundred and sixty feet on each side of the average central line of the said composite highway; and all property included within said limits shall be considered and held to have a frontage upon such improvement, and shall be the property benefited by the said local improvement, and shall be the property to be assessed to pay the cost thereof, which cost shall be assessed by the said board of county commissioners upon all the property so benefited in proportion to the benefits obtained thereby; and no lot or parcel of land in any district shall be assessed or charged for but one proportionate part thereof, regardless of any angle or change of direction in the line of improvement. [L. '97, p. 269, § 5.]

§ 5788. Relating to Street-car Tracks and Right of Way.—In arranging and laying out any such boulevard or composite highway it shall be proper and lawful to arrange for the location and right of way of a street-car track or tracks therein, but the lands upon which the same are built, or to be built, shall not be improved by such special assessment, but only at the expense of the parties owning the lands or the franchise thereon, and said land shall also be assessed in proportion to other property in the district to pay for the local improvement. [L. '97, p. 270, § 6.]

§ 5789. Assessment-rolls and Exhibits.—The city council or board of county commissioners, as the case may be, shall make out and certify to an assessment-roll, which shall show and exhibit in separate columns,—

First: The name of the owner of each separate lot, piece, parcel or subdivision of land assessed and lying within the assessment district, which shall be set opposite the inscription [description] thereof, and if the name of the owner be unknown the word "unknown" shall be written in its place;

Second: A brief description by lot, block, or by metes and bounds, of each subdivision of land therein;

Third: The assessment number of each subdivision of land separately assessed;

Fourth: The amount assessed separately against each subdivision within said district, which shall be the sum, also, that the said lot, piece or parcel of land is benefited by the said improvement;

Fifth: A plat or map showing the line or lines of said proposed improvement, and the lots, blocks, pieces and parcels of land lying in said district to be assessed for such improvement, each of which subdivisions of land shall be marked with its assessment number on its face. [L. '97, p. 270, § 7.]

§ 5790. Filing of Assessment-roll—Notice of.—Upon the completion of such assessment-roll it shall be filed with the city clerk or county auditor, as the case may be, whereupon such clerk or auditor shall forthwith give notice by publication for five days in a daily paper doing the city or county printing, that said assessment-roll is on file in his office, where it may be seen and examined by all parties interested, and the said notice shall state a time at which the council or the board, as the case may be, will hear any objections to the said assessment-roll, which time shall not be less than one nor more than ten days after the last publication of the said notice. [L. '97, p. 271, § 8.]

§ 5791. Objections to be Heard—Confirmation of Assessment-rolls. At the time appointed for hearing objections to the said assessment-roll and the assessments therein, the council or board, as the case may be, shall hear and decide upon all objections which shall have been filed by any party interested, to the regularity of the proceedings in making said improvements or in levying said assessments, or to the correctness of the amount of said assessment, or of the amount levied upon any particular lot or parcel of land; and if the proceedings are found by them to have been regular, they shall correct any errors which may be found in the assessment, and shall pass an order approving and confirming said proceedings, and said assessment so corrected by them, and their decision and order

shall be a final determination of the regularity, validity and correctness of said assessment, and of the amount thereof levied upon each lot or parcel of land, and shall bar all persons appearing and objecting or failing to appear from any further recourse in law. [L. '97, p. 271, § 9.]

§ 5792. **Lien of Assessments.**—All such assessments shall be liens upon the property assessed, and all such liens shall relate back to and take effect as of the date when the council or board, as the case may be, found the work a proper one to be undertaken under the law and the petitions presented, and sustained the petitions against the objections made, or proceeded with the work without such objection, when none was made. [L. '97, p. 272, § 10.]

§ 5793. **County Treasurer to Collect—Date of Delinquency.**—The city or county clerk, as the case may be, shall, within five days after the confirmation of said assessment-roll as aforesaid, certify and annex to the said roll a true copy of the order of confirmation, and issue and annex to the said roll a warrant directing the county treasurer to receive and collect the amount or amounts due thereon, in the manner and at the times hereinafter pointed out, and shall thereupon deliver said roll, order of confirmation and warrant to the said county treasurer, who shall thereupon be authorized to receive and collect the same, as by this law provided; the clerk shall, if the district lies within the city, also notify the city controller of the amount of the said roll, and if a district lies outside of the city the county auditor shall be so notified of the amount thereof, and the treasurer shall be charged therewith; the treasurer, within ten days after receiving the said roll, shall give notice by three weekly publications in the official newspaper of the city or county that such assessment-roll is in his hands for collection, that the assessments are payable, and the date at which the same will become delinquent for the nonpayment of the first installment of principal and interest; no demand shall be necessary for any such assessment, but it shall be the duty of every person whose property is assessed for improvements as herein provided, to pay all such assessments levied upon such property before the same become[s] delinquent. [L. '97, p. 272, § 11.]

§ 5794. **When Assessments are Due and Payable.**—The said assessments shall be due and payable on the date of the order confirming the said assessment-roll, and may be paid at any time thereafter as herein provided. Any person may at any time within thirty days after said order of confirmation redeem his said property by paying the full amount of such assessment without interest; if the said property is redeemed after said thirty days the owner shall pay the full amount of such assessment and the interest up

to the succeeding first Monday in July or January, as the case may be. If the order confirming the said assessment-roll shall be made more than thirty days next before the first Monday in July or January, or if not then, on the first Monday in July or January first thereafter, the first installment of one-tenth of the principal, and interest for one year on the whole sum due, shall be and become due and delinquent; and thereafter, annually, on the said first Monday in July or January, corresponding to the first date of delinquency, one-tenth of the principal sum, and one full year's interest on the whole sum due, shall be and become due and delinquent; upon the failure of any such owner to make payment of any installment and interest before delinquency, and upon such delinquency, the whole sum due on the said lot, piece or parcel delinquent shall also be and become due, payable and delinquent, and any sale of the said property for delinquency shall be for the full amount of the said assessment not then paid and interest to the next succeeding first Monday in July or January, as the case may be, and the costs of sale. [L. '97, p. 272, § 12.]

§ 5795. **Sale to Satisfy Assessments.**—The said county treasurer shall be and he is hereby empowered and authorized, by virtue of the law and the warrant to collect, to sell at public auction to the highest bidder for cash, all the lots, pieces and parcels of land described in the said assessment-roll, and upon which assessments are levied, whether in the name of the owner or in the name of an unknown, to satisfy all delinquent and unpaid assessments, with interest and costs; on the day of the delinquency a penalty of five per cent on the principal sum due shall accrue to such assessment in addition to the interest thereon, and must then and thereafter be collected therewith; such treasurer's warrant shall, for the purpose of making sale of said real estate on which assessments are delinquent and unpaid, be deemed and taken as an execution against said real property for the amount of the said assessments with interest, penalty and costs, and the treasurer shall, within sixty days after said date of delinquency, commence the sale of the said real property, and continue such sale from day to day thereafter, until all the lots and parcels of land described in said assessment-roll on which any such assessment or installment is delinquent and unpaid are sold; such sales shall take place at the front door of the courthouse, and such sales may take place from year to year if other delinquencies on said roll occur; the treasurer shall give notice of such sales by publishing a notice thereof once a week for three consecutive weeks, in the official city or county newspaper, as the case may require; such notice shall contain a list of all lots and parcels of land upon which such assessments are delinquent with the amount of the assessment, interest, penalty and costs, to the date

of sale, including the costs of advertising due upon each of such lots or parcels of land, together with the names of the owners thereof, or the words "unknown owner," as the same may appear on said assessment-roll, and shall specify the time and place of sale, and that the several lots or parcels of land therein described will be sold to satisfy the assessment, interest, penalty and costs due upon each. [L. '97, p. 273, § 13.]

§ 5796. When Sale Shall Take Place.—All such sales shall be made between the hours of 10 o'clock A. M. and 3 o'clock P. M., each lot or parcel of land shall be sold separately and in the order in which the same appears on the assessment-roll, commencing at the head thereof; all lots and parcels of land sold for delinquent assessments shall be sold to the highest bidder, and whenever any such lot is sold for more than the sum sufficient to satisfy the delinquent assessment, with interest, penalty and costs, the surplus shall be kept by the treasurer in a separate fund, and thereafter the owner or his legal representatives shall, on application, be entitled, upon proving their right thereto, to receive the same; if there be no bidder for any lot or parcel of land of a sum sufficient to pay the delinquent assessment, interest, penalty and costs, the said treasurer shall declare the said property sold to the city, if the district is within the city, or to the county, if without the city, and the city or county in such case shall be a trustee of the title for the benefit of the bondholders; the said lands so stricken off to the said city or county may be disposed of as hereinafter provided, by a sale of the certificates of sale, or held, if not sold, to await the action of the bondholders, who shall be held to be the equitable owners thereof in proportion as their interests may appear. [L. '97, p. 274, § 14.]

§ 5797. Improvement Ordered—Limit of Liability.—Immediately after and upon the passage of the order confirming the assessment-roll, the city council or the board of county commissioners, as the case may be, shall be and they are hereby authorized to cause the said improvement to be made at the expense of the said district: Provided, that the said contractor, laborers, materialmen or subcontractors shall in all cases look only to the fund to be raised by such special assessment for their compensation: And provided, that neither the city nor county shall be responsible therefor in any degree except as trustee for the said district and bondholders. [L. '97, p. 275, § 15.]

§ 5798. Sale of Certificates.—The city controller shall be the custodian of all certificates of purchase for lots or parcels of land so sold to the city, and the county treasurer shall continue in the custody of all such certificates so sold to the county, and either shall, at any time prior to the issuance of a deed for such property and prior

to the redemption of the lot or parcel of land therein described, sell and transfer any such certificate to any person who will pay to the county treasurer the amount for which the lot or parcel of land therein described was stricken off to the city or county with the interest subsequently accrued thereon; within ten days after the completion of the sale of all the lots and parcels of land described in such assessment-roll and sold as aforesaid, the treasurer must make a return to the city council, or the board of county commissioners, of his doings thereon, showing all lots and parcels of land sold by him, to whom sold, and the sum paid therefor. [L. '97, p. 275, § 16.]

§ 5799. Purchaser's Lien.—The purchaser at improvement assessment sales acquires a lien on the lot or parcel of land sold for the amount paid by him at such sale, as well as for all delinquent taxes and improvement assessments, and all costs and charges thereon, whether levied previously or subsequently to such sale, subsequently paid by him on the lot or parcel of land, and shall be entitled to interest thereon at the rate of twelve per cent per annum from the date of such payment. [L. '97, p. 275, § 17.]

§ 5800. Redemption Notice—Deed.—Every lot and parcel of land sold for any delinquent assessment as aforesaid, shall be subject to redemption by the former owner, or his grantee, mortgagee or heir, within one year within the date of the certificate of purchase, on payment to the county treasurer, for the purchaser, of the amount the same was sold for, with twelve per cent interest per annum, together with all taxes and improvement assessments and costs and charges thereon paid by the purchaser on such lot or parcel of land since such sale, with like interest thereon, and on such redemption being made, the treasurer shall give to the redemptioner a certificate of redemption therefor and pay over the amount received from such redemptioner to the purchaser or his assigns; should no redemption be made within the period of one year, the treasurer shall, on demand by the purchaser, or his assigns, and the surrender of the certificate, execute to him a deed for the lot or parcel of land therein described: Provided, that no such deed shall be executed until the holder of said certificate shall have notified the owner of the said lot or parcel of land that he holds said certificate and that he will demand a deed thereof; and if, notwithstanding said notice, no redemption be made within ninety days from the service of said notice, said holder shall be entitled to said deed. Said notice may be given by personal service upon said person, or by publication in a weekly newspaper published in said city or county for three weeks; such notice and return thereto, with the affidavit of the person claiming said deed, stating that said service was made, shall be filed with the treasurer; such deed shall be executed only for the lot or parcel of

land named in the certificate, and after the payment of all subsequent taxes and assessments thereon; the deed shall be executed in the name of the city or county, as the case may be, and shall recite in substance the matters contained in the certificate, the notice to the owner, and that no redemption has been made of the property within the time allowed by law; such deed shall be signed and acknowledged before a notary public by the treasurer as such; the deed shall be prima facie evidence that the property was assessed as required by law, that the improvement assessment was not paid, that the property was sold as required by law, that it was not redeemed, that notice had been given, and that the person executing the deed was the proper officer, and the deed shall be conclusive evidence of the regularity of all other proceedings from the assessment inclusive up to the execution of the deed. [L. '97, p. 276, § 18.]

§ 5801. Sale to City or County.—If any property within such assessment district shall be offered for sale, and no person shall bid a sum sufficient to pay the assessment, the interest, penalty and costs, the said property shall be stricken off to the city, if the district is within the city, or to the county, if the assessment district is within the county, and in either case the city or county, as the case may be, shall hold the said property as a trustee for the use and benefit of the holders of the bonds against the said district; but neither the said city nor county shall be required to pay any money out of its treasury upon the said bonds or interest thereon otherwise than as the same shall have been received from the said assessments: Provided, that if there shall not be a sufficient fund to pay the bonds and interest the said lots or lands so stricken off to the trustee may be utilized by the bondholders, as a common fund for further payments. [L. '97, p. 277, § 19.]

§ 5802. Improvements, How Made.—All work authorized by this chapter in laying out, grading and finishing the said composite highway or boulevard, or walks, cycle paths or parks in connection therewith, shall be done under the same supervision as other improvements in said city or county, and shall be done by days' work or by contract, at the discretion of the council or board: Provided, that if the petition for doing the work in the first place shall designate the manner of making the improvement, whether by days' work or contract, then the improvement must be done as requested in said petition: And provided further, that in no case shall the cost of any such improvement exceed the estimate made by the engineer; and before awarding any contract authorized by this act the same proceedings shall be had and the contract shall be let in like manner as other contracts in said city or county. [L. '97, p. 277, § 20.]

Cited in 77 Wash. 231.

§ 5803. Contracts for Improvements. — All contracts shall be drawn under the supervision of the city or county attorney and shall have attached thereto detailed specifications of the work to be done, which shall be referred to and made a part of the contract, and the maps, estimates and all of the proceedings in the matter of creating the said assessment district shall be considered a part of the said contract; each contract shall be signed in duplicate, the contractor taking one and the proper city or county official keeping the other; at the same time with the execution of said contract the said contractor shall execute a bond to the city or county, as the case may be, and deliver the same to the clerk of the council or board; said bond shall be jointly and severally in the sum named in the notice for proposals, with two or more sufficient sureties, to be approved by the council or board; or the contractor may deposit with the county treasurer a certified check, upon some solvent bank, for said amount, for the faithful performance of said contract, which check shall be drawn payable to the said county treasurer; such sureties shall justify in a sum equal to the amount of the bond, and such bond shall be conditioned that such contractors shall pay all laborers, mechanics and materialmen and persons who shall supply such contractor with provisions or goods of any kind, all just debts due to such persons, or to any person to whom any part of such work is subcontracted or given; which bond shall be filed with the clerk of the city or county, as the case may be. The contract for work shall specify the time within which the work shall be commenced and when to be completed, as was specified in the notice inviting proposals therefor; in case of failure on the part of the contractor to complete his contract within the time fixed, his contract may be by the council or board declared void, and the council or board may relet any unfurnished portion of said work: Provided, that no contractor shall be paid any sum to exceed eighty per cent until the whole of the said contract shall have been completed and accepted by the board or council; the work shall be done to the satisfaction of the city engineer, if within the city, or to the county surveyor, if without, and shall be done according to the plans and specifications. [L. '97, p. 278, § 21.]

§ 5804. Payment for Improvements—Issuance of Bonds.—Whenever any improvement aforesaid shall be made under this chapter, provision for its payment shall be made by the issuance, by the council or board, of improvement district bonds, payable in ten annual equal installments, none of which bonds shall draw interest at a higher rate than ten per cent per annum; such bonds may be issued to the contractor at par, if he agrees to accept the same, or the council or board may sell the same at not less than par value, net, and pay the proceeds to the contractor. Such bonds shall not be issued in

amount in excess of the contract price of the work or improvement together with the cost of all lands for right of way therefor, whether acquired by purchase or condemnation, and also all incidental expenses incurred by the city or county for said improvement: Provided, that when the annual tenth is paid the interest upon the whole sum shall also be paid; the bonds shall be of such denominations as the council or board shall determine, and shall be numbered from one to the highest number; the county treasurer, whenever he shall have received a sum sufficient from the redemption of any piece or pieces of property by the owner's paying his assessment together with the interest to the next semi-annual date of interest payment, to pay one of the bonds in full, shall call the said bond, beginning at the first in number: Provided, that no such call shall be made and no such payments received after the eighth annual payment; the installments of principal and interest shall be paid on the third Monday in July and January; the principal annually and the interest semi-annually, and the bonds may provide for paying the same at the fiscal agency of the state of Washington in New York city. [L. '97, p. 279, § 22.]

§ 5805. **Lien of Assessment Transferred to Bondholders.** — Such bonds, when issued to the contractor constructing the improvement in payment therefor, or when sold as above provided, shall transfer to the contractor or other owner or holder all the right and interest of such city or county in and with respect to every such assessment, and the lien thereby created against the property of such owners assessed as shall not have availed themselves of the provisions of this chapter in regard to the redemption of their property as aforesaid, shall authorize said contractor and his assigns and the owners and holders of said bonds to receive, sue for and collect or have collected every such assessment embraced in any such bond by or through any of the methods provided by law for the collection of assessments for local improvements. And if the city or county shall fail, neglect or refuse to pay said bonds, or to promptly collect any of such assessments when due, the owner of any such bonds may proceed in his own name to collect such assessment and foreclose the lien thereof in any court of competent jurisdiction, and shall recover, in addition to the amount of such bonds and interest thereon, five per centum, together with the costs of such suit. Any number of holders of such bonds for any single improvement may join as plaintiffs, and any number of owners of the property on which the same are a lien may be joined as defendants in such suit. And such bonds shall be equal liens upon the property for the assessments represented by such bonds without priority of one over another to the extent of the several assessments against the several lots and parcels of land. [L. '97, p. 280, § 23.]

§ 5806. Reassessment, When.—In all cases of special assessment for local improvements of any kind against any property, persons or corporations whatsoever, wherein said assessments have failed to be valid in whole or in part for want of form or insufficiency, informality or irregularity, or nonconformance with the laws govering such assessments, the city council or other authorized board or body shall be and they are hereby authorized to reassess such special taxes or assessments and to enforce their collection in accordance with the provisions of law existing at the time the reassessment is made: And it is further provided, that whenever, for any cause, mistake or inadvertence, the amount assessed shall not be sufficient to pay the cost of the improvement made and enjoyed by owners of property in the local assessment district where the same is made, that it shall be lawful, and the city council or other authorized board or body is hereby directed and authorized, to make reassessments on all the property in said local assessment district sufficient to pay for such improvement, such reassessment to be made and collected in accordance with the provisions of the law or ordinance existing at the time of its levy. [L. '97, p. 280, § 24.]

§ 5807. Construction.—Nothing herein shall be construed as repealing or modifying any existing manner and method for cities of the first class or counties to make improvements as herein provided for, but shall be construed as an additional and concurrent power and authority. The holder of any bond issued under the authority of this chapter shall have no claim therefor against the city or county by which the same is issued, in any event, except from the collections of the special assessment made for the improvement for which such bond was issued; but his remedy, in case of no payment, shall be confined to the enforcement of such assessments. A copy of this section shall be plainly written, printed or engraved on the face of each bond so issued. [L. '97, p. 281, § 25.]

CHAPTER XIX.

Changing and Improving Roads at Expense of Land Benefited.

See last two preceding chapters.

§ 5808. Improvements Authorized—Assessment of Property Benefited.—The board of county commissioners of any county in this state shall have power, as hereinafter provided, to cause to be constructed or improved any county road, or any part of such road, within the limits of their respective counties, by deviating from existing lines whenever it shall be deemed of advantage to obtain a shorter or more direct road without lessening its usefulness or whenever such deviation is of advantage by reason of lessened gradients, or by draining in any direction to reach the most convenient and sufficient

outlet, or by grading or by constructing thereon a roadway of telford, macadam, gravel, or any other suitable material; and to levy and cause to be collected an assessment upon all lots, tracts and parcels of land specially benefited by such improvement for paying the cost and expenses thereof, which assessment shall become a first lien upon all property liable therefor, prior and superior to all other liens and encumbrances; and to provide for the payment of such assessment either on the immediate payment plan or by installments, and to issue local improvement district warrants for such installments. [L. '09, p. 768, § 1.]

§ 5809. Resolution to Improve by County Commissioners.—Upon the presentation of a petition as provided in section 5810 hereof the board of county commissioners shall pass a resolution that the public interest demands the improvement of any such county road, or part thereof, situated within such county, and described in such resolution, but such description shall not include any portion of a highway within the boundaries of any city or incorporated town. [L. '09, p. 769, § 2.]

§ 5810. Petition by Owners of Abutting Property. — The owners of two-thirds of the lineal feet of lands fronting on such county road, or part thereof sought to be improved, in any county in this state may present to the board of county commissioners of such county a petition setting forth that the petitioners are such owners and that they desire such road, or part thereof, to be improved under the provisions of this chapter, the particular road or portion thereof sought to be improved, the kind and nature of the improvement desired, and the mode of payment of the assessments to be levied for defraying the cost and expenses of such improvement. If any such property stands in the name of a deceased person or any person for whom a guardian has been appointed, the signature of the executor, administrator or guardian, as the case may be, shall be deemed equivalent to the signature of the owner of the property on such petition. [L. '09, p. 769, § 3.]

§ 5811. Notice of Hearing—Election of Supervisors.—Such board of county commissioners shall make an order appointing a place in the vicinity of said road in said county where, and a time when said petitioners and all owners of land fronting upon said road, or portion thereof sought to be improved, and to be specially benefited by such improvement, and upon whose lands special assessments will be levied to pay for such improvement, may meet with the county engineer, or his duly appointed deputy; and the county auditor shall immediately give notice to said county engineer of such meeting, and shall cause a notice thereof to be given by publication in a newspaper printed and published in the vicinity of said road, or nearest thereto,

in said county, and of general circulation therein, for three consecutive weeks next prior to the time of such meeting, which notice shall state the time and place of said meeting, the kind of improvement asked for, the place of beginning, intermediate points, if any, and place of termination of said road, or the portion thereof sought to be improved. At said meeting said county engineer, or his said deputy, or in the absence of both, some one of the said owners present, shall preside, and said petitioners and said owners of such lands shall then proceed to elect three of such owners as a committee of supervisors, at least one of whom shall be chosen from among the said petitioners. A majority of such owners present and voting at such meeting shall be sufficient for such election, and said presiding officer shall declare and certify to said board of county commissioners the names of such owners so elected as such committee of supervisors. The persons so elected shall, as soon as may be thereafter, qualify by taking an oath that they are owners of lands fronting upon or specially benefited by said improvement and to be included within the local assessment district therefor, as hereinafter provided, and that they will fully, impartially and faithfully perform the duties of such supervisors to the best of their ability, which said oath may be administered by anyone authorized by the laws of the state of Washington to administer oaths, or by said county engineer or his deputy, who are thereunto hereby fully authorized. [L. '09, p. 770, § 4.]

§ 5812. Assessment of Damages and Benefits—Plans—Width of Road.—It shall be the duty of such committee of supervisors and the county engineer or his said deputy to forthwith, or as soon as they can assemble at said place, meet and proceed to view, examine and survey said road, or the portion thereof sought to be improved, so that such county engineer can from such examination and survey make plans and specifications and an estimate of the cost of such construction and improvement; to examine and determine the lands that will be specially benefited by such improvement and should be included within the local district to be assessed to defray the cost and expense of such improvement; to ascertain what, if any, damage or injury to the property of any person or persons will be sustained by or in consequence of the making of such improvement for the payment of which such local district would be liable and, in so far as may be, obtain without cost to the local district the release in writing from such person or persons of their claim for such damage or injury, or, in case of failure so to do, arrange, in so far as may be, for such release to be given, upon the approval and ordering of such improvement, on such terms as to amount as may be deemed fair and reasonable to be paid from the funds collected upon the assessment of said district; and such county engineer shall without unnecessary delay prepare such plans and specifications and an esti-

mate of the cost of such improvement, including therein all expenses incident thereto except for services of any county officer receiving a salary, and prepare a plat and description of such local improvement district and a description of the several tracts or parcels of land included therein and the valuation of said lands as appears upon the last annual assessment-roll of the county made for the purpose of levying general taxes; and for the purpose of making such surveys said county engineer shall take to his aid such assistants as are necessary and usually employed by him in making county surveys and at such compensation as is usually paid for like services employed in making other county surveys, the same to be charged as an expense against said local improvement district. The improved or permanent roadway of all such roads so improved shall not be less than eight nor more than sixteen feet in width with shoulders of not less than two feet nor more than four feet in width, unless for special reasons to be stated by said county engineer and committee of supervisors it is required that it shall be of greater width. [L. '09, p. 771, § 5.]

§ 5813. Boundaries of Improvement District — Divisions for Assessment.—Such local improvement district shall be constituted, and the boundaries thereof fixed, as follows: The road, or portion thereof to be improved, coterminous with the improvement, shall be the central line through the district, and the bordering lands on each side, and within a distance of half a mile from the margin of said road and coterminous with the construction work or improvement shall be included in and constitute the body of the improvement district, and shall be subject to assessment to the extent above provided. For the purpose of making an equitable apportionment of the assessment, such improvement district shall be divided longitudinally into three parts as follows: All land on both sides of said road, or portion thereof, to be improved, and within a distance of eight hundred and eighty feet from the margins thereof shall constitute the first subdivision; all the land outside of the first subdivision, and within eight hundred and eighty feet from the exterior margins thereof, shall constitute the second subdivision; and all the land outside of said second subdivision and within eight hundred and eighty feet from the exterior margins thereof shall constitute the third subdivision. Each separate tract or parcel of land in said first subdivision shall be assessed and be subject to a charge for a proportional part of forty-five per cent of the whole cost of the construction work or improvement of said road, including said incidental expenses, and it shall be subject to a lien therefor until it shall be paid; each separate tract or parcel of land in said second subdivision shall be assessed and subject to a charge for a proportional part of thirty-five per cent of

said whole cost and expense of said construction work or improvement, and be subject to a lien therefor until it shall be paid; each tract or parcel of land in said third subdivision shall be assessed and subject to a charge for a proportional part of twenty per cent of said whole cost and expense of said construction work or improvement, and be subject to a lien therefor until it shall be paid. The charge upon the several separate tracts or parcels of land in each subdivision shall be assessed ratably according to the front foot plan; that is to say, one foot of longitude measured along the road constituting the center of such improvement district, and extending latitudinally across the subdivision shall be taken as the unit by which to determine the proportion of the assessment, so that a unit in each subdivision will be eight hundred and eighty square feet of superficial area. If the areas of said subdivision are not equal to each other the rates fixed for each subdivision shall be fixed on the basis that the benefit conferred on eight hundred and eighty square feet of land in subdivisions first, second and third, are related to each other as are the numbers 45, 35 and 20, respectively. [L. '09, p. 772, § 6.]

§ 5814. Engineer's Report of Cost, etc.—As soon as the county engineer shall have completed said work, and at the next ensuing meeting of the board of county commissioners the said county engineer in conjunction with said committee of supervisors shall render a detailed report to said board of county commissioners, with all maps, descriptions, plans, specifications, details and estimates of damages, costs and expenses, and if it shall appear from the said report that the whole amount of the damages, cost and expense of said construction or improvement, chargeable as a lien against the property specially benefited within such improvement district, does not exceed fifty per cent of the total assessed valuation of the lots, tracts and parcels of land contained in such improvement district as the same appears upon the last annual assessment-roll of the county made for levying general taxes, the said board of county commissioners shall make and enter upon their records an order that the said improvement be made, and creating such local improvement district for the payment of said damages, costs and expenses of making said improvement, by special assessment of the property in said district specially benefited, according to said report, to be known and designated Local Improvement District No. —— in —— County, Washington, and such report shall be kept on file in the office of the auditor of said county with the files pertaining to the proceedings of said board of county commissioners. [L. '09, p. 773, § 7.]

§ 5815. Condemnation Proceedings.—When said county engineer and committee of supervisors are unable to agree with the owner of

any lands upon the amount of damages, if any, sustained by the taking or injuring of his property by reason or in consequence of making of such improvement, they shall in said report to the county commissioners set forth such fact with a statement of their reasons therefor, and said county commissioners shall cause the amount thereof to be ascertained and determined by condemnation and paid in the same manner as damages are so ascertained, determined and paid where new roads are laid out and opened and the county commissioners and land owners are unable to agree upon the amount thereof; and such damages, and the expenses incident to ascertaining and determining the same, shall be advanced on the order of the county commissioners from the funds of the county, so that the progress of such work shall not be delayed, and said funds shall be reimbursed the amount so advanced from the first money collected of the local improvement district funds, and the same shall constitute a part of the cost and expense of making such improvement. [L. '09, p. 774, § 8.]

§ 5816. Advertisement for Bids — Contract — Bond—Payments—Liability.—After the making of such order directing the making of such improvement and establishing such local improvement district, said county engineer and committee of supervisors shall let a contract for furnishing of the necessary materials and the performance of the work and labor necessary for the construction and completion of said improvement, according to said plans and specifications, and under the supervision of said county engineer. They shall advertise for bids for three successive weeks in a newspaper published at the county seat of such county, and in such other newspaper as said committee of supervisors shall deem of advantage, for the construction of said improvements, according to such plans and specifications, fixing the time for opening such bids at the office of the county commissioners and award such contract to the lowest responsible bidder, except that no contract shall be awarded at a greater sum than the estimate of cost of such work hereinbefore provided for. But if no bid otherwise acceptable be made within such estimate, such county engineer may amend his estimate, and in conjunction with said committee of supervisors certify such amended estimate to the county commissioners, and, if said amended estimate does not exceed said fifty per cent limit of valuation, said board of county commissioners shall make and enter a new order, in like manner as provided in section 5815 hereof, based upon such amended estimate, and said county engineer and committee of supervisors may proceed anew to obtain bids and award the contract as herein provided. The county engineer and committee of supervisors may reject any and all bids, and before the execution of a contract for such construction, they shall require a bond executed by a corporate surety or two or more

individuals, good and sufficient sureties, satisfactory to them, conditioned that the contractor will furnish the required material and perform the required work upon the terms specified and within the time prescribed and in accordance with the plans and specifications, and will pay for all labor and materials employed upon or in said work; and as a bond of indemnity against any direct or indirect damages that shall be suffered or claimed for injuries to persons or property during the construction of said improvement and until the same is accepted. Partial payments may be provided for in the contract, and paid in the manner herein provided when certified by the county engineer and committee of supervisors to an amount not to exceed eighty per cent of the value of the work done. In letting said contract said surveyor [engineer] and supervisors shall provide therein that at least twenty per centum of the amount due the contractor on estimates shall be retained to secure the payment of laborers who have performed work on said improvement and materialmen who have furnished materials therefor, and such laborers and materialmen shall for thirty days after their work has been completed or their materials furnished have a lien on such twenty per centum so reserved for labor done and materials furnished: Provided, notice thereof in writing shall have been filed with the county engineer within said thirty days, which lien shall be senior to all other liens, whether by judgment, attachment or contract, and no improvement shall be deemed completed until the county engineer and committee of supervisors shall have filed with the clerk of the board of county commissioners a statement signed by a majority of them declaring the same to have been completed, and all such liens shall have been discharged. Such contract shall be executed in the name and on behalf of the county by the chairman of the board of county commissioners and attested with the seal of said board, for the use and benefit of said local improvement district; but such county shall not thereby be rendered subject to any claim or liability except from the special assessment made upon the property of such local district for such improvement or from the proceeds of the sale of any local improvement warrants issued to pay for such improvement as herein provided. Such contractor's bond shall be executed to the county, and in its name enforced by and for the use and benefit of any and all whom it may concern, and shall be kept in the custody of the county auditor. [L. '09, p. 774, § 9.]

§ 5817. Bids, Notice for — Deposit — Opening, etc. — Such notice for bids shall state generally the work to be done, and refer to the plans and specifications [filed] with the board of county commissioners, and shall call for proposals for doing the same and furnishing the necessary materials therefor, sealed and filed with the county auditor, as clerk of the board of county commissioners, on or before

the day and hour named in said notice. All bids shall be accompanied by cash or a certified check payable to the order of the county auditor for a sum not less than five per cent of the amount of the bid, as a guaranty of the good faith of the bidder, and no bid shall be considered unless accompanied by such cash or check. At the time and place named such bids shall be publicly opened and read; no bid shall be rejected for informality, but shall be received if it can be understood what is meant thereby. The county engineer and committee of supervisors shall determine the lowest bidder, and may let such contract to such bidder if within said estimate, or if in their opinion all bids are too high, they may reject all of them and readvertise for bids, and in such case all checks and cash shall be returned to the bidders; but if such contract be let, then and in such case all checks and cash shall be returned to the bidders except that of the successful bidder, which shall be retained until a contract be entered into for making such improvement between the bidder and the county in accordance with such bid. If the said bidder fails to enter into such contract in accordance with his bid within ten days from the date on which he is notified that he is the successful bidder, and to execute and file a bond as hereinbefore provided, the said cash and check and the amount thereof shall be forfeited to the county, for the use and benefit of the particular local improvement district, and the county auditor shall cash said check and pay said amount into the county treasury to the credit of the said local improvement district, and the said county engineer and committee of supervisors shall readvertise for bids for the doing of such work. Neither said supervisors nor any county officer shall have power to remit such forfeiture. [L. '09, p. 776, § 10.]

§ 5818. Roads Closed When Necessary.—Whenever a contract has been let for the construction or improvement of any such county road in accordance with the provisions of this chapter, the contractors may and are hereby authorized to, whenever the county engineer supervising the work shall certify to the necessity therefor in writing, close any such road or part thereof to the public by putting up a sufficient obstruction and notice to the effect that such road is closed for improvement. When so closed any person disregarding such obstruction and driving, riding or walking over any portion of such road so closed shall be deemed guilty of a misdemeanor and shall upon conviction thereof be subject to a fine of five dollars. Nothing herein contained, however, shall relieve the contractor of the burden of keeping county roads under construction or improvement at all times open to the public until the county engineer supervising the work shall have certified to the necessity for closing such road and shall have filed such in the office of the county auditor. [L. '09, p. 777, § 11.]

§ 5819. Inspector—Duties and Salary—Pay of Supervisors.—The committee of supervisors and county engineer together shall appoint some suitable and competent person, other than one of said committee, as an inspector of such work as it progresses, whose duty it shall be to be upon the work at all times during its progress and to inspect and observe the performance thereof and to report to and be under the supervision of the county engineer, and to inform said county engineer and said committee of supervisors of any inferior materials used or any departure from the plans and specifications not authorized by said county engineer and committee of supervisors; and he shall be paid for his services as such inspector at the rate of three dollars per day for the time he is actually engaged upon said works. Each member of the committee of supervisors shall be paid for his services the sum of three dollars per day for the time said committee of supervisors is actually engaged in meeting and acting with said county engineer, and in transacting as a committee the business of said local improvement district, until the work of said improvement shall have been fully completed and accepted by them and said county engineer. [L. '09, p. 778, § 12.]

§ 5820. Assessment-roll — Notice — Hearing — Objections—Confirmation.—When the final order for said improvement shall have been made, such county engineer and committee of supervisors shall proceed to apportion the estimated cost and expenses of said improvement upon the land embraced in said improvement district, according to the benefits to be derived therefrom, and, not more than thirty days after said contract shall have been let as hereinbefore provided, report to and file with the board of county commissioners an assessment-roll, in duplicate, prepared by such surveyor [engineer], which shall contain the description of each lot or parcel of land or part thereof to be assessed, the amount to be charged, levied or assessed against each lot or parcel of land or part thereof in proportion to the special benefits to be derived by each such lot or parcel or part thereof from such improvement, and the name of the owner of each such lot or parcel of land or part thereof, if known, but in no case shall a mistake in the name of the owner be fatal when the description of the property is correct. As soon as said assessment-roll shall have been so reported and filed, the county commissioners shall cause notice to be published for three consecutive weeks, which notice shall be published in the newspapers in which notice of invitation for bids for the letting of said contract was published, notifying all persons interested that said assessment-roll has been filed, and requiring them to appear at the office of the county commissioners, at the county seat, at a time not less than fifteen days from the date of the last issue of said publication of said notice, and make objections thereto if any they have. At the time fixed the

county commissioners shall meet, and, if no objections have been filed to said assessment-roll, they shall make and enter an order confirming the same; but if objections, in writing, have been filed by any of the land owners affected thereby, the county commissioners shall proceed to hear such objections and for that purpose shall hear any testimony that shall be offered by any party interested; and either one of the county commissioners shall be authorized to administer oaths to witnesses. After such hearing they shall make such corrections and changes, if any, as to them shall appear just and requisite to apportion the assessment to the benefits to be received from such improvement, and shall then make and enter an order approving and certifying such assessment-roll, and levying and assessing the amounts thereof against each and all of the lots and parcels of land, or parts thereof, respectively, included in said roll as approved, and the same shall become a first lien thereon. The costs and expenses of surveys and of all preliminary proceedings to and including the letting of the contract and giving notice that the assessment-roll has been certified for collection and the preparation, issuance and disposal of the warrants for the payment of the cost and expenses of such improvement shall be paid out of the county treasury, and shall be refunded, as well as all other amounts advanced by the county for expenses of such improvement, or for damages as hereinbefore provided, from the local improvement funds as soon as sufficient thereof shall come into the hands of the county treasurer. [L. '09, p. 778, § 13.]

§ 5821. Modes of Payment.—There shall be two modes of making payment of such special assessments chargeable against the several tracts and parcels of land included in such local improvement district, namely, that of "immediate payment" and that of "payment by warrants." The mode adopted and the period, not exceeding ten years, over which such warrants shall be made payable, shall be that petitioned for. [L. '09, p. 780, § 14.]

§ 5822. "Immediate Payment"—Notice—Collection.—In case of the payment of such assessments by the mode of immediate payment, the county commissioners, as soon as such assessment-roll has been approved and certified, shall deliver the same to the county auditor, who shall file one of such duplicates thereof in his office with the files of the proceedings of said county commissioners in relation to such improvement district, and shall immediately deliver the other of said duplicates to the county treasurer for the collection of such assessments. The county treasurer shall give notice by publication for two consecutive weeks in the newspapers in which notice of proposals for bids was advertised, and shall mail a copy of such notice to the owner of the property assessed when the name of such owner and his post-

office address is known, but the failure to mail such notice shall not be fatal when publication thereof is made, which said notice shall state that such assessment-roll has been certified to him for collection, and that unless payment is made within thirty days from the date of such notice such assessment will become delinquent and shall bear interest at the rate of ten per cent per annum, and if not paid before such assessment shall have become delinquent, a penalty of five per cent shall be added, and the sums delinquent shall be added on the annual tax-roll for the current year against each lot, tract and parcel so delinquent, and, with the interest and penalty, collected as other taxes, separate account being kept thereof, and if not paid within the time fixed for the payment of general county taxes, shall be collected as such taxes are collected, together with such additional charges and penalties as are authorized to be charged and collected on other delinquent taxes, and each lot, tract or parcel so delinquent shall be sold for the amount of such assessment, with interest, penalty and costs, at the time and in the manner and by the same authority and process as lands and lots are sold for general county taxes. [L. '09, p. 780, § 15.]

§ 5823. "Payment by Warrants"—Collection of Installments.—In case of the mode of "payment by warrants" being adopted, the county commissioners, and the county engineer and committee of supervisors, shall proceed the same in all respects as in case of the mode of "immediate payment," to the approval and certifying of the assessment-roll; but the county commissioners at the time of levying said assessment, and in their order making such levy, shall provide and declare that the sum charged thereby against each of such tracts or parcels of land may be paid in equal annual installments, with interest upon the whole sum so charged at the rate fixed in said order, specifying the number of such installments, which shall be equal to the number of years which the warrants issued to pay for the improvement may run before payment of the same may be demanded by the holder thereof; and each year thereafter the county treasurer shall collect one of said installments, together with the interest due thereon and on all installments thereafter to become due, in the same manner and with the same added penalty and interest in case of delinquency, and by means of the same proceedings to enforce such payment by the sale of the land as hereinbefore provided for the collection of said assessment by the method of immediate payment. [L. '09, p. 781, § 16.]

§ 5824. Special Warrants to Contractor.—The county commissioners may, and in all cases where the improvement is ordered upon a petition specifying the method of payment by warrants, must provide for the payment of the cost and expenses of such improvement,

to be made under the provisions of this chapter, by special warrants as a charge against the property of the local improvement district, issued to the contractor in payment of the contract price, or by the proceeds of such warrants to be issued and sold as hereinafter provided. [L. '09, p. 781, § 17.]

§ 5825. Issuance of Special Warrants—Interest—Form, etc.—The county commissioners shall make and enter an order authorizing and directing the issuance of such warrants, which by their terms shall be made payable on or before a date not to exceed ten years from and after the date of their issue, which latter date may be fixed by the order, and payment of which shall not be demanded by the holder thereof until the end of said period, and they shall bear such interest as shall insure their being disposed of at par and as may be provided for in said order, not exceeding ten per cent per annum, which interest shall be payable annually, and each warrant shall have attached thereto interest coupons for each interest payment. Such warrants shall bear the date of issue and be made payable to bearer. The warrants and each coupon shall be signed by the chairman of the board of county commissioners and shall be attested by the clerk of said board, and the seal of such board shall be affixed to each warrant but not to the coupon. Such warrant shall be printed, engraved or lithographed on good bond paper, and state on its face that it is issued in accordance and compliance with this act, designating the same by title and date of approval. Such warrants shall be in denominations of not less than one hundred nor more than one thousand dollars, and they shall refer to the improvement to pay for which the same shall be issued, and to the order and record thereof authorizing the same; each warrant shall provide that the principal sum therein named, and the interest thereon, shall be payable out of the local improvement fund created by special assessment for the payment of the cost and expenses of such improvement, and not otherwise, and shall bear upon its face the designation of the local improvement district, thus, Local Improvement District Number —— in —— County, Washington. Such warrants shall not be issued in excess of the cost and expenses of the improvement. [L. '09, p. 782, § 18.]

§ 5826. Payment of Assessments—Redemption of Warrants.—In case of payment by such special warrants, the county treasurer shall give notice by publication for two consecutive weeks, and shall mail a copy of such notice to the owner of the property assessed in the manner and with the same qualifications as to the giving of such notice provided in section 5823 of this chapter with regard to immediate payment, which notice shall state that such assessment-roll has been certified to him for collection, and that unless pay-

ment of the whole amount of such assessment is made within thirty days from the date of such notice, special warrants will be issued against said property for the payment of said assessment, and thereafter the same will be payable in annual installments with interest thereon at the rate provided for in said warrants. At any time within such thirty days any owner of lands within such local improvement district may pay the said assessment chargeable against his said lands, and release and discharge the same therefrom and from the operation and effect of such warrants; and no warrants shall be issued until twenty days after the expiration of such thirty days, nor for any amounts of such assessment so paid in full within such thirty days. The owner of any such lands may redeem the same from all liability for such assessment at any time after said thirty days by paying the entire installments of said assessment remaining unpaid and charged against such lands at the time of such payment with interest and all charges thereon to the date of the maturity of the installment next falling due. In all cases where any assessment or any installment thereof is paid as herein provided, the same shall be paid to the county treasurer, and all sums so paid shall be applied solely to the payment of the cost and expenses of such improvement, or to the redemption of such warrants issued therefor if paid after such warrants are issued. [L. '09, p. 783, § 19.]

§ 5827. Warrants—Sale of—Contractor may Take Proceeds Applied.—The special warrants issued under the provisions of this act, or such portion thereof as may remain unsold, if the same are ordered sold by the county commissioners, may be issued to the contractor constructing the improvement in payment therefor, or the order of the board of county commissioners directing the issuance of such warrants may provide that the same may be sold by the county treasurer, in the manner prescribed in such order, at not less than their par value and accrued interest; and the proceeds of such warrants shall be applied in payment of the cost and expenses of such improvement. [L. '09, p. 783, § 20.]

§ 5828. Warrants—Payment of Interest, Call for.—The county treasurer shall pay the interest on the warrants authorized to be issued by this act out of the funds of the local improvement district collected on assessments on account of which said warrants are issued. Whenever there shall be sufficient money in such local improvement fund against which such warrants have been issued under the provisions of this act, over and above sufficient for the payment of interest on all unpaid warrants, to pay the principal of one or more of such warrants, he shall call in and pay such warrants in their numerical order. Such call shall be made by publication in the

county official newspaper on the day following the maturity date of the installment of assessment or as soon thereafter as practicable, and shall state that special warrants No. —— (giving the serial number or numbers of said warrants called) of such local improvement district will be paid on the day the next interest coupons of said warrants shall become due, and interest upon said warrants thus called shall cease upon said date. [L. '09, p. 784, § 21.]

§ 5829. Collection by Holder.—If the county treasurer shall fail, neglect or refuse to pay said warrants issued under the provisions of this act, or to collect promptly any such assessments when due, the owner of any such warrants may proceed in his own name to collect such assessments and to foreclose the lien thereof in any court of competent jurisdiction, and shall recover in addition to the amount of such warrants and interest thereon, five per centum, together with the costs of such suit. Any number of holders of such warrants for any single improvement may join as plaintiffs and any number of owners of the property on which the same are a lien may be joined as defendants in such suit. Neither the holder nor any owner of any such warrant issued under the authority of this act shall have any claim therefor against the county through the instrumentality of which the same is issued, except from the special assessment made for the improvement for which such warrant was issued, but his remedy in case of nonpayment shall be confined to the enforcement of such assessments. A copy of this section shall be plainly written, printed or engraved on each warrant so issued. [L. '09, p. 784, § 22.]

§ 5830. Claims Audited—Order for Payment—Disbursement.—It shall be the duty of the county auditor to audit all claims and accounts for services and every kind of expense payable from the funds of the local improvement district, when the same shall have been first approved and certified by the committee of supervisors; and when so approved and audited, the county auditor shall issue to the county treasurer an order, in favor of the person to whom such claim or account is payable, to pay the same, and upon the presentation of such order by the person to whom it was issued, or his assignee, the county treasurer shall pay the same from the funds of such local improvement district provided for the payment of the cost and expenses of such improvement, and not otherwise. Estimates for work done under the contract for the construction and completion of such improvement shall be made by the county engineer with the approval of the committee of supervisors, and the same shall be likewise audited by the county auditor, and, when so made, approved and audited, the same shall be likewise paid by the county treasurer upon the order of the county auditor, to an amount, how-

ever, not exceeding eighty per centum of such estimate during the progress of the work. In case of said assessment being made payable by installments, the county treasurer shall pay such order only from such assessments as shall have been collected prior to the issue of such special local improvement warrants and from the proceeds of the sales of such warrants after the issue thereof; but in case it has been arranged with the contractor for the work, and ordered by the board of county commissioners, that such contractor shall receive such warrants to pay the contract price of the work, such order of the county auditor upon such approved estimates shall call for such warrants instead of money, and shall be paid in such warrants by the county treasurer, with whom the same shall be deposited for that purpose, and in that case such warrants shall not be given a date prior to the time of their delivery to such contractor upon such order, which date shall be then written in such warrants by the county treasurer and be deemed to be the date of their issue, from which interest shall begin to run and the time at or after which their payment may be demanded by the holder shall be computed. The amounts collected upon the installment payments of such assessments shall be reserved and disbursed by said county treasurer for the payment of the principal and interest on and for the redemption of such warrants. The proceeds from the sale of such warrants shall be disbursed by such county treasurer in payment of the cost and expenses of such construction and improvement of such county road, upon the orders of such county auditor, as hereinabove provided. [L. '09, p. 785, § 23.]

§ 5831. Refund of Excess for Improvement District.—Any money remaining in the county treasury belonging to the funds of such local improvement district, after the payment of the whole cost and expense of such construction or improvement, in excess of the total sum required to defray all expenditures on account thereof, including the reimbursement of the county for any advancements, shall be refunded, on demand, to the amount of such overpayment; and if there shall be such an excess in the assessment of any person who shall not have paid his assessment in full a rebate shall, on demand, be allowed to such person to the amount of such over-assessment: Provided, such demand hereinabove provided for be made within two years from the date upon which the assessment for such local improvement district became due. Any such funds remaining in the county treasury after the expiration of two years for which no demand has been made as herein provided, belonging to any local improvement district, after the payment of the whole cost and expense of such improvement shall go into a special fund and be disbursed by the county treasurer under the directions of the county

commissioners for keeping in repair the county road or part thereof so improved in said local improvement district. [L. '09, p. 786, § 24.]

§ 5832. Actions Arising Out of Improvements and Assessments.—No person shall be permitted to take advantage of any error committed in any proceeding to lay out, construct or improve any county road, or part thereof, under and by virtue of this chapter nor of any error committed by the county commissioners or by the county auditor, or county treasurer or county engineer or any other person or persons in the proceedings to lay out, construct or improve such road; nor of any informality, error, or defect appearing in the record of such proceedings, unless the party complaining is affected thereby. But the court in which any action may be brought to enjoin, reverse, or declare void the proceedings by which any such road has been laid out, constructed or improved, or ordered to be laid out, constructed or improved, or to enjoin the collection of any tax or assessment levied or ordered to be levied for the purpose aforesaid, may, if there be manifest error in such proceedings affecting the rights of the plaintiff in such action, set the same aside, as to him, without affecting the rights or liabilities of other parties in interest; and the court shall, in the final hearing, make such order in the premises as may be equitable and just, and may order the assessment levied against the plaintiff's property to remain on the assessment-roll for collection, or to be again levied in whole or in part, or may perpetually enjoin the same, or any part thereof. The cost of such action, and the proceedings had therein, shall be apportioned among the parties, or paid out of the county treasury, in whole or in part, as justice may require and the court direct: Provided, that all the land liable to assessment, under the provisions of this act, for the construction of such road, shall be held responsible to the county, to protect the county against all loss or liability arising from any judicial proceedings affecting the assessment for benefits, and also all costs and expenses that may arise in any litigation; and reassessments by the county engineer and committee of supervisors shall be made to discharge the same. [L. '09, p. 787, § 25.]

§ 5833. Roads Kept Up by County.—All roads laid out, constructed or improved under the provisions of this chapter shall thereafter be maintained in repair by the county, as other roads are kept and maintained in repair. [L. '09, p. 788, § 26.]

§ 5834. Act Concurrent With Existing Laws.—Nothing herein shall be construed as repealing or modifying any existing law for the creation, laying out, opening, construction or improvement of any public highway or county road, but shall be construed as an additional power and method for the improvement of county roads, and as extending to owners of rural lands a similar right to that enjoyed

by cities of the first class of making good roads of the public highways which are appurtenant to such lands at their own expense by charging the cost thereof upon such lands specially benefited, without impairing the county general funds or road and bridge funds, and shall be construed as co-operating and concurrent with the laws providing for the improvement of public highways under the supervision of the state highway commissioner. [L. '09, p. 788, § 27.]

CHAPTER XX.

Metropolitan Park Districts.

§ 5835. Organization Authorized.—The cities of the first class in the state of Washington, and such contiguous property the residents of which may decide in favor thereof in the manner hereinafter set out, are hereby authorized and empowered to create a metropolitan park district for the management, control, improvement maintenance, and acquisition of parks, park ways, and boulevards, now or hereafter located within such park district. [L. '07, p. 182, § 1.]

§ 5836. Petition for Election for Formation of District.—At any general election, or at any special election which may be called for that purpose, or at any city election held in such city in each of the various voting precincts of such city, the city council may, or on petition of fifteen per cent of the qualified electors of such city based upon the registration for the last preceding general city election shall, by ordinance, submit to the voters of such city the proposition of creating a metropolitan park district, the limits of which park district shall be coextensive with the limits of such city as now or hereafter established, inclusive of territory annexed to and forming a part of such incorporated city of the first class, which said territory by virtue of such annexation to any city having theretofore created a park district under this chapter shall be deemed to be the limits of such metropolitan park district, and the city council shall submit such proposition at the special election to be called therefor when such petition so requests. In submitting the said question to the voters for their approval or rejection, such city council shall pass an ordinance declaring its intention to submit the proposition of creating a metropolitan park district to the qualified voters of such city, which said ordinance shall be published for at least five days in a daily newspaper published in said city, and said city council shall cause to be placed upon the ballot for such election, at the proper place, the proposition which shall be expressed on said ballot in the following terms:

○ "For the formation of a metropolitan park district."

○ "Against the formation of a metropolitan park district."

[L. '07, p. 182, § 2; L. '09, p. 427, § 1.]

§ 5837. Park Districts — Elections—Commissioners.—If at such election a majority of the voters voting upon such proposition shall vote in favor of the formation of such park district, the city council shall so declare in its canvass of the returns of such election, and such park district shall then be and become a municipal corporation of the state of Washington, and the name of such metropolitan park district shall be "Metropolitan Park District of —— (inserting the name of the city constituting the park district)." At the same election at which the proposition is submitted to the voters as to whether a metropolitan park district shall be formed, five (5) park commissioners shall be elected to hold office respectively for the terms of one, two, three, four and five years, and until their respective successors are elected, the term of each nominee for park commissioners to be expressed on the ballot. And thereafter, and at least thirty (30) days prior to the first Tuesday of June in each year, such board of park commissioners shall give notice by publication in at least five issues of a daily newspaper published within said metropolitan park district that an election will be held on the first Tuesday of June thereafter for a park commissioner to hold office for five years and until his successor is elected. Nominations for park commissioners shall be by petition of one hundred (100) qualified electors of such park district, to be filed in the office of the city clerk of such city for the first election, and with the clerk of such metropolitan park district for all succeeding elections, such nominations to be so filed at least five (5) days prior to such election: Provided, however, that there shall be no election held on the first Tuesday of June immediately following the creation of such park district: And provided further, that in the event of a vacancy caused by death, resignation or otherwise, such vacancy shall be filled by appointment by a majority vote of the remaining commissioners until the next regular election for park commissioner. Said board of metropolitan park commissioners shall designate in their notice of election whether such election be a general or special election, the time of opening and closing the polls and the places for voting, but in no event shall there be less than one voting place in each of the various wards of such city, and at least one voting place in any outlying district annexed to such park district and not within the city. The polls shall be kept open at every election held by said park district at least from 1 o'clock P. M. to 7 o'clock P. M., but said park commissioners may keep the polls open for a longer period of time if they shall so order, but the time of opening and closing the polls must be stated in the notice of election, and the polls shall be opened and closed in accordance with such notice. Any person residing in said park district who is, at the time of holding of any such election, a qualified voter under the

laws of the state of Washington, shall be entitled to vote at any election held in such metropolitan park district. The officers of the city or county having charge of the registration books shall deliver the same to the park commissioners for the use of the election officers at any election held in a metropolitan park district formed under and in accordance with the provisions of this act. And the registration of voters for elections to be held in such metropolitan park district shall be conducted by the city clerk and officers of registration of the city and territory embraced within said metropolitan park district; and the notice prescribed to be given by section 4765, supra, shall constitute sufficient notice to citizens residing within said metropolitan park district for registration for any general or special election therein, without the necessity for such notice specially stating that it is for registration for an election to be held by a metropolitan park district. And any elector who shall have registered in accordance with the laws of this state entitling him to vote at a general or special election in the city or territory comprised within such metropolitan park district within time to constitute same a good registration for any general or special election of said metropolitan park district shall be entitled to vote thereat without further or other registration. The clerk of such metropolitan park district shall give notice of the closing of the poll-books for registration for any general or special election of such park district, by a notice published at least ten (10) days preceding such closing, such published notice to have at least two (2) insertions in a newspaper of general circulation in such park district. And such poll-books shall be closed for the purpose of registration of voters for any general or special park district election five (5) days preceding such election, and such published notice shall so declare: Provided, however, that said poll-books shall not thereby be deemed closed for general, county or city municipal elections, but closed only for general or special metropolitan park district elections. The city clerk or registration officer required to perform the duties enumerated under this act shall receive no additional compensation therefor. The general laws of the state of Washington governing the registration of voters for general or special city municipal elections, when not inconsistent with the foregoing provisions, shall govern the registration of voters for elections held under this chapter, and the registration books of the city and territory comprising said park district shall be the books used by said park district, and no separate registration books shall be kept or maintained by it. The manner of holding any general or special election for said metropolitan park district shall be in accordance with the laws of this state, and the charter provisions of the city within which said park district lies, in so far

as the same are not inconsistent with the provisions of this act. [L. '07, p. 183, § 3; L. '09, p. 428, § 2.]

§ 5838. Board of Park Commissioners—Officers—Powers and Duties.—When the said metropolitan park district shall be created as hereinbefore provided for, it shall at once be and become a separate and distinct corporation, the officers of which shall be a board of park commissioners consisting of five members, and said board of park commissioners shall annually elect one of their number as president and another of their number as clerk of said board. Such corporation is hereby given the right of eminent domain, and may purchase, acquire, and condemn lands for public parks, parkways, and boulevards, and may condemn lands to widen, alter, and extend streets, avenues, boulevards, and parkways, to enlarge and extend existing parks, and to acquire lands for the establishment of new parks, boulevards, and parkways. Said park commissioners shall have authority to pass orders, providing for all condemnations which they may desire to institute for the purpose of this act, and to bring actions in the proper courts for the condemnation of lands, to employ counsel, and to regulate, manage, and control the parks, parkways, boulevards, streets, and avenues under its control, and to provide for park policemen, for a secretary of the board of park commissioners, and for all necessary employees, and to fix their salaries and duties: Provided, however, that all employees of such metropolitan park district, except the attorney for such park district, shall be under civil service, and the said park commissioners shall constitute a civil service board to pass upon the qualifications of applicants for positions. Said board of park commissioners, as such civil service commission, shall adopt rules for the employment of necessary employees, shall provide for examinations at such times, and upon such subjects, as they may deem necessary, and the employment of such park employees shall be wholly upon the merit system. No park employee shall be discharged except for incompetency, inability to perform their duties, offensive partisanship, or such other reasons as may be deemed sufficient by such board, and then only after a full and fair hearing upon written charges filed with such board: Provided, however, that when the necessity for further continuing any park employee shall cease, such park commissioners shall have power to discharge such employee; it being the true intent and meaning of this act to place the sole acquisition, management, improvement and control of all parks, boulevards, and parkways, in such board of park commissioners; and the control, management, and improvement of any such park, parkways, and boulevards as shall be within or without the limits of any city and under its control, creating a metropolitan

park district pursuant to this act, shall immediately vest in such board of park commissioners: Provided, however, that all such parks, boulevards and parkways shall be subject to the police regulations of any city within which they may lie. [L. '07, p. 184, § 4.]

§ 5839. **Tax Levy—Limit of—Collection.**—Said board of park commissioners are hereby authorized to levy, or cause to be levied, a general tax on all the property located in said park district each year, not to exceed one and one-half mills on the assessed valuation of the property in such park district. Said taxes when so levied shall be certified to the proper county officials for collection the same as other general taxes. When such money is collected it shall be placed in a separate fund, to be known as the "Metropolitan Park District Fund," and paid out on warrants issued on the board of park commissioners for the purposes specified in this act. [L. '07, p. 185, § 5.]

§ 5840. **Limit of Indebtedness.**—Each and every metropolitan park district that may hereafter be organized pursuant to this chapter is hereby authorized and empowered, by and through its board of commissioners, to contract indebtedness for park, boulevard and parkway purposes, and the extension and maintenance thereof, not exceeding one quarter of one (¼) per cent of the taxable property in such metropolitan park district, to be ascertained by the last assessment for state and county purposes previous to the incurring of such indebtedness. [L. '07, p. 186, § 6.]

§ 5841. **Additional Indebtedness—Election to Authorize.**—Each and every metropolitan park district hereafter to be organized, pursuant to this chapter, may contract indebtedness in excess of the amount named in the preceding section, but not exceeding in amount, together with existing indebtedness, five (5) per centum of the taxable property in said district, to be ascertained as provided in the preceding section, whenever three-fifths (⅗) of the voters voting at said election in such metropolitan park district assent thereto, at an election to be held in said metropolitan park district, in the manner provided by this act, which election may be either a special or a general election, and the park commissioners of such metropolitan park district are hereby authorized and empowered to submit the question of incurring such indebtedness, and issuing negotiable bonds of such metropolitan park district, to the qualified voters of such park district at any time they may so order. [L. '07, p. 186, § 7.]

§ 5842. **Bonds—Issuance and Disposal of.**—In case the question of incurring indebtedness and issuing bonds as set forth and described in section 5841 shall be submitted to the voters of such metropolitan park district and carried as hereinabove provided for,

the commissioners of such metropolitan park district may issue the negotiable bonds of such district for the amount of such indebtedness and may dispose of said bonds either in payment of such indebtedness, or may advertise and sell said bonds in the open market for cash, but in no event shall said bonds be disposed of or negotiated at less than par. [L. '07, p. 186, § 8.]

§ 5843. **Same—Denomination, Interest, Form, etc.**—Said bonds shall be in denominations of not less than one hundred dollars nor more than one thousand dollars. They shall bear the date of issue, shall be made payable to the bearer, in not more than twenty (20) years from date of issue, and bear interest at a rate not exceeding five (5) per cent per annum, payable annually, with coupons attached, for each interest payment. The bonds and each coupon shall be signed by the presiding officer of the board of park commissioners and shall be attested by the clerk of said board, who shall be a member thereof. Said bonds shall be printed, engraved, or lithographed on good bond paper, and the bond shall state on its face that it is issued in accordance, and in strict compliance with an act of the legislature of the state of Washington, entitled: "An act authorizing the formation of metropolitan park districts, providing for park officials, fixing their powers and duties, and declaring an emergency," approved March 11, 1907, and the act amendatory thereof approved on the —— day of ——, 1909 (inserting the date of the approval of this act). Said bonds shall be payable as therein designated in any city of the United States having a national bank. [L. '07, p. 187, § 9; L. '09, p. 431, § 3.]

§ 5844. **Tax Levy for Interest and Redemption.**—Said commissioners shall include in their general tax levy for each year a sufficient sum to pay the interest on all outstanding bonds, and may include a sufficient amount to create a sinking fund for the redemption of such bonds. Said bonds shall be numbered from one (1) up consecutively, and shall be payable in the order of their number beginning with bond numbered one (1). [L. '07, p. 187, § 10; L. '09, p. 431, § 4.]

§ 5845. **Payment of Bonds—Notice of Call.**—Whenever there is money in the funds of such metropolitan park district and the commissioners shall deem it advisable to apply the same or any part thereof upon the payment of bonded indebtedness, they shall advertise in a daily newspaper published within said park district for the presentation to them for payment of as many bonds issued under the provisions of this act as they may desire to pay with the funds on hand, said bonds to be paid in numerical order, beginning with bond numbered one, until all of said bonds are paid: Provided, that thirty (30) days after the first publication of said

notice by the board of such park district, calling in any of said bonds by their number, said bonds shall cease to bear interest, which shall be stated in the notice calling for such bonds. [L. '07, p. 187, § 11.]

§ 5846. Interest Coupons—Payment of.—The coupons hereinbefore mentioned for the payment of interest on said bonds shall be considered in all purposes as warrants drawn upon the general fund of the said metropolitan park district issuing such bonds, and when presented to the treasurer of the county having custody of the funds of such park district at maturity, or thereafter, and when so presented, if there are no funds in the treasury to pay the said coupons, it shall be the duty of the county treasurer to indorse said coupons as presented for payment, in the same manner as county warrants are indorsed, and thereafter said coupons shall bear interest at the same rate as the bond to which it was attached. [L. '07, p. 188, § 12.]

§ 5847. Registration of Bonds, by County Treasurer and Park Board.—Before the bonds are delivered to the purchaser, they shall be presented to the county treasurer who shall register them in a book kept for that purpose and known as the "Metropolitan Park Bond Register," in which register shall be entered the number of each bond, date of issue and maturity, amount, rate of interest, to whom and when payable. Such county treasurer shall receive no compensation other than his regular salary for receiving and disbursing the funds of such metropolitan park district. The board of park commissioners shall keep a register of such bonds similar to that provided for the county treasurer. [L. '07, p. 188, § 13.]

§ 5848. Powers of Commissioners.—Said park commissioners shall have power to improve, acquire, extend, and maintain, open and lay out parks, parkways, boulevards, and avenues within said park district, and may pay out moneys for the purchase of lands, improvements, maintenance, and all expenses incidental to their office and duties. [L. '07, p. 188, § 14.]

§ 5849. Improvement on Local Assessment Plan.—If at any time any proposed improvement of any parkway, avenue, street, or boulevard shall be deemed by said park commissioners to be a special benefit to the lands adjoining, contiguous, approximate to or in the neighborhood of such proposed improvement, if such lands be within the corporate limits of any city of the first class, such board of park commissioners may so declare and order, designating the property to be benefited thereby, and thereupon they may petition the city council of such city to cause such improvement as said commissioners may direct to be done and made on the local assessment plan, and the portion of the cost of such improvement as fixed

by such assessment-roll assessed against the said property so benefited in the same manner and under the same procedure as is now, or may hereafter be, enacted for local improvements by cities of the first class, in so far as such procedure is not inconsistent with the provisions of this act, and the remainder of the cost of such improvement to be paid out of any funds of such metropolitan park district in its possession or under its control. Said board of park commissioners shall designate the kind, manner and style of the improvement so to be made, and may designate the time within which same shall be made. [L. '07, p. 188, § 15; L. '09, p. 432, § 5.]

§ 5850. City may Give Lands.—Any city of the first class within or comprising any such metropolitan park district is hereby given authority to turn over to said park commissioners any lands which it may own, or any street, avenue, or public place within said city for park or parkway purposes, and thereafter the control and management of the same shall vest exclusively in the said board of park commissioners: Provided, however, that the police regulations of such city shall apply to all such premises. [L. '07, p. 189, § 16.]

§ 5851. Objections to Assessments—Appeals.—Any person, firm or corporation, feeling aggrieved by the assessment against his or its property, may file objections with the city council, and may appeal from the order confirming said assessment-roll, in the same manner as objections and appeals are made in regard to local improvements in cities of the first class in the state of Washington. [L. '07, p. 189, § 17.]

§ 5852. Lien and Collection of Assessment.—The assessment for local improvements authorized by this chapter shall become a lien in the same manner, and be governed by the same law, as is provided for local assessments in cities of the first class, and such assessment shall be collected as local improvements in said cities of the first class. [L. '07, p. 189, § 18.]

§ 5853. Donations.—Said park commissioners shall have power to accept public streets of the city and grounds for public purposes when the same shall be donated for park, boulevard, and parkway purposes. [L. '07, p. 189, § 19.]

§ 5854. Annexation of Territory—Petition for Election for.—The territory adjoining and in the same county with any park district organized under this chapter may be annexed to and become a part of such metropolitan park district, in the manner following: Any twenty-five (25) legal voters, residents within the territory proposed to be annexed, may petition the board of park commissioners of such district to cause the question to be submitted to the legal voters of the territory proposed to be annexed, whether

they will be annexed and become a part of such adjoining park district: Provided, however, that where such territory proposed to be annexed shall be within the limits of an incorporated city or town other than the first class, such petition shall be signed by at least twenty (20) per cent of the qualified electors residing within such territory. The petition shall define the limits of the territory proposed to be annexed to such park district. Upon the filing of such petition with the board of park commissioners, if said commissioners shall concur in said petition, they shall provide for a hearing to be held for the discussion of such proposed annexation at the office of said board of park commissioners, and shall give due notice of such hearing by publication in a daily newspaper published in said park district for at least five (5) days prior to said hearing. If said park commissioners shall concur in said petition, it shall be their duty to submit the proposal to the electors of such territory proposed to be annexed, at an election to be held in such territory. The said commissioners shall, by order of such board duly adopted, fix a time and place or places within the limits of the territory proposed to be annexed, for the holding of such election to determine the question of annexation, and said commissioners shall name the persons to act as judges at such election, and shall give notice thereof by causing notice to be published for five (5) days in five (5) consecutive issues of a daily newspaper published in said park district, and by posting notices in five (5) public places within the territory proposed to be annexed to said district. The ballot to be used at such election shall be in the following form:

☐ "For annexation to metropolitan park district."

☐ "Against annexation to metropolitan park district."

The judge or judges at such election shall make return thereof to the board of park commissioners, who shall canvass such return and cause a statement of the result of such election to be entered on the record of such commissioners. If the majority of the votes cast upon that question at such election shall be for annexation, then such territory shall immediately be and become annexed to such park district, and the same shall thenceforth be a part of said park district, the same as though originally included in such district. [L. '07, p. 189, § 20.]

§ 5855. **Election—Officers—Expense.**—All election officers for any election held pursuant to this chapter shall be named by the board of park commissioners, and the expense of all such elections shall be paid out of the funds of such metropolitan park district. [L. '07, p. 191, § 21.]

§ 5856. Indebtedness Against Park Property Assumed by District. When any metropolitan park district shall be formed pursuant to this chapter, and shall assume control of the parks, parkways, boulevards, and park property of the city in which said park district is created, such park district shall assume all existing indebtedness, bonded or otherwise, against such park property, and shall arrange by taxation or issuing bonds, as herein provided, for the payment of such indebtedness, and shall relieve such city from such payment. Said park district is hereby given authority to issue refunding bonds when necessary in order to enable it to comply with this section. [L. '07, p. 191, § 22.]

CHAPTER XX-A.

Arterial Streets.

§ 5856-1. "Arterial" Streets Defined.—Whenever any street, avenue or highway within any city or town shall connect at or near the corporate limits of such city or town with any public road or highway not less than two miles in length, and constructed along a main line of travel being uniformly graded to a width of not less than sixteen feet, and having proper bridges, drains and culverts, and surfaced with macadam, stone, compacted gravel, or other material equally as permanent and durable, not less than twelve feet in width, such street, avenue or highway may be improved by grading or regrading, planking or replanking, paving or repaving, macadamizing or remacadamizing, graveling or regraveling, bridging or rebridging, surfacing or resurfacing, from the point of connection with such road or highway to the business center of such city or town, or to a connection with a permanently surfaced street leading thereto, under the provisions of this act. Streets improved under the provisions of this act shall be known as "arterial streets." [L. '13, p. 142, § 1.]

Cited in 87 Wash. 192, 194.

§ 5856-2. Resolution to Improve Arterial Street.—Whenever the city council or other governing body of any city or town shall desire to improve any arterial street under the provisions of this act it shall adopt a resolution designating the street or streets to be improved, the general character of the improvement to be made, the estimated cost thereof and the amount of such cost which will be of special benefit to the property, a certified copy of which resolution shall be forthwith transmitted to the board of county commissioners. If the board of county commissioners shall approve such resolution the city council or other governing body of such city or town shall thereupon be empowered to and shall improve such arterial street as above provided and to enter into contracts therefor. [L. '13, p. 143, § 2.]

Cited in 87 Wash. 194.

§ 5856–3. Local Improvement District — Limit of Assessments.— So much of the cost of such improvement as shall be of special benefit to property within such city or town shall be a charge upon such property, and the city council or other governing body shall cause to be created in the manner provided by law a local improvement district for the purpose of defraying so much of the cost as shall benefit property therein. The provisions of law with reference to the creation of local improvement districts for the improvement of streets shall, so far as the same are applicable, apply to arterial streets improved under the provisions of this act: Provided, however, that nothing in this act shall be construed to prevent any property included in such improvement district from being charged under this act with any amount not exceeding fifty per cent of the valuation thereof, as last placed upon it for the purpose of general taxation, exclusive of improvements thereon. So much of the cost of such improvement as shall not be charged to property within the improvement district above provided for shall be paid equally by the county and the city or town. The board of county commissioners of any county is authorized and empowered to pay the portion of the cost chargeable to such county for the improvement of any arterial street under the provisions of this act from the general road and bridge fund of the county, or from the district road and bridge fund of the district with which such arterial street connects. The city council or other governing body of any city or town is authorized to pay the part of the cost of improving any arterial street under the provisions of this act, which shall be a charge against such city or town from the general fund of such city or town or from any special fund which shall be available for that purpose. [L. '13, p. 143, § 3.]

§ 5856–4. Limitation of Act.—This act shall not be construed as providing for the maintenance of said arterial highways within the limits of any municipality. [L. '13, p. 143, § 4.]

CHAPTER XXI.

Private Ways of Necessity.

§ 5857. Private Ways may be Established, How. — The owner or owners of any lands, which do not abut on any highway, or which are so situated that it is necessary to cross the lands of others to obtain a reasonable way to any public highway, may obtain the location and establishment of a road between his or their said lands and the highway by proceedings in the superior court of the county in which the lands over which such proposed road is to run are situated, in the manner provided by law for the appropriation of private property by corporations, except as in this chapter provided. [L. '95, p. 180, § 1.]

For former laws on this subject see L. '54, p. 346, §§ 18, 19; Cd. '81, §§ 2984-2986; L. '88, p. 196.

§ 5857-1. Eminent Domain—What Included.—An owner, or one entitled to the beneficial use, of land which is so situate with respect to the land of another that it is necessary for its proper use and enjoyment to have and maintain a private way of necessity or to construct and maintain any drain, flume or ditch, on, across, over or through the land of such other, for agricultural, domestic or sanitary purposes, may condemn and take lands of such other sufficient in area for the construction and maintenance of such private way of necessity, or for the construction and maintenance of such drain, flume or ditch, as the case may be. The term "private way of necessity," as used in this act, shall mean and include a right of way on, across, over or through the land of another for means of ingress and egress, and the construction and maintenance thereon of roads, logging roads, flumes, canals, ditches, tunnels, tramways and other structures upon, over and through which timber, stone, minerals or other valuable materials and products may be transported and carried. [L. '13, p. 412, § 1.]

Cited in 77 Wash. 586; 82 Wash. 508.

§ 5857-2. Procedure for Condemnation.—The procedure for the condemnation of land for a private way of necessity or for drains, flumes or ditches under the provisions of this act shall be the same as that provided for the condemnation of private property by railroad companies, but no private property shall be taken or damaged until the compensation to be made therefor shall have been ascertained and paid as provided in the case of condemnation by railroad companies. [L. '13, p. 412, § 2.]

§ 5857-3. Logging Road to Carry Products.—Any person or corporation availing themselves of the provisions of this act for the purpose of acquiring a right of way for a logging road, as a condition precedent, [shall] contract and agree to carry and convey over such roads to either termini thereof any of the timber or other produce of the lands through which such right is acquired at any and all times, so long as said road is maintained and operated, and at reasonable prices; and a failure so to do shall terminate such right of way. The reasonableness of the rate shall be subject to determination by the public service commission. [L. '13, p. 412, § 3.]

§ 5858. Petition must Show What.—The person or persons desiring the location and establishment of such road shall set out in his or their petition a description of his or their lands, the situation of the highway with reference to such land, and such other facts as will show the necessity of the establishment of the road, and shall set out

the estimated value of the lands to be appropriated for such road. [L. '95, p. 180, § 2.]

§ 5859. Bonds for Costs.—Before the hearing of such petition, the petitioner or someone in his behalf shall enter into a bond with two or more sureties to be approved by the county clerk, which bond shall be in the penal sum of two hundred dollars, payable to the state of Washington for the use of such persons as may be interested, conditioned that the obligors shall pay all costs and expenses incurred in the proceedings. [L. '95, p. 181, § 3.]

§ 5860. Commissioners to View Proposed Road.—Upon the hearing of said petition after notice thereof as prescribed by law, the court shall appoint three commissioners, who shall, on a day to be fixed by the court, in the order appointing them, view the lands of the petitioner, and the lands over which it is proposed to locate and establish such road, for the purpose of determining,—

First: Whether there is necessity for the establishment of a road: and,

Second: The most practicable route for such road, if the same be necessary, and the clerk of said court shall furnish to said commissioners a certified copy of the order so appointing them. [L. '95, p. 181, § 4.]

§ 5861. Report of Commissioners.—When said commissioners shall have made such examination they shall, within ten days after the day appointed by the court for such examination, report to the court in writing (filing the same with the clerk of said court), their decision as to the necessity for the road, and if they deem such road necessary, then they shall set out in such report an accurate description of the road and the route thereof, as recommended by such commissioners, and the estimated value of the land which would be taken for such road, and the amount to be allowed in damages to each separate owner of the lands sought to be appropriated, which in their estimation is just and equitable. [L. '95, p. 181, § 5.]

§ 5862. Exceptions to.—Any person interested may file exceptions in writing to such report at any time within thirty days after the time fixed by the court for the examination of such commissioners, and such report shall be heard and considered by the court as to the necessity for such road, and as to the location thereof. On the next day after the expiration of the time limited for the filing of exceptions, or as soon thereafter as the same can be heard, which hearing shall be by the court without a jury, and the court shall decide as to the necessity of such road, and if the same be found necessary, then the court shall fix the location of the road and establish such road, to be opened when compensation shall be made therefor as provided by law: Provided, that if the court do not approve the

report of the commissioners as to the necessity of the road, or as to the route thereof, then the court may appoint other commissioners whose duties shall be the same as the duties of the commissioners first appointed. [L. '95, p. 181, § 6.]

§ 5863. Costs.—Such commissioners shall be allowed two dollars per day for their services, which shall be taxed as a part of the costs of the proceedings. All other costs shall be the same as in other civil actions and proceedings in such court, and all costs shall be taxed to and paid by the petitioner or petitioners. [L. '95, p. 182, § 7.]

§ 5864. Damages, When and How Awarded.—If, on the hearing of the report of the commissioners, the court shall find that there is necessity for the road, and shall by order determine the route thereof, then the cause shall be tried before a jury as to the amount of compensation to be made by way of damages for the establishment of the road: Provided, that such trial shall be had at a regular term [session] of such court when a jury shall be present. The trial shall be conducted and verdict rendered in the manner provided by law in the case of appropriation of private property by corporations: Provided further, that a jury may be waived as in other civil cases in courts of record in the manner prescribed by law. [L. '95, p. 182, § 8.]

§ 5865. Appeal.—No appeal shall be taken from any order of the court as to the necessity of the road or as to the route thereof until after judgment as to the amount of compensation: Provided, that exception shall be taken and entered to such orders at the time the same are made, and the appeal from such orders and from the judgment awarding such compensation shall be taken at one time: Provided further, that all the provisions of law relating to appeals from judgments in proceedings for the appropriation of private property by corporations shall apply to the proceedings provided for it in this chapter so far as the same are not inconsistent herewith. [L. '95, p. 182, § 9.]

§ 5866. Damages, Payment of.—Within twenty days after the judgment awarding damages the petitioner or petitioners shall pay into court the amount of the award of damages, together with the costs as aforesaid, and upon such payment judgment of appropriation shall be made establishing the road. [L. '95, p. 183, § 10.]

CHAPTER XXII.

State Highway Commissioner and Board.

§ 5867. Board and Commissioner—Appointment, Qualifications.—There is hereby created the office of state highway commissioner and a state highway board. The said state highway commissioner shall be appointed by the governor and shall hold his office for four years unless sooner removed for cause; and shall receive an annual compensation of five thousand dollars a year, and shall be allowed his actual traveling expenses while officially employed, and shall be allowed his office expenses.

He shall take oath of office and shall give a bond in the sum of ten thousand dollars, conditioned for the faithful performance of his duties; the said highway board shall be composed of the governor, state auditor, the state treasurer, the state highway commissioner and a member of the railroad commission of Washington, to be named by the governor. Each shall be allowed his actual traveling expenses while engaged in official duties as member of such highway board. [L. '11, p. 156, § 1. Cf. L. '05, p. 355, § 1; L. '97, p. 294, § 1; L. '09, p. 649, § 1.]

§ 5868. Location of Office — Duties. — The commissioner shall be furnished with a suitable office in the capitol building, where his records shall be preserved, and said office shall be kept open at such times as the business of the commissioner shall require. He shall keep a record of all proceedings and orders pertaining to the matters under his direction and copies of all plans, specifications and estimates submitted to him. The commissioner shall prepare and submit, ninety days before the session of each legislature of the state of Washington, a report of the work constructed or under construction and shall make recommendation as to the needed state highways, together with the estimated cost of such needed highways. [L. '05, p. 355, § 2; L. '07, p. 294, § 2; L. '09, p. 650, § 2.]

§ 5869. Apportionment of Appropriation.—It shall be the duty of the state highway board to decide what portion of the amount appropriated for any state road shall be expended within the boundaries of the several counties through which it is proposed to pass. [L. '07, p. 295, § 3; L. '09, p. 650, § 3.]

§ 5869-1. Construction of State Roads—Labor.—The state highway board may in its discretion cause any state road to be constructed, either under contract as now provided by law or by force account. In case the construction is done by force account, the work thereon shall be done by convict labor to the extent that the same may be available and advantageously used, and such free labor may be employed as may be necessary to successfully carry on the work.

If free labor is employed the state highway board shall by resolution entered on its records state the reasons therefor. [L. '13, p. 411, § 1.]

§ 5869–2. Purchase of Machinery.—Whenever any money shall be appropriated for any state road or roads, and the state highway board shall have determined to construct the same by convict labor and free labor as aforesaid, the state highway board may in its discretion purchase road-making machinery to be used in such construction work. The board shall, prior to entering upon any such construction work determine what roads shall be improved by force account, and estimate the amount and cost of machinery that can be used in the construction of all of the roads, to the end that the machinery may be used on different roads. When the board has decided how much machinery can be so used, it may purchase the same and pay for it from the appropriation made for different roads, in proportion to the amount of use that will be made of it on each road. [L. '13, p. 411, § 2.]

§ 5870. Survey—Approval of Board.—Whenever any money is appropriated for the construction of a state road, the state highway commissioner shall, unless such road has been theretofore surveyed, cause survey to be made of the entire length of such highway, and cause the same to be mapped both in outline and profile, and shall also cause plans and specifications for the construction of such highway to be prepared. Such maps, plans and specifications shall be thereupon submitted to the state highway board, and no portion of any appropriation shall be expended upon such road until the state highway board shall have declared such road feasible and shall have approved said outline and profile maps and said plans and specifications. [L. '07, p. 295, § 4; L. '09, p. 650, § 4.]

§ 5871. Assistants—Expense.—The state highway commissioner shall have authority to employ such civil engineers and assistants as may be necessary to carry out the provisions of section 5870, and to provide for superintendence of construction and maintenance work on state roads, and the expense so incurred shall be considered a part of the cost of the road in connection with which such expense is incurred and shall be a charge against the fund appropriated for the construction of such road. He shall also have authority to employ such assistants as may be necessary to carry on the office work of the highway department. [L. '07, p. 295, § 5; L. '09, p. 650, § 5.]

§ 5871–1. Assistant and Chief Clerk.—The highway commissioner may appoint an assistant who shall act as chief clerk in his office, and such assistant shall have power to perform any act or duty relating to the office of highway commissioner that the commissioner has, and, in case of vacancy by death or resignation of the highway

commissioner, said assistant shall perform the duties of said office until the vacancy is filled. Such assistant shall subscribe, take and file the oath of office provided by law for other state officers before entering upon the performance of his duties. The principal shall be responsible under his official bond for all of the official acts of the assistant, and may revoke such appointment at his pleasure, and may require his assistant to give him a bond in such sum as the principal may determine, which bond shall be made, executed, approved and filed as other state official bonds. [L. '13, p. 69, § 1.]

§ 5872. Acquisition of Right of Way.—The state highway commissioner is hereby authorized to acquire right of way on behalf of the state for state roads by gift, purchase or condemnation in the manner prescribed by law for the acquirement or condemnation of lands for county roads. The cost of such right of way shall be paid for from the fund apportioned to the state road for which such right of way is acquired. Whenever it is necessary to locate and construct a state road over and across any of the public lands of the state of Washington, the state highway commissioner shall file in the office of the state land commissioner a map showing the location of such road over and across each legal subdivision of such public lands, and upon the filing of such map, the easement for such right of way shall be reserved to the state and such subdivision of public land when sold, leased or otherwise disposed of, shall be sold, leased or disposed of subject to such right of way. [L. '07, p. 295, § 6; L. '09, p. 651, § 6.]

§ 5873. Advertisement for Bids — Deposit — Contractor's Bond.—Upon the approval of the maps, plans and specifications as provided for in section 5870, it shall be the duty of the state highway commissioner to advertise for bids for the construction of such highway, or such sections thereof as the state highway board shall designate, according to such maps, plans and specifications. Advertisements for such bids shall be made by publication in the official county paper, and also in some daily paper of general circulation in the state to be designated by the state highway commissioner, for not less than three consecutive weeks prior to the time set for the opening of said bids. All bids received shall be opened by the state highway board at its office at the capitol. Said state highway board shall have the right to reject any and all bids if in its opinion good cause exists therefor, but otherwise shall award the contract to the lowest and best bidder. The state highway board shall require a surety bond from the successful bidder in the full amount of the contract, conditioned for the faithful performance thereof according to law. Each bidder shall deposit with his bid a certified check in an amount equal to five per centum of the amount of his bid. Should the bidder to whom the contract is awarded fail to enter into a contract and

furnish the bond hereinbefore provided within ten days after the notice of such award, the amount of such check shall be forfeited to the public highway fund. The checks of all unsuccessful bidders shall be returned after the contract is awarded and a bond given. Nothing in this section shall be construed to prevent the employment of convict labor when otherwise authorized by law. [L. '07, p. 296, § 7; L. '09, p. 651, § 7.]

§ 5874. Approval of Claims—Vouchers.—The state highway commissioner shall examine and allow or disallow all bills for work done or materials furnished, and certify all claims allowed to the state auditor. In the event that counties appropriate money to aid in the construction of any state road, such sum so appropriated shall be expended upon vouchers approved by the state highway board, and the county auditor is authorized to draw his warrant upon such vouchers. [L. '07, p. 296, § 8; L. '09, p. 652, § 8.]

§ 5875. State to Keep in Repair.—After the completion of any road constructed or repaired by the state under this act it shall become the duty of the state highway commissioner to keep the same in repair at the cost of the state, such cost to be paid from the public highway fund. The word road in this act shall be deemed to include all tunnels, culverts and bridges built by the state. [L. '07, p. 297, § 9; L. '09, p. 652, § 9.]

§ 5876. Expenses Paid from Highway Fund.—All expenses of the state highway commissioner's office, including salary, office expenses, traveling expenses, and all expenses of the highway board shall be paid out of the public highway fund. [L. '07, p. 297, § 10; L. '09, p. 652, § 10.]

§ 5877. Duties of Commissioner—Statistics—Advice.—In addition to his other powers and duties, the state highway commissioner shall compile statistics relative to the public highways throughout the state, and shall collect all information in regard thereto deemed expedient. He shall investigate and determine upon various methods of road construction adapted to different sections of the state, and as to the best methods of construction and maintenance of roads and bridges, and such other information relating thereto as he shall deem appropriate. He may be consulted at all reasonable times by county officers having care and authority over highways and bridges, and shall advise such officers relative to the construction, repair, altering or maintenance of the same; and shall furnish such other information and advice as may be requested by persons interested in the construction and maintenance of public highways, and shall at all times lend his aid in promoting highway improvement throughout the state. He shall co-operate with all highway officers and shall assist county authorities, and, when requested by them, furnish them with

plans and directions for the improvement of the public highways and bridges. [L. '07, p. 297, § 11; L. '09, p. 652, § 11.]

§ 5878. Reports to Highway Commissioner.—The road supervisors and the county commissioners of any county, and all other officers who now have or may hereafter have by law the care and supervision of the public highways and bridges shall, from time to time, upon the written request of the state highway commissioner, furnish him with all available information in connection with the building and maintenance of the public highways and bridges in their respective localities. [L. '07, p. 297, § 12; L. '09, p. 653, § 12.]

CHAPTER XXII-A.

Classification of Public Highways.

§ 5878-1. Classes.—The highways of the state of Washington shall be divided into two classes, called primary and secondary roads. [L. '13, p. 221, § 1.]

Cited in 85 Wash. 262.

§ 5878-2. Primary Roads Specified—Pacific Highway.—A primary state highway is established as follows: A highway starting at the international boundary line at Blaine, Washington; thence southerly by the most feasible route through the cities of Bellingham, Mt. Vernon, Everett, Bothell, Seattle, Renton, along the easterly side of the White River valley, through Kent, Auburn, Tacoma, Olympia. Tenino, Centralia, Chehalis, to the southern boundary line of the state at the city of Vancouver, Washington, to be known as the Pacific Highway. [L. '15, p. 484, § 1. Cf. L. '13, p. 221, § 2.]

§ 5878-2a. Sunset Highway.—A primary state highway is established as follows: A highway starting from the Pacific Highway at Renton, Washington; thence over the most feasible route through Snoqualmie Pass; from Snoqualmie Pass southeasterly by the most feasible route by way of Easton and Cle Elum to Ellensburg; thence by the most feasible route to the Columbia River near Vantage; thence by the most feasible route to Wenatchee; thence over the most feasible route, through Waterville and Spokane, to the state boundary which shall be known as the Sunset Highway. [L. '15, p. 485, § 2; L. '15, p. 64, § 1.]

§ 5878-2b. Inland Empire Highway.—A primary state highway is established as follows: A highway connecting with the Sunset Highway at or in the vicinity of the city of Ellensburg; thence by the way of North Yakima, Kennewick, Pasco, Walla Walla, Dayton, crossing the Snake River in the vicinity of Central Ferry, Colfax, Rosalia, Spokane, Deer Park, Loon Lake, Colville, to the international

boundary line at Laurier, which shall be known as the Inland Empire Highway. [L. '15, p. 485, § 3.]

§ 5878–2c. Inland Empire, Eastern Route.—A primary state highway is established as follows: A highway known as the eastern route of the Inland Empire Highway, shall commence at or in the vicinity of the town of Dayton, thence over the most feasible route, through the town of Pomeroy, to the Idaho and Washington state line where said line crosses the steel bridge known as the Lewiston and Clarkston bridge, and shall be known as the first division of the eastern route.

The second division of the eastern route shall commence at a point on the Idaho and Washington line where the same crosses the public road known as the Lewiston and Uniontown road, thence over the most feasible route through Pullman, Palouse, and Garfield, thence in a northerly direction through Oakesdale joining the Inland Empire Highway at the most practical point to be determined by the highway commissioner. [L. '15, p. 485, § 4.]

§ 5878–2d. Central Washington Highway.—A primary state highway is established as follows: A highway connecting with the Inland Empire Highway at Pasco, Washington; thence by the most feasible route through Connell, Ritzville, Sprague, and Cheney, to Spokane, Washington, to be known as the Central Washington Highway. [L. '15, p. 486, § 5.]

§ 5878–2e. McClellan Pass Highway.—A primary state highway is established as follows: A highway starting at a connection with the Pacific Highway at Auburn, Washington; thence along the most feasible route through Enumclaw, following the route of former state road No. 1, to North Yakima, Washington.

At a point in Pierce county where said state road No. 1 leaves the main channel of White River, a branch shall take off which shall follow up the White River valley to a connection at the most practicable point with the Rainier National Park.

Another branch shall take off where road No. 1 leaves the American River and shall follow said American River by the most feasible route to a connection with the Rainier National Park, this highway and its branches to be known as the McClellan Pass Highway. [L. '15, p. 486, § 6.]

§ 5878–2f. National Park Highway.—A primary highway is established as follows: A highway starting from the Pacific Highway in the city of Tacoma; running thence southerly by the most feasible route, to or near the town of Elbe, where it will branch, one section connecting with the government road in Rainier National Park, at or near Ashford, Pierce county, and the other by the most feasible route

through Mineral, Morton, Klickitat, Prairie, Forest, Chehalis, Pe Ell, South Bend, to the ocean beach at Holman, in Pacific county, which shall be known as the National Park Highway. [L. '15, p. 487, § 7.]

§ 5878–2g. Olympic Highway.—A primary state highway is established as follows: A highway starting from the Pacific Highway in Olympia, Washington, combining roads numbers nine (9) and fourteen (14), and completely circling the Olympic Peninsula, through the cities of Shelton, Hoodsport, Duckabush, Quilcene, Port Angeles, Hoquiam, Montesano, Elma, and McCleary, reuniting with the Pacific Highway at Olympia, which shall be known as the Olympic Highway. [L. '15, p. 487, § 8.]

§ 5878–3. Secondary Roads. — All other state highways heretofore or hereafter established that are not designated to be primary highways, shall be classed as secondary highways. [L. '13, p. 223, § 3.]

§ 5878–4. Maintenance of Primary Highways.—All primary highways when constructed shall be maintained at the expense of the public highway fund of the state, and shall be under the immediate supervision and control, both for construction and maintenance of the state highway department. [L. '13, p. 223, § 4.]

§ 5878–5. Maintenance of Secondary Highways. — All secondary highways when constructed shall be maintained by the counties in which they are located, and in the event that any county does not desire to maintain such secondary highway it shall so indicate to the highway department of the state by the passage of a formal resolution to that effect spread upon the records of said board of county commissioners, a copy of which shall be forwarded to the office of highway commissioner; whereupon, said highway, unless it is a way of necessity whereby certain persons residing thereon are connected with the county highway, the same shall be abandoned as a public highway, and the right of way revert to the abutting property.

In the event that it is a private way of necessity the maintenance and upkeep of said highway shall devolve upon the persons whom it serves. [L. '13, p. 223, § 5.]

§ 5878–6. County and City Expenditure on State Roads.—Nothing in this act shall be construed to prevent the authorities of any county or road district from expending the road funds of such county or road district upon primary or secondary highways either for construction, maintenance or right of way, and they are hereby empowered so to do, the only exception being that when any section of the primary highway has been constructed by the state any expenditures made upon said portion of said primary highway shall be under the direction of the state highway commissioner. [L. '13, p. 223, § 6.]

§ 5878–7. Routes.—In determining the question of whether or not any particular route is the most feasible, no attention need be paid to routes heretofore selected for state highways. [L. '13, p. 224, § 7.]

§ 5878–8. Width of Highway. — All primary highways when graded shall be graded so that they shall have a running surface of not less than sixteen (16) feet in width. [L. '13, p. 224, § 9.]

§ 5878–9. Transfer of Fund.—Hereafter the state treasurer shall transfer from the public highway fund to the permanent highway fund all taxes levied in counties composed entirely of islands respectively, for the public highway fund, and place to the credit of each of said counties the amount of said levy, which shall be expended on permanent highways under the provisions of chapter XXII–B. [L. '13, p. 304, § 1.]

CHAPTER XXII–B.

Permanent Highways.

§ 5879–1. Permanent Highway.—The term "permanent highway," when used in this act, shall be construed to mean an improved public road constructed along a main line of travel, either beginning at some trade center or an extension of an existing road of like character beginning at some trade center. Every permanent highway shall be uniformly graded to a width of not less than sixteen feet, shall have proper bridges, drains and culverts, and shall be surfaced with macadam, stone, gravel or other material equally as permanent and durable not less than twelve feet in width. No such highway shall be constructed with a grade exceeding five per cent, except where, by reason of physical conditions, it is not feasible or practicable to obtain such grade, but in no case shall any such highway be constructed with a grade greater than ten per cent. [L. '11, p. 118, § 1.]

Cited in 80 Wash. 52.

§ 5879–2. Owners' Petition. — The owners of two-thirds of the lineal feet of lands, other than lands of the state or the United States, fronting upon any public highway or section thereof in any county may present to the board of county commissioners a petition setting forth that the petitioners are such owners, and that they desire that such highway or section thereof be improved under the provisions of this act.

The board of supervisors of any township, in any county having township organization, or a majority of them, may, when authorized at a general election, or a special election called for the purpose, sign a petition for the improvement of any public highway within such township, in whole or in part. [L. '11, p. 118, § 2; L. '13, p. 484, § 1.]

§ 5879–3. Resolution to Improve.—The board of county commissioners in any county, upon the receipt of a petition as provided in the preceding section, or upon its own motion, may pass a resolution for the improvement of any public road or highway or section thereof described in such resolution, under the provisions of this act, and within ten days after the passage of any such resolution shall transmit a certified copy of the same to the state highway commissioner.

Said board shall have no power to provide for the improvement of any portion of a highway within the corporate limits of any city or town. [L. '11, p. 119, § 3.]

§ 5879–4. Highway Commission's Duty.—Such highway commissioner, upon receipt of such resolution, shall investigate and determine whether the highway or section thereof sought to be improved is of sufficient public importance to merit improvement under the provisions of this act, taking into consideration the use, location and value of such highway or section thereof for the purpose of common traffic and travel, and after such investigation shall certify his approval or disapproval of such resolution, and if he shall disapprove such resolution he shall state his reasons therefor.

All expenses incurred by the state highway commissioner under the provisions of this act shall be paid from the public highway fund. [L. '11, p. 119, § 4.]

§ 5879–5. County Engineer.—The board of county commissioners may require the county engineer to perform all engineering in connection with and to supervise any improvement work contemplated or prosecuted under the provisions of this act, or may in its discretion employ a construction engineer for that purpose and fix his compensation, such compensation to be paid by the county. [L. '11, p. 119, § 5.]

§ 5879–6. Surveys.—Whenever the board of county commissioners shall have passed a resolution for the improvement of any public highway under the provisions of this act, and the same shall have received the approval of the state highway commissioner, a certified copy thereof shall be transmitted to the county engineer, or construction engineer appointed as aforesaid, who shall thereupon make the necessary surveys and prepare profiles, maps, plans and specifications, and an estimate of the cost of construction or improvement of the highway or section thereof described in the resolution; making such recommendations concerning deviation from existing lines as he shall deem of advantage to obtain a shorter and more direct route, or to lessen gradients, or to otherwise improve such highway. [L. '11, p. 119, § 6.]

§ 5879–7. Recommendation — Record. — Upon the completion of such profiles, maps, plans, specifications and estimate, a copy thereof

shall be transmitted to the state highway commissioner, who shall thereupon examine the same and return them to the board of county commissioners, making such changes therein or recommendations with reference thereto as he may deem advisable, and certifying his approval thereof.

Upon receipt of such profiles, maps, plans, specifications and estimate, the board of county commissioners may pass a resolution adopting the same, and that such highway or section thereof shall be improved under the provisions of this act. No resolution thereafter adopted by said board shall have the effect of rescinding or annulling the resolution so adopting such profiles, maps, plans, specifications and estimate, unless the same shall be approved by the state highway commissioner. The profiles, maps, plans, specifications and estimate as finally adopted by the board of county commissioners shall be filed in its office and become a permanent record of the board, and certified copies thereof shall be transmitted to the state highway commissioner and to the county engineer. [L. '11, p. 120, § 7; L. '13, p. 484, § 2.]

§ 5879–8. Board may Condemn.—Whenever the board of county commissioners shall find it necessary for the purpose of straightening any permanent highway, lessening the gradients thereof, or otherwise improving the same, to acquire or appropriate lands, real estate, or other property, and are unable to agree with the owners thereof, upon the reasonable and fair value of such lands, real estate, or other property, such board is hereby authorized to acquire the same by condemnation proceedings in the manner provided by law for the appropriation of lands, real estate or other property by private corporations authorized to exercise the right of eminent domain. [L. '11, p. 120, § 8.]

Cited in 86 Wash. 412.

§ 5879–9. Advertise for Bids — Surety Bond — Final Payment.—When the board of county commissioners shall have finally adopted the profiles, maps, plans and specifications for the improvement of any permanent highway under the provisions of this act, said board shall advertise for bids for three successive weeks in a newspaper published at the county seat of such county, and if they deem advisable, in such other newspaper as it shall determine, for the construction and improvement of such permanent highway, or section thereof, according to such profiles, maps, plans and specifications, and shall award the contract to the lowest responsible bidder, save that the board shall have the right to reject any and all bids. All contracts shall be let on the lump sum basis. Before entering into any contract for such construction or improvement, it shall require a corporate surety bond in the full amount of the contracts, condi-

tioned that the party thereto will perform the work upon the terms, within the time, and in accordance with the contract, profiles, maps, plans and specifications, and that such party will indemnify the county against any direct or indirect damages that shall be suffered or claimed for injuries to persons or property during the construction and improvement of such highway and until the same is accepted. Each bid shall be accompanied by a certified check in a sum equal to one-tenth of the amount of such bid, payable to the county, which shall be forfeited to the county upon the failure of the party, for a period of twenty days after any contract is awarded to any such party, to enter into a proper contract and furnish satisfactory bonds as required by this act. Monthly partial payments shall be provided for in the contract and paid in the manner therein provided, when certified by the county engineer or construction engineer employed, as the case may be, to an amount equal to eighty per centum of the value of the work done during the preceding month. Twenty per centum of the contract price shall be retained until the entire work has been accepted and no final payment shall be made until the state highway commissioner shall have examined the work or caused the same to be examined and certify to the state auditor that such work has been fully completed in accordance with the contract and the profiles, maps, plans and specifications governing such work. All payments to be made by the state upon contracts entered into in accordance with the provisions of this act shall be made by the state treasurer from the permanent highway fund hereinafter created, upon the warrant of the state auditor issued upon the presentation of proper vouchers by the person entitled thereto, said vouchers to be approved by the board of county commissioners, and the state highway commissioner, and, in case of final payment, to be accompanied by the certificate of the state highway commissioner as aforesaid. The state auditor shall issue no warrant for any purpose against the permanent highway fund hereinafter provided for unless there be sufficient money to pay such warrant in such fund to the credit of the county affected. No payment shall be made for any incidental changes during the progress of the work, unless the same shall have been approved by the board of county commissioners by resolution, and a copy of said resolution shall have been transmitted to the state highway commissioner. The board of county commissioners shall let no contract for the improvement of any permanent highway or section thereof less than one mile in length. Whenever any permanent highway shall be improved or constructed pursuant to a petition as provided for in section 5879–2, the proportion of the cost of such improvement chargeable to the property within the improvement district shall be paid out of the general road and bridge fund of the county, and all taxes assessed

against abutting property under the provisions of the following section, and all moneys payable by any township, shall, when collected, be paid into said general road and bridge fund. All payments made from the general road and bridge fund upon contracts entered into in accordance with the provisions of this act, shall be made by the county treasurer upon warrants of the county auditor, issued upon the presentation of proper vouchers, approved by the board of county commissioners and the state highway commissioner. [L. '11, p. 121, § 9; L. '13, p. 485, § 3.]

§ 5879–10. Fifteen Per Cent Tax—Divisions—List—Roll—Assessment.—The county engineer of any county in which any highway or section thereof has been improved or constructed pursuant to a petition as provided in section 5879–2, shall have the power and it shall be his duty upon receiving notice from the board of county commissioners of the county in which said highway is located, of the cost of construction or improvement of such highway or section thereof, to prepare, verify and file with the county auditor an assessment-roll of the assessments and shall assess upon the lands benefited thereby, and situated within the boundaries of an improvement district, to be established, fifteen per cent or such greater per cent as may be stated in such petition, of said total cost. Such improvement district shall be constituted, and the boundaries thereof fixed, as follows: The highway coterminous with the improvement shall be the central line through the district, and the bordering lands on each side and within a distance of not less than six hundred and sixty feet, and not more than three miles, such width to be fixed by the board of county commissioners, from the center line of said highway and coterminous with the construction work or improvement shall be included in and constitute the body of the improvement district and shall be subject to assessment to the extent above provided. For the purpose of making an equitable apportionment of the assessment, such improvement district shall be divided longitudinally on each side of the center line of such highway, into three parts of equal width, which, beginning with the part abutting upon the highway, shall be known as the first, second and third subdivisions, respectively, of such improvement district. In case the petition shall call for the payment of fifteen per cent each separate tract or parcel of land in said first subdivision shall be assessed and be subject to a charge for a proportional part of seven per cent of the whole cost of the construction work or improvement of said highway, and it shall be subject to a lien therefor until it shall be paid; each separate tract or parcel of land within said second subdivision shall be assessed and subject to a charge for a proportional part of five per cent of the whole cost of such construction work or improvement and be subject to a lien therefor until it shall be paid; each separate

tract or parcel of land in said third subdivision shall be assessed and subject to a charge for a proportional part of three per cent of the whole cost of such construction work or improvement and be subject to a lien therefor until it shall be paid. If the per cent of cost to be paid by such owners shall be greater than fifteen per cent the excess shall be assessed to the property in each subdivision upon the same ratio as such fifteen per cent. The charge upon the several separate tracts or parcels of lands in each subdivision shall be assessed ratably on the basis of the special benefits according to the actual area within such subdivision; that is to say, the area within the first subdivision shall be assessed seven-fifteenths, the area within the second subdivision shall be assessed five-fifteenths, and the area within the third subdivision shall be assessed three-fifteenths of the proportionate part of the cost assessed to the property in the assessment district. Each tract or parcel of land shall be assessed according to the relation of the area thereof to the total area within the subdivision wherein it is situated. The county engineer shall file such assessment-roll, as aforesaid, with the auditor of the county at least thirty days prior to the date prescribed by law for the first annual meeting of the county board of equalization after such list shall have been completed, and at said meeting, or an adjourned meeting, said board shall hear all objections to the assessments and determine the same, and correct all errors which may be found in such list; and after the same shall have been examined, compared and corrected by the county board of equalization, the assessment-roll shall be filed with the county treasurer, and the amount charged against the several lots, tracts or parcels of land within such improvement district shall be a lien upon such land, and shall be collected in the same manner as the general taxes of such county are collected, and shall become delinquent at the same time as general taxes, and after becoming delinquent shall be increased by the same percentage of penalty, and shall bear interest at the same rate as other delinquent state and county taxes: Provided, that the county commissioners may in their discretion by resolution duly certified to the county treasurer permit the payment of such taxes in ten equal annual installments, in which event each installment shall become delinquent as general taxes, and after becoming delinquent shall bear the same rate of interest as other delinquent state and county taxes: Provided, further, that the owner may pay all or any number of such installments at any time, and all deferred payments shall bear interest at the rate of six per cent per annum from the thirty-first day of May of the year following the filing of the assessment-roll with the county treasurer: And provided further, that whenever the county commissioners shall have provided for the payment of said taxes in installments as aforesaid it may, if it shall deem necessary or proper,

issue bonds of the county payable from the general road and bridge fund ten years after the date of the issuance thereof with such option to redeem as shall be considered advisable, in an amount not exceeding the proportion of the cost of such highway which shall be a charge against the abutting property, and that such bonds shall bear interest at a rate not greater than six per cent per annum and shall be sold at not less than par by the board of county commissioners in such manner as they shall deem advisable. A notice directed to all owners of property affected by such assessment, whether known or unknown, to appear before said county board of equalization on a day to be therein specified to make their objections, if they have any, to such assessments, shall be published by the county auditor in a newspaper of general circulation in the county in at least three issues on different days of said newspaper, the first of which shall be at least twenty days prior to the specified date for appearances, and said notice shall contain a description of the highway, for the construction or improvement of which the assessment is made, and enumerate the several sections of land, according to the United States surveys, which shall be wholly or partially included within the special improvement district. If any such assessment shall be deemed invalid by the county board of equalization or adjudged to be invalid by any court of competent jurisdiction, a reassessment of the land within an improvement district with proper boundaries shall be made and collected in the manner herein prescribed. The county boards of equalization may hold adjourned or special sessions whenever it may be necessary to do so for the purpose of hearing objections to, and completing assessment lists required by this act.

All persons owning property abutting on such highway so improved, or residing thereon shall thereafter pay all highway taxes assessed against them in money, and in the manner now provided by law.

Where the petition for the improvement or construction of any permanent highway shall be signed by the board of supervisors of any township, or a majority of them, under the provisions of section 5879–2, the proportion of the assessment of abutting property shall, as to property within such township, be a charge upon such township and shall be paid by such township from the moneys raised for the purpose of constructing and improving roads therein into the general road and bridge fund of the county on or before the date of the approval of such construction or improvement work by the state highway commissioner. [L. '11, p. 122, § 10; L. '13, p. 487, § 4.]

§ 5879–11. Construction and Closing of Highway.—Whenever a contract has been let for the improvement or construction of any such highway in accordance with the provisions of this act, the con-

tractors may and are hereby authorized to, whenever the engineer in charge of the work shall certify to the necessity therefor in writing, close any such highway or section thereof to the public by putting up a sufficient obstruction and notice to the effect that such highway is so closed. When such highway shall have been so closed to the public any person disregarding such obstruction and driving, riding or walking over any portion of such highways so inclosed, shall be deemed guilty of a misdemeanor. Nothing herein contained, however, shall relieve the contractors of the burden of keeping highways under construction at all times open to the public until the engineer in charge of the work shall have certified to the necessity for closing such highway and shall have filed such certificate in the office of the county auditor of the county within which such highway or section thereof is located. [L. '11, p. 125, § 11.]

§ 5879-12. Maintenance.—Whenever the improvement of any permanent highway shall have been completed and accepted under the provisions of this act, the same shall be maintained in the same manner as is provided by law for the maintenance of other public highways and roads. [L. '11, p. 126, § 12.]

§ 5879-13. Draining.—Whenever during the construction of any such highway, or after its completion, it may be necessary for the proper construction or maintenance thereof to open or maintain ditches or drains for the purpose of properly draining such highway, the county commissioners of the county within which such highway or section thereof is situated, shall have the right to enter upon the lands adjacent thereto and to open any existing ditch or drain or dig a new ditch or drain for the free passage of water for the purpose of draining such highway. Said county commissioners shall also be empowered to agree with the owner of any such lands upon the amount of damages, if any, sustained by him in consequence of such entry upon his lands and performance of the work hereby authorized, and the amount of damages so agreed upon shall be the road district charge and shall be audited and paid the same as other road district charges. If the county commissioners are unable to agree with such owner upon the amount of damages thus sustained, the amount thereof shall be ascertained and determined and paid in the same manner as damages are so ascertained, determined and paid where new highways are laid out and opened and the county commissioners and land owners are unable to agree upon the amount thereof. [L. '11, p. 126, § 13.]

§ 5879-14. Providing Revenue.—For the purpose of raising revenues for the improvement and maintenance of permanent highways under the provisions of this act, the proper state officers shall levy and collect a tax of one and one-half mills upon all property in the state subject to taxation for the year 1913, and for each year there-

after. All moneys derived from such tax shall be paid into the state treasury and credited to a fund to be known as the "Permanent Highway Fund." The amounts received from each county shall be credited to the county paying the same, until such time as the same shall be expended on contracts for permanent highways within such county or for the maintenance of the same under the provisions of this act. Five per cent of all moneys credited to each county under this act and which shall be derived from taxes levied for the year 1912 and subsequent years shall be set aside and expended by the board of county commissioners, upon vouchers approved by such board, for maintaining and repairing roads constructed under the provisions of this act and other roads of like character, and no part of such five per cent shall be expended for any other purpose. [L. '11, p. 126, § 14; L. '13, p. 491, § 5.]

§ 5879–15. Transfer Fund.—Upon the taking effect of this act, the state treasurer shall transfer from the public highway fund to the permanent highway fund hereby created, and placed to the credit of each county, a sum equal to one-half of all taxes levied in such county for said public highway fund for the years 1907, 1908, 1909 and 1910, first deducting therefrom all sums expended from the public highway fund for state aid road purposes in such county under the provisions of chapter 150 of the Session Laws of 1907 prior to such transfer. All payments on contracts executed prior to the passage of this act for state aid roads shall, from and after the date of its passage, be paid out of the permanent highway fund and charged to the county in which such state aid road is situated: Provided, that if any county shall not have sufficient money to its credit in the permanent highway fund to carry out any such contract or contracts, then and in that event the state treasurer shall transfer to the credit of such county from the public highway fund to the permanent highway fund sufficient money to complete the existing contracts for state aid roads. For the purpose of making the transfers from the public highway fund to the permanent highway fund, as provided in this section, there is hereby appropriated out of the public highway fund the sum of five hundred and eighty thousand dollars, or so much thereof as may be necessary. [L. '11, p. 127, § 15.]

§ 5879–16. No Railroads on Highway.—No railroad or street railroad, by whatsoever power operated, shall be constructed upon any permanent highway or section thereof which may be improved under the provisions of this act, and the acts amendatory thereof and supplemental thereto, nor shall any such railroad or street railroad be constructed upon any public highway or section thereof of which such permanent highway is a continuation. [L. '11, p. 127, § 16.]

§ 5879-17. Bonds for Improvements Heretofore Made.—Where any assessment for the improvement of any permanent highway pursuant to petition has heretofore been made and extended upon the tax-rolls of any county and said assessment has not been paid, the county commissioners may provide for the payment of the same in installments, and may issue bonds of the county to an amount not exceeding such unpaid assessment in the manner provided in section 5879-10. [L. '13, p. 491, § 6.]

§ 5879-18. County Roads Through Fourth Class Cities.—Each and every county of this state is hereby authorized to build, construct and improve any permanent highway as same is defined by this chapter, through the corporate limits of any city of the third or fourth class, upon such streets or other rights of way connecting with such permanent highway in the corporate limits of such municipality as may be provided for such purpose by the municipal authorities, of sufficient width and appropriate for said purpose. [L. '13, p. 384, § 1.]

Cited in 86 Wash. 411.

§ 5879-19. Eminent Domain—County may Pay Damages.—Where such city or town is unable to pay for the condemnation of such rights of way, the county may pay or aid such municipality to pay for the same. All expenses herein authorized shall be disbursed and all such construction, improvement and repair herein contemplated shall be disbursed under, and be controlled wholly by, the provisions of this chapter, or law amending or superseding the same. [L. '13, p. 384, § 2.]

Cited in 80 Wash. 52; 86 Wash. 411.

CHAPTER XXIV.

State Roads.

§ 5897. State Road Defined.—The term "state roads" shall be construed to mean roads constructed in the sparsely settled and mountainous regions of the state, the entire expense of engineering and construction being borne by the state and paid for out of the highway fund. [L. '07, p. 308, § 1.]

For balance of this section see § 5879.

§ 5897½. Public Highway Fund Created.—There is hereby created a fund to be known as the public highway fund. [L. '05, p. 252, § 1.]

§ 5898. State Tax Levy for Highways and Bridges.—For the purpose of raising revenue to construct and repair highways and bridges, the proper state officers shall levy and collect a tax of one and one-fourth mills upon all of the property in the state subject to taxation for the fiscal year beginning March 1, 1913, and for each fiscal year thereafter shall levy and collect a tax of one mill. The fund pro-

vided by such levy shall be placed in said public highway fund: Provided, however, that nothing in this act contained shall have the effect or be construed to alter or modify in any particular any tax levy made or proceeding had or to be had for the collection of any tax heretofore levied or imposed under or pursuant to the provisions of any former or existing laws: And provided further, that seven and one-half per centum of the taxes collected as herein authorized shall be set aside by the state treasurer and used exclusively under the direction of the highway commissioner for the repair and maintenance of state roads that shall have been established and constructed. [L. '15, p. 231, § 1. Cf. L. '05, p. 253, § 2; L. '07, p. 23, § 1; L. '09, p. 886, § 1; L. '11, p. 303, § 1; L. '13, p. 220, § 1.]

§ 5899. Rights of Way Over County Roads.—It shall be lawful for boards of county commissioners to transfer and convey to the state of Washington rights of way over and along county roads for state road purposes, and it is hereby made their duty to make such transfer or conveyance upon receiving notice from the state highway board that a state road has been established and definitely located over a county road and that said road will be improved and maintained by the state and that funds are available for the immediate construction of such road. [L. '09, p. 102, § 1.]

§ 5900. Report on Proposed State Roads to Legislature.—No road shall hereafter be established as a state road until the same shall have been examined and if necessary surveyed, and shall have been found to be feasible and of public utility, and all facts concerning its feasibility and utility have been reported to the state legislature by the state highway commissioner. [L. '07, p. 309, § 2; L. '09, p. 37, § 1.]

§ 5901. State Roads Enumerated—Road No. 23.—A secondary state highway is established as follows: State Road No. 23; this road shall begin at the city of Spokane in Spokane county, and run thence by way of Mead to the town of Newport. [L. '15, p. 487, § 9. Cf. L. '07, p. 309, §§ 3, 4.]

For former laws establishing certain state highways, see L. '97, pp. 289–292, 338–345; L. '99, pp. 229–234; L. '01, pp. 217, 218, 225, 226; L. '03, pp. 265, 266; L. '05, pp. 18–22, 359.

§ 5901a. State Road No. 4—Sans Poil-Loomis.—A secondary state highway is established as follows: State Road No. 4, or the Sans Poil-Loomis Road; this road shall begin at the mouth of the Sans Poil Creek on the Columbia River, and run thence as nearly as practicable over the present road to the city of Republic in Ferry county, Washington, and thence from said city of Republic over the present traveled road as nearly as may be practicable to the town of Loomis, in Okanogan county, Washington. [L. '15, p. 488, § 10.]

§ 5901b. State Road No. 5—Cowlitz-Natchez.—A secondary state highway is established as follows: State Road No. 5, or the Cowlitz-Natchez Road: This road shall begin at Riffe postoffice in Lewis county, thence up the Cowlitz River and its tributaries by way of Kosmos and Randle by the most feasible route to a connection with the McClelland Pass Highway. [L. '15, p. 448, § 11.]

§ 5901c. State Road No. 22—Kettle Falls.—A secondary state highway is established as follows: State Road No. 22. This road shall begin at Meyers Falls in Stevens county, and run thence through Kettle Falls, Daisy, Gifford, Cedonia and Hunters to Fruitland; thence through and across the Detillion Bridge across the Spokane River to a connection with the Sunset Highway at Davenport in Lincoln county. [L. '15, p. 488, § 12.]

§ 5901d. State Road No. 4—Kettle River Extension.—A secondary state highway is established as follows: Kettle River extension of State Road No. 4: This road shall begin at the city of Republic in Ferry county and run thence by the most feasible route to Curlew in said county; thence by the most feasible route along the east river bank of Kettle River to the international boundary line near the town of Ferry. [L. '15, p. 488, § 13.]

§ 5901e. State Road No. 8—Columbia River.—A secondary state highway is established as follows: State Road No. 8, or the Columbia River Road: This road shall begin at the town of Washougal in Clarke county, Washington, and run thence over the line as surveyed for such state road through Clarke and Skamania counties, and thence over the most practicable route to the town of Goldendale, in Klickitat county. [L. '15, p. 489, § 14.]

§ 5901f. North Central Highway.—A secondary state highway is established as follows: North Central Highway: This road shall begin at the city of Davenport in Lincoln county and run thence southerly and westerly by the most feasible route through Harrington, Odessa, Krupp and Ephrata to a connection with the Sunset Highway. [L. '15, p. 489, § 15.]

§ 5901g. State Road No. 10—Wenatchee-Oroville.—A secondary state highway is established as follows: State Road No. 10, or the Wenatchee-Oroville Road: This road shall begin at the lower bridge on the Wenatchee River in Chelan county, Washington, and shall run thence over the present constructed state road to Maple Creek; thence by the most practicable route to the town of Pateros, in Okanogan county; thence over the present constructed county road as nearly as practicable through the towns of Brewster and Okanogan, and thence by the most practicable route to the north line of Okanogan county, Washington, near the town of Oroville. [L. '15, p. 489, § 16.]

§ 5901h. State Road No. 11 — Skagit River. — A secondary state highway is established as follows: State Road No. 11, or the Skagit River Road: This road shall begin at Marblemount in Skagit county, Washington, and shall run thence in a northerly direction up the Skagit River by the most practicable route to make connection with the present wagon road near the mouth of Mill Creek; thence by the most practicable route to Barron, in Whatcom county, Washington. [L. '15, p. 490, § 17.]

§ 5901-i. State Road No. 12—Methow-Barron.—A secondary state highway is established as follows: State Road No. 12, or the Methow-Barron Road: This road shall begin in the county road on the south side of and near the mouth of the Methow River and shall follow as nearly as practicable the present surveyed line for such road to the twenty mile post; thence by the most practicable route to the town of Winthrop; thence up the south fork of the Methow River valley and over the summit of the Cascade Mountains, by the most practicable route to Barron, in Whatcom county, Washington. [L. '15, p. 490, § 18.]

§ 5901j. State Road No. 19.—A secondary state highway is established as follows: State Road No. 19: This road shall begin at the town of Kelso in Cowlitz county, and run thence by the most feasible route through the towns of Cathlamet and Skamokawa in Wahkiakum county, to the town of Naselle in Pacific county, thence by the most feasible route to a connection with the National Park Highway. [L. '15, p. 490, § 19.]

§ 5901k. State Road No. 20.—A secondary state highway is established as follows: State Road No. 20: This road shall begin at the town of Raymond in Pacific County and run thence by the most feasible route to Aberdeen in Chehalis county. [L. '15, p. 491, § 20.]

§ 5901-l. State Road No. 21.—A secondary state highway is established as follows: State Road No. 21: This road shall begin at Kingston, thence by the most feasible route through Port Gamble, Poulsbo and Bremerton to a connection with the Olympic Highway between Shelton and Hoodsport in Mason county. [L. '15, p. 491, § 21.]

§ 5901m. Scope of Amendment.—Nothing herein shall be construed to change or vacate any state road or extension of any road established by any act or statute other than sections 5878-2 and 5901 of Remington & Ballinger's Annotated Codes and Statutes of Washington. [L. '15, p. 491, § 22.]

§ 5902. Other Roads Designated as State Roads.—The following described roads having been examined and all surveys necessary to a determination as to their feasibility and utility having been made

by the state highway commissioner under the provisions of chapter 116, Laws of Washington, A. D. 1907, and the report of the state highway commissioner being favorable, the same are hereby declared to be state roads and shall be known and described as hereinafter set forth. [L. '09, pp. 111, 190, § 1.]

§ 5903. **Same Enumerated.**—State Road No. 14, or the Hood Canal Road, the same being a road beginning at Hoodsport in Mason county and running thence by the most practicable route to Duckabush in Jefferson county. State Road No. 15, or the Lewis River Road, beginning at Woodland in Cowlitz county and running thence up the north bank of Lewis River, following as nearly as practicable the county road, and continuing to the mouth of the Big Muddy, a tributary of Lewis River in Skamania county.

State Road No. 16, or the Garfield-Asotin Road, beginning at a point where the county road intersects the north line of the northeast quarter of section 4 in township 9 north, range 42 east, W. M., in Garfield county and running thence in a southerly course by the most feasible route along the divide between the Tucannon River and Pataha Creek and the divide between the Tucannon River and Asotin Creek to the summit of the Blue Mountains, near what is known as Summit Springs; thence by the most feasible route southerly to the divide between Wenatchee and Grouse creeks, thence following the divide southwesterly to the Asotin county road near the upper crossing of Grouse Creek at or near the line between sections 5 and 6 in township 6 north, range 43 east, W. M., in Asotin county, Washington.

State Road No. 17, or the Island-Skagit Road, the same being a road and two bridges crossing the United States Military Reservations Nos. 14 and 15 and connecting the county roads of Island and Skagit counties. [L. '09, p. 111, § 2.]

§ 5905. **Same Enumerated.**—Lincoln county extension of State Road No. 4, the same being a road beginning at the mouth of the Sans Poil River on the north bank of the Columbia River in Ferry county, and extending thence southerly by the most practicable route to the town of Wilbur on the Central Washington Railroad in Lincoln county, Washington.

State Road No. 18, beginning at Alder in Pierce county and running in a southerly direction by the way of Elbe to a point in State Road No. 5 near Kosmos in Lewis county.

Extension over the existing county roads of State Road No. 7 westerly to Renton, and thence to and along the west shore of Lake Washington to the city of Seattle, and the extension of State Road No. 7 easterly by the way of Swauk and Peshastin creeks and the Wenatchee valley to the city of Wenatchee; thence to a point on the

sixth standard parallel north in Douglas county near the town of Waterville; thence easterly over the existing county roads as nearly as practicable through the towns of Coulee City and Wilbur and the city of Spokane, to the Idaho line at the point where it intersects the north bank of the Spokane River. [L. '09, p. 190, § 2.]

§ 5906. Survey Authorized of Proposed Roads.—The state highway commissioner is hereby authorized and it is made his duty to cause an examination, and if necessary a survey to be made, to determine the feasibility and utility of the following described proposed state road extensions, and proposed state roads, and to make a report of all facts concerning the same to the legislature of the state of Washington.

1st. Extension over the most feasible route of State Road No. 7 westerly through the town of Renton and along the shore of Lake Washington to the city of Seattle and easterly to the city of Spokane.

2d. Extension over the most feasible route of State Road No. 5 westerly through the city of Chehalis to the cities of South Bend in Pacific county and Aberdeen in Chehalis county, and easterly to the city of Pullman in Whitman county.

3d. Extension over the most feasible route of State Road No. 8 westerly to the city of Vancouver and easterly to the city of Walla Walla and thence to the eastern boundary of Asotin county.

4th. A north and south trunk road beginning at the city of Blaine in Whatcom county; thence southerly by the most feasible route through the principal cities of the sound to the city of Vancouver in Clarke county.

5th. A north and south trunk road beginning at a point on the northern boundary of Ferry county, running thence along the most feasible route to the eastern boundary of the state in the southern part of Whitman county.

6th. A road beginning at a point on the proposed extension of State Road No. 7 in the vicinity of Cle Elum in Kittitas county, leading thence as nearly as practicable along the Yakima valley to an intersection with the proposed extension of State Road No. 8 in Benton county.

7th. A road beginning at Kelso in Cowlitz county and leading along the most feasible route through Wahkiakum and Pacific counties to a point in the vicinity of South Bend in Pacific county.

8th. A road beginning at Alder in Pierce county and extending easterly and southerly to a point on State Road No. 5 in Lewis county in the vicinity of Kosmos.

9th. A road beginning at Metaline in Stevens county and extending by the most feasible route northerly and westerly through Northport and thence southerly and westerly to Orient in Ferry county.

10th. A road beginning at a point in Lincoln county, opposite the mouth of the Sans Poil River in Ferry county, and extending southerly to Wilbur, Washington, the same being an extension of State Road No. 4. [L. '09, p. 94, § 1.]

CHAPTER XXV.

Acquisition of Quarries and Road Material by State.

§ 5907. Geological Survey—Data.—The board of geological survey shall cause to be made, under the superintendence of the state geologist, a field examination and survey of the state for the purpose of ascertaining and determining the existence within the state of suitable road making materials; and shall likewise cause to be compiled and made a map or maps showing the locations and areas, as nearly as can be ascertained, of the various deposits of such material; and shall cause to be made suitable analyses and laboratory tests necessary to determine the relative merits or value for road building purposes of the various deposits so located. Upon final completion of said work, said board of geological survey shall file in the office of the state highway commissioner a complete report of said examination and survey, including all maps, analyses, tests and any other data which said board may have compiled touching the same: Provided, however, that pending the completion and final report thereof, all information gained by said state geologist during the progress of said examination and work shall at all times be available to the state highway commissioner, and a partial report showing such deposits of road-making materials as may in the meantime have been examined, together with such analyses and tests thereof as may in the meantime have been made, showing the relative value and merits of such materials for road making purposes, shall be furnished to said state highway commissioner by the first day of September, 1909. [L. '09, p. 810, § 1.]

See supra, § 5603, quarries for county road building.

§ 5908. Selection of Quarry Sites.—Upon receipt of said partial report, together with maps, data, etc., the state highway commissioner shall, if there be found to exist materials suitable and in quantities and places sufficient therefor, select four or more sites best adapted for the location and establishment of rock quarries and crushing plants for supplying materials suitable and proper for the construction of highways, and, if found practicable, two or more of which sites shall be selected west of the summit of the Cascade Mountains and two or more east thereof. [L. '09, p. 811, § 2; L. '09, Ex. Sess., p. 39, § 1.]

§ 5909. Acquisition of Sites — Condemnation Proceedings. — Said state highway commissioner shall report such selections or locations

to the state board of control, whose duty it shall then become to acquire the said quarry sites so selected, together with sufficient area of land adjoining the same as may be necessary for the purpose of establishing and constructing thereon all such facilities, conveniences and plants as may be requisite, suitable and adequate to carry out the objects of this chapter. For this purpose said board of control is hereby authorized to accept on behalf of the state, any deed of gift or grant of any such site, or to purchase the same and accept deed of purchase thereof. In all cases where said board of control is unable to agree with the owners as to the reasonable and fair value of the premises sought, said board shall report such failure to the governor, who shall forthwith, by order, direct proceedings to acquire the same by condemnation, to be instituted by the attorney general in the superior court of the county wherein such premises are located, while proceedings shall be instituted therein by the attorney general in the manner provided by law for the taking of private property for public use, and to that end it is hereby declared necessary for the public uses of the state to acquire or appropriate the premises described in the order of the governor, and said attorney general is hereby authorized to institute and maintain, in the name of the state, the proceedings so far as applicable provided for in section 891 to section 900 inclusive, to the same extent and in like manner as if the legislature had by specific act declared it necessary for the public uses of the state to acquire or appropriate the same. [L. '09, p. 811, § 3.]

§ 5910. Building for Convicts — Rock-crushers and Machinery.— Whenever under the provisions of this chapter any site and quarry is procured, the state highway commissioner shall take possession thereof, and may forthwith erect and construct at and upon the same such stockades, buildings and structures as may be necessary, suitable and adequate for the safe confinement and comfortable housing of such convicts as may from time to time be confined or worked therein, and may likewise purchase and install therein such suitable and proper rock-crushing plants, machinery, appliances and tools, and with such capacity as in the judgment of the highway commissioner may be necessary and adequate to keep continuously employed and occupied such force of convicts as may from time to time be worked therein. [L. '11, p. 517, § 1. Cf. L. '09, p. 812, § 4.]

§ 5911. Employment of Convicts.—It shall be the duty of the state highway commissioner to keep and employ in the several quarry sites so established and equipped as aforesaid, under charge of the superintendent of the penitentiary, and with his permission and that of the state board of control, in charge of such other persons in the employ of the state as the board of control shall direct, a sufficient

number of able-bodied convicts when available to keep and maintain said plant therein installed in continuous operation to its full capacity, for which purpose said convicts may be transferred from the penitentiary at Walla Walla. [L. '11, p. 517, § 1. Cf. L. '09, p. 812, § 5.]

§ 5912. Output for State Roads—Surplus—Free Labor.—All convicts maintained at said quarry sites shall, when physically able and so long as there is a demand for the output of such quarry, be kept and employed continuously (except Sundays and legal holidays) in the quarrying, crushing, preparation and handling of rock or other materials for roads or streets. All rocks so crushed shall be, upon the request of the state highway commissioner, loaded upon the car or vessel and there delivered to said state highway commissioner, who shall use the same in the construction or maintenance of state roads or state aid roads: Provided, however, that so much of said materials as the state highway commissioner may not at any time require for use on state roads or state aid roads shall be by said highway commissioner disposed of at not less than ten per cent above estimated cost f. o. b. the car, scow or boat at the place of production, to counties, cities or towns within the state in the order of application therefor, excepting in cases where the demands of such counties, cities and towns may be in excess of the supply, in which case the state highway commissioner shall apportion, deliver and distribute such material among the several counties, cities and towns applying, in such proportion as in his judgment may seem fair and equitable: Provided, further, that all materials used by the state highway commissioner on any state road shall be paid for out of the appropriation, apportionment or fund for the construction or improvement of the particular road upon which it is used, and all material sold to the state highway commissioner or to any county, city, town or other municipality, shall be at not less than ten per cent above the estimated cost of production at the place of delivery: Provided further, that when the quantity of material on hand is in excess of the amount demanded by the state highway commissioner for use upon state roads, or state aid roads, or for disposition to the counties, cities and towns as herein provided, then the same may be disposed of by the state highway commissioner, at such prices, not less than the cost of production, as said commissioner may deem most advantageous for the state, giving prior right of purchase to citizens of the state of Washington before applicants from another state: And provided further, that nothing in this act shall be so construed as to prohibit the state highway commissioner from employing within said stockades, or at said quarry sites, in the production of said material and in the operation of said quarry, such free labor as the commissioner may

deem necessary or proper. [L. '11, p. 517, § 1. Cf. L. '09, p. 813, § 6; L. '09, Ex. Sess., p. 39, § 2.]

§ 5913. Shipping Facilities to be Acquired.—If, after the acquisition of the quarry sites and the installation of the crushing plants, machinery and appliances herein provided for, there be sufficient funds left of the appropriation in this act provided, it shall be the duty of the state board of control to acquire by purchase or otherwise, cars or scows sufficient in number, in their judgment most suitable and best adapted for the transportation of materials from the said quarries to the place where the same is to be used. [L. '09, p. 814, § 7.]

§ 5914. Appropriations — Application — Good Roads Fund. — All moneys received from the sale of products of the state quarries and all moneys that may be received on account of fire insurance and settlement of fire losses at such quarries shall be paid into the state treasury and shall be kept in a fund to be known as the "Quarries Rotary Fund." Such fund shall be used for the purpose of maintaining such rock quarries and all necessary expenses in connection therewith, including the repayment as herein provided, and the cost and expenses of transporting to and from, keeping and guarding the convicts working therein, the payment of the fire insurance premiums and for making such permanent improvements as the state highway commissioner shall deem necessary to be expended on the order of the state highway commissioner: Provided, however, no warrant shall be issued against said fund in excess of the amount remaining in such fund at the time of the issuance of the warrant. All warrants drawn against this fund shall be paid in the same manner as the state's general fund warrants are paid. All moneys heretofore paid out of the state general fund and the public highway fund for the purchasing and installing of crushing machinery, appliances, tools and cars for the maintenance of the state quarries, shall be repaid to the respective funds from which used, whenever the state highway commissioner shall deem sufficient funds have been received from the sale of the product of such quarries over and above the amount required for the operation of such plants. To secure the efficient, economical and satisfactory administration and maintenance of the several rock quarries under the jurisdiction of the state highway commissioner, the state highway commissioner is hereby authorized to appoint a superintendent of quarries who shall have and exercise such powers and perform such duties in connection with the various rock quarries of the state as shall be from time to time prescribed by the state highway commissioner. He shall receive an annual salary of not more than two thousand dollars and his necessary traveling expenses, to be paid out of the quarries rotary fund herein established, and in

case there is insufficient in that fund he shall be paid out of the state highway fund. He shall be subject at all times to the jurisdiction, control and direction of the highway commissioner, and shall appoint such assistants with such compensation as shall be determined by the state highway commissioner. [L. '13, p. 556, § 1; L. '11, p. 517, § 1. Cf. L. '09, p. 814, § 8; L. '09, Ex. Sess., p. 40, § 3.]

Historical Society. See "Libraries, Museums, and Historical Society," § 6996.

Homesteads. See §§ 528–572.

In probate proceedings, see § 1465.

Hops. See "Inspection," § 6025.

Horticulture. See "Agriculture," § 3082–1.

Hospitals. For insane, see "Insane," § 5936.

Hotel Inspector. See "Inspection," § 6031.

TITLE XLI–A.

HOTELS.

See Inspection, § 6028½.

5914–1. "Hotel" defined.
5914–2. Record of guests.
5914–3. Liability for loss of property—Limitations.
5914–4. Liability for loss of baggage—Limitation—Storage—Sale.
5914–5. Lien on property of guest.
5914–6. Sale to satisfy lien—Notice.
5914–7. Obtaining hotel accommodations by fraud—Penalty.
5914–8. Posting notice of act in rooms.

§ 5914–1. "Hotel" Defined.—Any building held out to the public to be an inn, hotel or public lodging-house or place where sleeping accommodations are furnished for hire to transient guests whether with or without meals in which fifteen or more rooms are used for the accommodation of such guests shall for the purposes of this act only, be defined to be a hotel, and whenever the word hotel shall occur in this act it shall be construed to mean a hotel as herein described. [L. '15, p. 695, § 1.]

§ 5914–2. Record of Guests.—Every hotel defined as such in this act shall keep a record of the arrival and departure of its guests in such a manner that the record will be a permanent one for at least one year from the date of departure. [L. '15, p. 695, § 2.]

§ 5914–3. Liability for Loss of Property—Limitation.—No hotel-keeper, whether individual, partnership or corporation, who constantly has in his hotel a metal safe or suitable vault in good order and fit for the custody of money, bank notes, jewelery, articles of gold and silver manufacture, precious stones, personal ornaments, railroad mileage books or tickets, negotiable or valuable papers and bullion, and who keeps on the doors of the sleeping-rooms used by guests, locks or bolts, and who keeps posted in each of said sleeping-rooms a notice of liability as hereinafter specified, shall be liable for the loss or injury to such property suffered by any guest unless such guest has offered to deliver the same to such hotel-keeper for custody in such metal safe or vault and such hotel-keeper has omitted or refused to take it and deposit it in such safe or vault for custody and to give such guest a receipt or claim check therefor: Provided, however, that the keeper of any hotel shall not be obliged to receive from any one guest for deposit in such safe or vault any property hereinbefore described exceeding a total value of one thousand dollars, and shall not be liable, for any excess of such property, whether received or not: Provided further, such hotel-keeper may by special arrangement with a guest receive for deposit in such safe or vault any property upon such terms as they may agree to in writing, but every hotel-keeper shall be liable for any loss of the above-enumer-

ated articles of a guest in his inn or hotel after said articles have been accepted for deposit, if caused by the theft or negligence of the hotel-keeper or any of his servants. [L. '15, p. 695, § 3.]

§ 5914–4. Liability for Loss of Baggage — Limitation — Storage — Sale.—The liability of the keeper of any hotel, whether individual, partnership, or corporation, for loss of, or injury to personal property placed by his guests under his care, other than that described in the preceding sections, shall be that of a depositary for hire: Provided, however, that in no case shall such liability exceed the sum of one hundred and fifty dollars for each trunk and its contents, fifty dollars for each valise or suitcase and its contents, and ten dollars for each box, bundle or package, and contents, so placed under his care, and all other miscellaneous effects including wearing apparel and personal belongings, fifty dollars, unless he shall have consented in writing with such guest to assume a greater liability: And provided further, whenever any person shall suffer his baggage or property to remain in any hotel after leaving the same as a guest, and after the relation of hotel-keeper and guest between such guest and the proprietor or manager of such hotel has ceased, or shall forward the same to such hotel before becoming a guest thereof and the same shall be received into such hotel, such keeper may at his option hold such baggage or property at the risk of such owner and when any personal property has been kept and stored by such hotel-keeper for one year after the relation of hotel-keeper and guest has ceased or when it does not exist, the hotel-keeper may if he so desires and acting as the agent of the owner deliver said property to a reliable storage or warehouse company for further storage. In the event the warehouseman declines to accept such property for storage and the hotel-keeper not desiring to retain it longer in his possession, he may sell the same at public auction after paying the expenses incurred by advertisement and sale, as well as any storage that may have accrued, and he shall hold the remaining money arising from such sale subject to the demand of the owner or his legal representatives. [L. '15, p. 695, § 4.]

§ 5914–5. Lien on Property of Guest.—The keeper of any hotel, whether individual, partnership or corporation, shall have a lien on all personal property brought into such hotel, belonging to his guest for the proper charges due him from such guest for accommodation, board and lodging, and for such extras as are furnished at their request, and for all money paid for or advanced to them, and said hotel-keeper shall have the right to retain and hold possession of such personal property until the amount of such charges be paid, and such personal property shall be exempt from attachment or execution until such hotel-keeper's lien and the cost of satisfying it are satisfied. [L. '15, p. 697, § 5.]

§ 5914–6. Sale to Satisfy Lien—Notice.—The hotel-keeper shall retain the personal property upon which he has a lien as above mentioned for a period of ninety days, at the expiration of which time if such lien is not satisfied, he may proceed to sell such personal property, or any part thereof, at public auction, after giving ten days' notice of the time and place of sale by posting said notice in three conspicuous places in the city or town, one of which shall be the post-office and another the courthouse door, if the town be the county seat, and by mailing a notice of the time and place of sale to the person, guest or boarder at the place of residence registered by him on the register of said hotel, and after satisfying the lien and any expense of selling the property that may accrue, any residue remaining shall on demand be paid to such guest or boarder: Provided, however, that should the guest fail or refuse to register from any particular town or city, the notice herein required to be mailed shall be addressed to the name of the guest at the city or town wherein the hotel is located. [L. '15, p. 697, § 6.]

§ 5914–7. Obtaining Hotel Accommodations by Fraud—Penalty.—Any person who shall willfully obtain food, money, lodging or accommodation at any hotel with intent to defraud the owner or keeper thereof, shall be guilty of a gross misdemeanor. Proof that lodging, food or other accommodations were obtained by a false pretense or by false or fictitious show or pretense of any baggage or other property or that the person refused or neglected to pay for such food, lodging or other accommodation on demand, or that he gave in payment for such food, lodging or other accommodations negotiable paper executed by himself on which payment was refused or that he absconded without paying or offering to pay for such food, lodging or other accommodation, or that he surreptitiously removed or attempted to remove his property or baggage, shall be prima facie evidence of the fraudulent intent hereinbefore mentioned. [L. '15, p. 698, § 7.]

§ 5914–8. Posting Notice of Act in Rooms.—It shall be the duty of every hotel-keeper within this state to keep posted in each guest or sleeping-room of said hotel a notice, printed in plain type, to the effect that the liability of said hotel-keeper is as defined by this act, giving the title of this act and the date of its approval and stating that a copy of this act may be seen or secured by any guest at the office of said hotel, and it shall be the further duty of the hotel-keeper to furnish a copy of this act to any guest on request. No hotel-keeper who fails to comply with the provisions of this section shall have any benefit from or protection under this act. [L. '15, p. 698, § 8.]

Humane Societies. See "Animals," § 3266.

TITLE XLII.

HUSBAND AND WIFE.

5915. Separate property of husband.
5916. Separate property of wife.
5917. Community property defined—Husband's control of personalty.
5918. Community realty, conveyance of, etc.
5919. Agreements as to status of.
5920. Separate earnings of wife, etc.
5921. Earnings of wife and minor children.
5922. Tenancy in dower and by curtesy abolished.
5923. Liberal construction.
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5925. Married persons may acquire and hold property, how.
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5933–1. Family desertion.
5933–2. Punishment—Payment to family—Suspension of judgment—Working prisoners.
5933–3. Prima facie proof.
5934. Procedure on failure to comply with order.
5935. Evidence.

§ 5915. Separate Property of Husband.—Property and pecuniary rights owned by the husband before marriage, and that acquired by him afterward by gift, bequest, devise or descent, with the rents, issues, and profits thereof, shall not be subject to the debts or contracts of his wife, and he may manage, lease, sell, convey, encumber, or devise, by will, such property without the wife joining in such management, alienation, or encumbrance, as fully and to the same effect as though he were unmarried. [Cd. '81, § 2048; 1 H. C., § 1397.]

Cited in 1 Wash. 79, 83; 7 Wash. 292, 293; 17 Wash. 491; 20 Wash. 205; 41 Wash. 195, 196; 46 Wash. 58; 52 Wash. 3; 57 Wash. 513; 74 Wash. 237; 75 Wash. 115; 82 Wash. 110; 83 Wash. 161; 86 Wash. 195.

For former statutes on the subject of this chapter, see L. '69, pp. 318–323; L. '71, pp. 67–74; L. '73, pp. 450–455, and p. 486, repealing L. '71; L. '75, p. 53; L. '79, p. 151 and pp. 77–81.

§ 5916. Separate Property of Wife.—The property and pecuniary rights of every married woman at the time of her marriage, or afterward acquired by gift, devise, or inheritance, with the rents, issues, and profits thereof, shall not be subject to the debts or contracts of her husband, and she may manage, lease, sell, convey, encumber or devise by will such property, to the same extent and in the same manner that her husband can, property belonging to him. [Cd. '81, § 2400; 1 H. C., § 1398.]

Cited in 1 Wash. 79, 83; 4 Wash. 264; 6 Wash. 509, 512; 19 Wash. 550; 20 Wash. 202, 205; 21 Wash. 239; 28 Wash. 117; 46 Wash. 582; 52 Wash. 3; 58 Wash. 19; 74 Wash. 237; 76 Wash. 115; 78 Wash. 39; 82 Wash. 110; 86 Wash. 195.

See supra, § 570, separate property of wife exempt, when.

§ 5917. Community Property Defined—Husband's Control of Personalty.—Property, not acquired or owned as prescribed in the next two preceding sections, acquired after marriage by either husband or wife, or both, is community property. The husband shall have the management and control of community personal property, with a like power of disposition as he has of his separate personal property, except he shall not devise by will more than one-half thereof. [Cd. '81, § 2409; 1 H. C., § 1399.]

Cited in 1 Wash. 79; 3 Wash. 483, 484; 4 Wash. 276; 5 Wash. 190; 6 Wash. 510; 7 Wash. 410; 13 Wash. 579; 20 Wash. 205; 39 Wash. 298; 46 Wash. 582; 48 Wash. 667; 54 Wash. 267; 57 Wash. 513; 59 Wash. 653; 61 Wash. 395; 65 Wash. 128; 66 Wash. 197; 75 Wash. 644; 76 Wash. 116; 78 Wash. 243, 477; 79 Wash. 134; 82 Wash. 110, 112; 83 Wash. 161; 86 Wash. 195, 534.

See supra, § 1342, descent of.

See infra, § 5930, liability for debts of each other.

§ 5918. Community Realty, Conveyance of, etc.—The husband has the management and control of the community real property, but he shall not sell, convey, or encumber the community real estate, unless the wife join with him in executing the deed or other instrument of conveyance by which the real estate is sold, conveyed, or encumbered, and such deed or other instrument of conveyance must be acknowledged by him and his wife: Provided, however, that all such community real estate shall be subject to the liens of mechanics and others for labor and materials furnished in erecting structures and improvements thereon as provided by law in other cases, to liens of judgments recovered for community debts, and to sale on execution issued thereon. [Cd. '81, § 2410; 1 H. C., § 1400.]

Cited in 1 Wash. 79, 81, 82, 85; 3 Wash. 367, 481, 483, 484; 6 Wash. 502; 9 Wash. 459, 471; 10 Wash. 244; 17 Wash. 87; 20 Wash. 52; 21 Wash. 544; 23 Wash. 390; 25 Wash. 463; 31 Wash. 395; 40 Wash. 591; 57 Wash. 595; 60 Wash. 79; 69 Wash. 462; 75 Wash. 644; 78 Wash. 39.

For provisions to protect innocent purchasers of community real property, see §§ 8771–8774, infra. As to conveyances of community property between husband and wife, and the execution of a power of attorney by either authorizing the sale of such property, see §§ 8766–8770, infra.

See supra, § 1145, community interest in land, how charged with mechanics' liens.

See infra, § 5292, burden of proof in transactions between husband and wife.

See infra, § 8771, record title, effect of on community lands.

See infra, § 8772, inventory of separate claims.

See infra, § 8769, power of attorney to convey community property.

§ 5919. Agreements as to Status of.—Nothing contained in any of the provisions of this chapter, or in any law of this state, shall

prevent the husband and wife from jointly entering into any agreement concerning the status or disposition of the whole or any portion of the community property, then owned by them or afterward to be acquired, to take effect upon the death of either. But such agreement may be made at any time by the husband and wife by the execution of an instrument in writing under their hands and seals, and to be witnessed, acknowledged, and certified in the same manner as deeds to real estate are required to be, under the laws of the state, and the same may at any time thereafter be altered or amended in the same manner: Provided, however, that such agreement shall not derogate from the right of creditors, nor be construed to curtail the powers of the superior court to set aside or cancel such agreement for fraud, or under some other recognized head of equity jurisdiction, at the suit of either party. [Cd. '81, § 2416; 1 H. C., § 1401.]

Cited in 4 Wash. 274, 277, 284; 34 Wash. 101; 82 Wash. 111.

"Chapter": See note to § 5923, infra.

As to burden of proof in cases involving transactions between husband and wife, see § 5292.

As to the manner in which deeds may be executed, consult § 8746 et seq.

Instruments relating to, to be recorded: See infra, § 8786.

§ 5920. Separate Earnings of Wife, etc.—A wife may receive the wages of her personal labor, and maintain an action therefor in her own name, and hold the same in her own right, and she may prosecute and defend all actions at law for the preservation and protection of her rights and property as if unmarried. [Cd. '81, § 2404; 1 H. C., § 1402.]

Cited in 6 Wash. 512; 28 Wash. 176; 86 Wash. 195.

See supra, § 181, husband and wife must join in actions, when.

See supra, § 182, wife as party to actions.

See infra, § 6289, injuries to intoxicated husband.

§ 5921. Earnings of Wife and Minor Children.—The earnings and accumulations of the wife and of her minor children living with her, or in her custody while she is living separate from her husband, are the separate property of the wife. [Cd. '81, § 2413; 1 H. C., § 1403.]

Cited in 28 Wash. 176; 86 Wash. 195.

See supra, § 570, separate property of wife exempt, when.

§ 5922. Tenancy in Dower and by Curtesy Abolished.—No estate is allowed the husband as tenant by curtesy, upon the death of his wife, nor is any estate in dower allotted to the wife upon the death of her husband. [Cd. '81, § 2414; 1 H. C., § 1405.]

See supra, § 1343, tenancy in dower and curtesy abolished.

§ 5923. Liberal Construction.—The rule of common law that statutes in derogation thereof are to be strictly construed has no application to this chapter. This chapter establishes the law of this state respecting the subject to which it relates, and its provisions and all

proceedings under it shall be liberally construed with a view to effect its object. [Cd. '81, § 2417; 1 H. C., § 1406.]

Cited in 4 Wash. 265, 283, 284; 13 Wash. 581.

"This chapter" is chapter 183 of the Code of 1881, the provisions of which, as modified by subsequent legislation, are embodied in this title, and in §§ 1342, 8767, 8773.

§ 5924. Chapter not Retroactive.—This chapter shall not be construed to operate retrospectively, and any right established, accrued, or accruing, or in anything done prior to the time this chapter goes into effect, shall be governed by the law in force at the time such right was established or accrued. [Cd. '81, § 2418; 1 H. C., § 1407.]

"This chapter": See note to last section.

§ 5925. Married Persons may Acquire and Hold Property, How.—Every married person shall hereafter have the same right and liberty to acquire, hold, enjoy, and dispose of every species of property, and to sue and be sued as if he or she were unmarried. [Cd. '81, § 2396; 1 H. C., § 1408.]

Cited in 1 Wash. 79, 81; 3 Wash. 483; 4 Wash. 264, 278, 280, 283, 364; 18 Wash. 310; 20 Wash. 202, 269; 46 Wash. 472; 58 Wash. 19; 74 Wash. 237.

§ 5926. Civil Disabilities of Wife Abolished.—All laws which impose or recognize civil disabilities upon a wife, which are not imposed or recognized as existing as to the husband, are hereby abolished, and for any unjust usurpation of her natural or property rights she shall have the same right to appeal in her own individual name to the courts of law or equity for redress and protection that the husband has: Provided always, that nothing in this chapter shall be construed to confer upon the wife any right to vote or hold office, except as otherwise provided by law. [L. '79, p. 151, § 1; Cd. '81, § 2398; 1 H. C., § 1409.]

Cited in 1 Wash. 79; 3 Wash. 483, 484; 4 Wash. 264, 283; 20 Wash. 202, 269; 65 Wash. 498; 76 Wash. 508.

"This chapter": See note to § 5923.

§ 5927. Contracts and Liabilities of Wife.—Contracts may be made by a wife, and liabilities incurred, and the same may be enforced by or against her to the same extent and in the same manner as if she were unmarried. [Cd. '81, § 2406; 1 H. C., § 1410.]

Cited in 4 Wash. 278, 280, 364; 15 Wash. 144; 16 Wash. 529; 20 Wash. 202; 24 Wash. 683; 46 Wash. 473; 74 Wash. 237; 79 Wash. 134.

§ 5928. May Sue Each Other.—Should either husband or wife obtain possession or control of property belonging to the other, either before or after marriage, the owner of the property may maintain an action therefor, or for any right growing out of the same, in the same manner and to the same extent as if they were unmarried. [Cd. '81, § 2401; 1 H. C., § 1411.]

Cited in 4 Wash. 265; 24 Wash. 683; 46 Wash. 473.

§ 5929. Injuries by Married Woman, Liability for.—For all injuries committed by a married woman, damages may be recovered from her alone, and her husband shall not be responsible therefor, except in case where he would be jointly responsible with her if the marriage did not exist. [Cd. '81, § 2402; 1 H. C., § 1412.]

Cited in 58 Wash. 19.

See infra, § 6289, action for injuries to intoxicated husband.

§ 5930. Antenuptial and Separate Debts.—Neither husband nor wife is liable for the debts or liabilities of the other incurred before marriage, nor for the separate debts of each other, nor is the rent or income of the separate property of either liable for the separate debts of the other. [Cd. '81, § 2405; 1 H. C., § 1413.]

Cited in 2 Wash. 334; 10 Wash. 572.

§ 5931. Family Expenses, Liability for.—The expenses of the family and the education of the children are chargeable upon the property of both husband and wife, or either of them, and in relation thereto they may be sued jointly or separately. [Cd. '81, § 2407; 1 H. C., § 1414.]

Cited in 1 Wash. 79, 81; 3 Wash. 483; 15 Wash. 686; 20 Wash. 203; 40 Wash. 669; 51 Wash. 439; 54 Wash. 18; 78 Wash. 229; 86 Wash. 535.

§ 5932. Custody of Children.—Henceforth the rights and responsibilities of the parents, in the absence of misconduct, shall be equal, and the mother shall be as fully entitled to the custody, control, and earnings of the children as the father; and in case of the father's death, the mother shall come into as full and complete control of the children and their estate as the father does in case of the mother's death. [L. '79, p. 151, § 2; Cd. '81, § 2399; 1 H. C., § 1415.]

Cited in 67 Wash. 316; 75 Wash. 578, 579.

See supra, § 988, custody of children in divorce proceedings.

§ 5933-1. Family Desertion.—Every person who,

1st: Having any child under the age of sixteen years dependent upon him or her for care, education or support, deserts such child in any manner whatever, with intent to abandon it;

2d: Willfully omits, without lawful excuse, to furnish necessary food, clothing, shelter, or medical attendance for his or her child or children or ward or wards;

3d: Having sufficient ability to provide for his wife's support, or who is able to earn the means for such wife's support, who willfully abandons and leaves his wife in a destitute condition, or who refuses or neglects to provide such wife with necessary food, clothing, shelter, or medical attendance, unless by her misconduct he is justified in abandoning her.

Shall be guilty of a gross misdemeanor. [L. '13, p. 71, § 1.]

Cited in 79 Wash. 571; 82 Wash. 385.

§ 5933–2. Punishment—Payment to Family—Suspension of Judgment—Working Prisoners.—In any case enumerated in the previous section, the court may render one of the following orders:

1st: Should a fine be imposed it may be directed by the court to be paid in whole or in part to the wife, or to the guardian, or to the custodian of the child or children, or to an individual appointed by the court as trustee.

2d: Before trial, or after conviction, with the consent of the defendant, the court, in its discretion, having regard to the circumstances and to the financial ability or earning capacity of the defendant, shall have the power to make an order, which shall be subject to change by it from time to time as circumstances may require, directing the defendant to pay a certain sum weekly during such time as the court may direct, to the wife or to the guardian, or custodian of the minor child or children, or to an individual appointed by the court, and to release the defendant from custody or probation during such time as the court may direct, upon his or her entering into a recognizance, with or without sureties, in such sum as the court may direct. The condition of the recognizance to be such that if the defendant shall make his or her appearance in court whenever ordered to do so, and shall further comply with the terms of the order and of any subsequent modification thereof, then the recognizance shall be void, otherwise to remain in full force and effect.

3d: Where conviction is had and sentence to imprisonment in the county jail is imposed, the court may direct that the person so convicted shall be compelled to work upon the public roads or highways, or any other public work, in the county where such conviction is had, during the time of such sentence. And it shall be the duty of the board of county commissioners of the county where such conviction and sentence is had, and where such work is performed by persons under sentence to the county jail, to allow and order the payment, out of the current fund, to the wife, or to the guardian, or the custodian of the child or children, or to an individual appointed by the court as trustee, at the end of each calendar month, for the support of such wife, child, or children, ward or wards, a sum not to exceed one and fifty one-hundredths dollars for each day's work of such person. [L. '13, p. 71, § 2.]

Cited in 79 Wash. 573.

§ 5933–3. Prima Facie Proof.—Proof of the abandonment or nonsupport of a wife, or the desertion of a child or children, ward or wards, or the omission to furnish necessary food, clothing, shelter, or medical attendance for a child or children, ward or wards, is prima facie evidence that such abandonment or nonsupport, or omission to furnish food, clothing, shelter, or medical attendance is willful. The provisions of section 5933–1 are applicable whether the parents

of such child or children are married or divorced and regardless of any decree made in said divorce action relative to alimony or to the support of the wife or child or children. [L. '13, p. 72, § 3.]

Cited in 82 Wash. 386.

§ 5934. Procedure on Failure to Comply With Order. — If the court be satisfied by information or complaint and due proof, under oath, that at any time the defendant has violated the terms of such order, it may forthwith proceed with the trial of the defendant under the original indictment or information, or sentence him under the original conviction, or enforce the original sentence, as the case may be. In case of forfeiture of a recognizance and enforcement thereof by execution, the sum recovered may, in the discretion of the court, be paid in whole or in part to the wife or to the guardian or custodian of the minor child or children. [L. '07, p. 200, § 2.]

As to repeal of this section, see § 2304, and note. See note to § 5933.

§ 5935. Evidence.—No other evidence shall be required to prove marriage of such husband and wife, or that such person is the lawful father or mother of such child or children, than is or shall be required to prove such facts in a civil action. In all prosecutions under this act any existing provisions of law prohibiting the disclosure of confidential communications between husband and wife shall not apply, and both husband and wife shall be competent witnesses to testify for or against each other to any and all relevant matters, including the fact of such marriage and the parentage of such child or children. Proof of the desertion of such wife, child or children in destitute or necessitous circumstances or of neglect to furnish such wife, child or children necessary and proper food, clothing or shelter is prima facie evidence that such desertion or neglect is willful. [L. '07, p. 201, § 3.]

As to repeal of this section, see § 2304, and note. See note to § 5933.